

<b>People v Velez</b>
2015 NY Slip Op 33017(U)
August 14, 2015
Supreme Court, Westchester County
Docket Number: Indictment No. 15-0583
Judge: Susan M. Capeci
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FILED  
AND  
ENTERED  
ON 8/13 2015  
WESTCHESTER  
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK  
COUNTY CLERK  
- against -

DECISION & ORDER

Indictment No: 15-0583

ANTONIO VELEZ,  
Defendant.

CAPECI, J.,

The defendant, having been charged by indictment with aggravated criminal contempt (P.L. 215.52), unlawful imprisonment in the first degree (P.L. 135.10), assault in the second degree (P.L. 120.05 (6)), criminal possession of a weapon in the third degree (P.L. 265.02 (1)), two counts of criminal contempt in the first degree (P.L. 215.51(b)(v) and 215.51(b)(i)), endangering the welfare of a child (P.L. 260.10(1)), assault in the third degree (P.L. 120.00 (1)), two counts of criminal obstruction of breathing or blood circulation - apply pressure (P.L. 121.11 (a)), criminal mischief in the fourth degree (P.L. 145.00 (1) and 145.00 (4)(a)), and criminal contempt in the second degree (P.L. 215.50 (3)), now makes this motion seeking omnibus relief.

The defendant has submitted an affirmation from his attorney and memorandum of law in support of his omnibus motion, in which he seeks the following relief: 1) disclosure of materials not previously provided through consent discovery, and Brady material; 2) inspection of the grand jury minutes by the Court and the defendant, and thereafter, for the dismissal of the indictment and/or reduction of the charges contained therein; 3) a Sandoval/Ventimiglia hearing; and 4) a reservation of rights to make further

pretrial motions as necessary.

The People have submitted an affirmation in opposition in which they consent to provide discovery limited to the parameters of CPL article 240, as well as Brady material. They also consent to a Sandoval hearing, and an in camera inspection of the grand jury minutes by the Court to assess legal sufficiency, but otherwise oppose the motion. The Court now finds as follows.

1. MOTION FOR DISCOVERY AND INSPECTION/ BRADY

The defendant has been provided with consent discovery in this case. Therefore, the defendant's demand for disclosure of items or information to which he is entitled pursuant to the provisions of CPL 240.20(1) (a) through (k) 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 his defense (CPL 240.40 (1) (a); People v Bianco, 169 Misc2d 127 (Crim. Ct, Kings Co. 1996)).

The defendant's demand for the production of Rosario material at this time is premature (see CPL 240.45(1); Catterson v Rohl, 202 AD2d 420 (2d Dept 1994)). Further, there is no statutory right to disclosure of all police reports concerning an ongoing investigation (Brown v Grosso, 285 AD2d 642 (2d Dept 2001); see also Pirro v LaCava, 230 AD2d 909 (2d Dept 1996)).

The People have acknowledged their continuing obligation to provide exculpatory information to the defendant (Brady v Maryland, 373 US 83), and are directed to disclose any such information to the defense.

2. 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 each count of the indictment was supported by sufficient evidence and that the instructions given were appropriate. There was no infirmity which would warrant a dismissal of the instant 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)).

3. MOTION FOR A SANDOVAL/VENTIMIGLIA HEARING

The defendant's motion for a Ventimiglia hearing is denied at this time since the People do not represent that they are seeking to introduce any of defendant's prior bad acts on their direct case. The defendant's motion may be renewed in the event the People later seek to offer such evidence at trial. The motion for a Sandoval hearing is granted and shall be renewed before the trial Judge.

4. MOTION FOR RESERVATION OF RIGHTS TO MAKE FURTHER MOTIONS

Lastly, the defendant requests leave to make further pre-trial motions as necessary. The defendant's motion is denied. CPL 255.20 is controlling with respect to the time frame for making pre-trial motions and there have been no allegations of good cause for making further motions outside of those time constraints.

This decision constitutes the Order of the Court.

Dated: White Plains, New York  
August 14, 2015



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HON. SUSAN M. CAPECI  
A.J.S.C.

To:

Hon. Janet DiFiore  
District Attorney, Westchester County  
111 Dr. Martin Luther King Jr. Blvd.  
White Plains, New York 10601  
Attn: Susan L. Pollet, Esq.  
Assistant District Attorney

Richard L. Ferrante, Esq.  
Attorney for Defendant  
399 Knollwood Road, Suite 111  
White Plains, New York 10603