

People v Murray

2013 NY Slip Op 34063(U)

March 8, 2013

Supreme Court, Westchester County

Docket Number: 12-1281-02

Judge: Barbara G. Zambelli

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FILED
AND
ENTERED ON
Mar. 8 2013
WESTCHESTER
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
THE PEOPLE OF THE STATE OF NEW YORK

- against -

JOHN MURRAY and BEATRICE CAMPER,

Defendants.

-----X
ZAMBELLI, J.

DECISION & ORDER

Indictment No.: 12-1281-02

MAR 8 2013

COUNTY OF WESTCHESTER

The defendant has been indicted for murder in the second degree allegedly committed on or about October 3, 2012 in the County of Westchester. She now moves by notice of motion with supporting affirmation and memorandum of law for omnibus relief. The People's response consists of an affirmation in opposition and a memorandum of law. Upon consideration of these papers, as well as review of the grand jury minutes and exhibits and the consent discovery order entered in this case, the motion is disposed of as follows:

1. MOTION TO INSPECT/DISMISS/REDUCE

This application is granted to the extent that the Court has conducted an in camera inspection of the minutes of the grand jury proceedings. Upon review of the evidence presented, this Court finds that all counts were supported by sufficient evidence and that the instructions given were appropriate. There was no other infirmity which would warrant a dismissal of the indictment. Accordingly, that branch of the motion which seeks dismissal of the indictment is denied. The Court further finds no facts which would warrant releasing

any portion of the minutes of the grand jury proceedings to the defense (CPL §210.30[3]).

2. MOTION FOR A FURTHER BILL OF PARTICULARS

This motion is denied. The bill of particulars which was served pursuant to and simultaneously with the consent order was sufficient to adequately inform the defendant of the substance of her alleged conduct and to enable her to prepare and conduct a defense (People v. Byrnes, 126 AD2d 735, 736; see also People v. Watts, 84 NY2d 948; People v. Gargano, 222 AD2d 694; People v. Lopez, 175 AD2d 267). The information requested by defendant need not be disclosed (People v. Sanchez, 278 AD2d 889).

3. MOTION FOR DISCOVERY / BRADY MATERIAL

This application is granted to the limited extent of ordering that the People are to provide the defendant with materials and information, the disclosure of which is required pursuant to the provisions of CPL §240.44 and §240.45. The defendant's demand for disclosure of items or information to which she is entitled pursuant to the provisions of CPL §240.20(1) (a) through (l) is granted upon the People's consent. The application is otherwise denied as it seeks items or information which are beyond the scope of discovery and the defendant has failed to show that such items are material to the preparation of her defense (CPL §240.40 [1][a]).

The People are reminded of the continuing obligation to provide exculpatory information to the defendant (Brady v. Maryland, 373 U.S. 83). Exculpatory information includes any information that would be "favorable to the defense, material either to guilt or punishment, or affecting the credibility of prosecution witnesses," (People v. Baxley, 84 NY2d 208, 213). The People are directed to disclose any such information to the defense. Where a question exists as to whether a particular item should be disclosed, they are

directed to submit the material or information to the Court, which will conduct an in camera examination to resolve the issue.

4. MOTION TO SUPPRESS PRIOR BAD ACTS (SANDOVAL AND VENTIMIGLIA)

Granted on consent of the People to the extent that this Court directs that a hearing be held immediately prior to trial. Prior to the commencement of jury selection, the People will disclose to defendant all specific instances of her prior uncharged crimes and bad acts they expect to introduce at trial for impeachment purposes (CPL §240.43). Defendant must then sustain her burden of informing the Court of the prior convictions and misconduct which might unfairly affect her as a witness in her own behalf (People v. Matthews, 68 NY2d 118, 121-122). In the event the People seek to introduce defendant's prior bad acts on their direct case, the burden is on the People to seek a Ventimiglia hearing to determine the admissibility of such evidence (People v. Ventimiglia, 52 NY2d 350).

5. MOTION TO SUPPRESS PHYSICAL EVIDENCE

Defendant moves to suppress physical evidence seized in this case. While defendant fails to specify which evidence she seeks to suppress, from the context of her motion, it is clear that she is seeking to suppress the evidence recovered from her residence and from her cell phone for which the People allege that she provided the police a written consent to search. Defendant argues that her consent was not freely and voluntarily given. Defendant submits that prior to giving her consent, she was present in the police department with a strong police presence and not allowed to leave, that she was subject to police interrogation for three hours and that she was told by the police to sign the form and was not advised of her right to refuse her consent. The People oppose the

motion and argue that defendant was not in custody when she gave the consent, as they submit that she voluntarily appeared at the police department. They also argue that defendant knowingly and voluntarily gave her consent to search, as she so indicated on the form she signed.

The defendant's motion is granted to the extent that a pre-trial hearing will be held to determine whether property seized should be excluded as the product of an unlawful seizure or other violation of the defendant's rights (Mapp v. United States, 367 US 642; People v. Holmes, 81 NY2d 1056; People v. Selby, 220 AD2d 544).

