

People v Loquasto

2013 NY Slip Op 33652(U)

May 7, 2013

County Ct, Wayne County

Docket Number: 12-143A

Judge: Daniel G. Barrett

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

At a Term of the County Court held in and for the County of Wayne at the Hall of Justice in the Village of Lyons, New York on the 7th day of May, 2013.

Present: Honorable Daniel G. Barrett
County Court Judge

STATE OF NEW YORK
COUNTY COURT COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

ALBERT L. LOQUASTO,

Defendant

Appearances - ADA, Christopher Bokelman, Esq.
Defendant - Robert Tucker, Esq.

DECISION
Index No. 12-143A

STATE OF NEW YORK
COUNTY COURT COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

ANTHONY LOQUASTO,

Defendant

Appearances - ADA, Christopher Bokelman, Esq.
Defendant - Douglas M. Jablonski, Esq.

DECISION
Index No. 12-143B

Both Defendants having moved for a Huntley and Mapp Hearing. The Court having granted Huntley Hearings in both cases. The Court having reserved on the request for a Mapp Hearing in both cases.

In the motion papers for Albert Loquasto Defendant alleges his home was entered and searched without consent pursuant to a search warrant issued by Judge Young of Walworth Town Court. Property was seized and the People intend to introduce as evidence said seized property. Defendant contends that the evidence must be suppressed as the search was improper. Defendant requests a hearing to determine whether there was probable cause to issue the warrant and whether any evidence obtained should be suppressed.

The People with regard to said request oppose suppression and assert that the search of the residence was pursuant to a lawful warrant. That the Defendant bears the burden of showing that the law enforcement was unlawful. Further the People submit that the law enforcement officer acted within the lawful authority of the search warrant in performing the search. That if the Court does grant a Mapp Hearing that there be a protective order pursuant to CPL 240.50 or in the alternative that the Court review the application in camera to determine that probable cause existed for the issuance of the search warrant and that the search warrant application not be disclosed to Defendant.

In Anthony Loquasto's request for suppression of seized property, Defendant alleges that he gave no consent to any search of his person or property nor was there any contraband visible within his sight, reach or control at the time of his arrest. This Defendant argues that the material evidence was illegally seized and must be suppressed or in the alternative a pre-trial hearing held to determine the admissibility of the same.

The People respond to said motion that a search warrant, unchallenged by the unsupported allegations made by the Defendant in his motion, was valid and thus procedures by law enforcement were lawful in all ways. The People respectfully submit that the Defendant's motion is facially insufficient to demand a hearing on the issue of suppression of the evidence seized pursuant to a valid search warrant.

The procedure for the motion to suppress evidence is pursuant to CPL 710.60. CPL 710.60 (1) provides that the motion papers must state the ground or the grounds of the motion and must contain sworn allegations of fact, whether of the Defendant or of another person or persons, supporting such grounds.

CPL 710.60 (2) provides the court must summarily grant the motion if:

- A. The motion papers comply with the requirements of subdivision 1 and the People concede the truth of the allegations of fact therein, which support the motion; or
- B. The People stipulate that evidence sought to be suppressed will not be offered into evidence in any criminal action or proceeding against the Defendant.

In both cases herein the People are not conceding the truth or the allegations of the fact which support the motion and they are not stipulating that the evidence sought to be suppressed will not be offered into evidence at trial.

CPL 710.60 (3) provides the court may summarily deny the motions if:

- A. The motion papers do not allege a ground constituting legal basis for the motion; or
- B. The sworn allegations of fact do not as a matter of law support the ground alleged.

People essentially submit that the Defendants' motions are insufficient to merit a hearing on the issue to suppress the evidence seized pursuant to a valid search warrant.

The Court notes that in response to the pre-trial order of discovery in the paperwork it provides that Phyllis Loquasto was the owner of the property in question, that being 809 Plank Road, Walworth, New York. Defendant Albert Loquasto upon information and belief is the son of Phyllis Loquasto and Defendant Anthony Loquasto upon information and belief is the grandson of said Phyllis Loquasto. Further attached to Response to Pre-Trial of Discovery is a statement of Phyllis Loquasto that provides that Albert Loquasto and Anthony Loquasto have access to the house.

The Court notes that in neither motion papers filed by either Defendant does either Defendant claim a proprietary interest or any privacy interest in the property that was searched.

The Defendant bears the burden of proof in attacking the sufficiency of the information underlying the issuance of a search warrant, People v. Glen, 30 N.Y. 2d 252. In both sets of motion papers the motions are only signed by the attorneys for the Defendant. There are no factual allegations by anyone of any knowledge. Attorney's affidavits are alleged upon information and belief.

In People v. Burton, 6 N.Y. 3d 584 the court noted that although individuals possessed a legitimate expectation of privacy with regard to their persons, the mere assertion that contraband was recovered from a defendant does not create an issue of fact as to whether the search and seizure were the result of a fourth amendment violation. Rather defendant must additionally assert that the search was not legally justified and there must be sufficient factual allegations to support that contention.

A defendant seeking to challenge a search and seizure is required to demonstrate a personal legitimate expectation of privacy in the searched premises, People v. Rance P. Sculley, 14 N.Y. 3d 861. In said case the court held that the defendant did not assert a privacy interest in the apartment in his motion papers or oral argument, see also People v. Wesley, 73 N.Y. 2d 351.

In neither case before the Court has either Defendant demonstrated a personal legitimate expectation of privacy in the searched premises.

Huntley and Wade motions may not be denied simply because the defendant's factual pleas are inadequate, however, Mapp motions are frequently denied on a count of the defendant's failure to allege facts that would require suppression, People v. Mendoza, 82 N.Y. 2d 415. Said court's decision provides hearings are not automatic or generally available for the asking of boiler plate allegations. Rather factual sufficiency should be determined with reference to the face of the pleadings, the context of the motion and defendant's access to the information.

Instructive is the case of People v. Reynolds, 71 N.Y. 2d 552. In that case defense allege that a search warrant was based on the illegal observations of marihuana in the curtilage of the defendant's house, hid in enclosed areas rather than visible in an open field. The court noted that these were conclusory assertions and that no sworn allegations of fact were offered to support them. The discussion in the Mendoza case, supra, the court uses an example of the following statement in defendant's motion papers: "I did nothing giving rise to probable cause". The court held such statement without more is plainly insufficient because probable cause is a mixed legal-factual issue and the pleading lacks the factual portion of the equation.

In the case at hand in moving papers for Anthony Loquasto merely states the property was illegally seized and therefore is inadmissible and must be suppressed. In Albert Loquasto's he states that the evidence must be suppressed as the search was improper.

The Court is aware that the Defendants were not provided a copy of the applications for the search warrant. However, there is a great deal of information provided with the Pre-Trial Order of Discovery in order to allow the Defendants to allege something for the Court to determine whether a hearing is necessary.

In this case the Defendants have not demonstrated an legitimate privacy interest in the property that was searched. Defendants' pleadings cannot make out a violation of the fourth amendment if they do not contain allegations establishing his or her standing to protest the illegality, People v. Carter, 86 N.Y. 2d 721. In those cases in which evidence is not taken from the defendant's person, the defendant will be obliged to set out particulars of his or her connection either to the evidence, or to the area in which it was seized, People v. Gomez, 67 N.Y. 2d 843, People v. Lovejoy, 197 A.D. 2d 353.

Further the Court provides Defendants have failed to allege any factual allegations that would require a hearing even if standing had been established.

This constitutes the Decision of the Court.

Dated: May 7, 2013
Lyons, New York



Daniel G. Barrett
County Court Judge