6. MOTION TO SUPPRESS STATEMENTS

The People have served the defendant with three CPL §710.30 notices regarding two oral statements and an oral statement electronically recorded. The defendant moves to suppress the noticed statements on the grounds that they were made while defendant was in custody without benefit of sufficient Miranda warnings and were involuntary, and that the defendant was not in the proper state of mind to comprehend her rights. The People oppose the motion and argue that as to the first and second noticed statements, that these statements were voluntarily made by the defendant, who was not in custody, but present at the hospital and at her home, respectively. The People further assert that the questions defendant was asked at these points were not designed to illicit incriminating statements but to assist in the investigation of her husband's death, thus they submit that Miranda warnings were unnecessary. As to the third statement, the People argue that defendant was again not in custody for this statement, as she was not under arrest and was told that she was free to leave. The People further submit that defendant was given her Miranda rights and agreed to speak with the police and that she was arrested after she

made incriminating statements.

Defendant's application is granted to the extent that the Court will conduct a hearing prior to trial concerning the noticed statements allegedly made by the defendant for the purpose of determining whether Miranda warnings were necessary and, if so, whether she was so advised and made a knowing, intelligent and voluntary waiver thereof, or whether the statements were otherwise involuntarily made within the meaning of CPL §60.45.

7. MOTION FOR REASONABLE TIME FOR FURTHER MOTIONS

The defendant's request for permission to make additional pretrial motions is denied. Additional motions will only be considered upon good cause shown pursuant to CPL §255.20(3).

8. MOTION TO SEVER

Defendant argues that she will be unduly prejudiced if she is tried jointly with her co-defendant because she alleges that they have irreconcilable defenses and because her co-defendant will not be bound by the Court's Sandoval ruling. The People oppose the motion as premature.

The defendant's claims are conclusory and do not rise to the level of the compelling reasons required to mandate severance at this time (see People v. Mahboubian, 74 NY2d 174). Defendant's motion is denied with leave to renew before the trial judge.

9. MOTION TO CONTROVERT THE SEARCH WARRANT

Defendant moves to controvert the search warrant executed on October 25, 2012 for the search of a certain Dell Tower personal computer and a certain Emachine Tower personal computer. Defendant, who has been provided with the search warrant and supporting affidavit, alleges that the information in the affidavit was stale, that the police

waited too long to present their information to the issuing judge, and that the information related to criminal activity that occurred too far in the past. Defendant argues that the warrant was "predicated upon information that the defendant possessed the [computers] on October 25, 2012, even though it was in the possession of the Westchester County District Attorney's Office" and that probable cause did not continue to exist at the time the warrant application was made. Defendant further argues that suppression is required because the Search and Seizure Receipt and Inventory form submitted by the police was not sworn to and notarized. The People oppose the motion and argue that the warrant application contains probable cause on its face. The People's response fails to address defendant's contention that the information in the warrant affidavit was stale.

Defendant's motion is denied. Contrary to the defendant's contention, the caption of both the warrant and its supporting affidavit indicate that at the time the warrant application was presented to the court (ie. October 25), the subject computers were in the possession of the District Attorney's office, having been recovered from a search of the defendant's home conducted pursuant to her alleged consent. It is clear from the context of these allegations that the computers were recovered on or about October 4, 2012. It is also clear from the allegations of the warrant application that the information sought to be obtained from the computers was on-going in nature and related to the defendants' alleged motivation to commit the crime. Given this, the information was not stale (see People v. Demus, 82 A.D.3d 1667, 1668 (4th Dept. 2011), lv. denied, 17 N.Y.3d 815 (2011); People v. Williams, 249 A.D.2d 343 (2d Dept. 1998), lv. denied, 92 N.Y.2d 883 (1998); People v. Mallory, 234 A.D.2d 913, 914 (4th Dept. 1996), lv. denied, 89 N.Y.2d 1013 (1997); People v. Tune, 103 A.D.2d 990, 991 (3d Dept. 1984)). Moreover, upon the review of the four

corners of the search warrant affidavits, the Court finds that the warrants were supported by probable cause (see People v. Keyes, 291 AD2d 571 (2d Dept. 2002)). As to the defendant's motion to suppress evidence on the basis that no returns filed on the warrants were not duly sworn, the motion is denied as the return and inventory under a search warrant are ministerial acts and the failure to perform such acts do not void an otherwise validly issued warrant (see People v. Morgan, 162 A.D.2d 723 (2d Dept. 1990); see also People v. Pietramala, 84 Misc.2d 496 (Queens Crim. Ct. 1975)).

10. MOTION TO CONDUCT PRETRIAL HEARINGS 20 DAYS BEFORE TRIAL

This motion is denied. In accordance with the long standing practice of the Westchester County Court, pre-trial hearings granted on a post-indictment motion to suppress are held immediately prior to trial unless otherwise ordered by the Supervising Judge of the Trial Assignment Part.

This Decision constitutes the Order of the Court.

Dated: White Plains, New York
March 8, 2013



BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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