

**People v Thompson**

2015 NY Slip Op 33028(U)

October 30, 2015

County Court, Westchester County

Docket Number: Indictment No. 15-0691

Judge: Barbara G. Zambelli

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FILED  
AND  
ENTERED ON  
Oct. 30 2015  
WESTCHESTER  
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK

DECISION & ORDER

- against

Indictment No.: 15-0691

CURTIS THOMPSON,

Defendant.

ZAMBELLI, J.

The defendant has been indicted for the crimes of Criminal Possession of a Weapon in the Third Degree (two counts), Resisting Arrest and Obstructing Governmental Administration in the Second Degree, allegedly committed on or about May 24, 2015, in the County of Westchester. He 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 AND 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 (see, CPL §210.30[3]).

2. MOTION FOR DISCOVERY AND INSPECTION

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. As to the defendant's demand for exculpatory material, the People have indicated their awareness of their continuing obligation to disclose any such material immediately upon its discovery. 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, for examination in camera in order to resolve the issue.

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 his defense (CPL §240.40 [1][a]). With regard to witness names the People further recognize their duty to comply with People v. Rosario, 9 N.Y.2d 286; CPL §240.44, §240.45.

3. MOTION TO PRECLUDE PRIOR BAD ACTS

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 his prior uncharged crimes and bad acts

they expect to introduce at trial for impeachment purposes (CPL §240.43). Defendant must then sustain his burden of informing the Court of the prior convictions and misconduct which might unfairly affect him as a witness in his own behalf (People v. Matthews, 68 N.Y.2d 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 N.Y.2d 350).

4. 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 his alleged conduct and to enable him to prepare and conduct a defense (see, People v. Byrnes, 126 A.D.2d 735, 736; see also, People v. Watts, 84 N.Y.2d 948; People v. Gargano, 222 A.D.2d 694; People v. Lopez, 175 A.D.2d 267). The information requested by the defendant need not be disclosed (see, People v. Sanchez, 278 A.D.2d 889).

5. RESERVATION

Additional motions will only be considered upon good cause shown pursuant to CPL §255.20(3). Defendant's request for an adjournment after pretrial hearings is denied with leave to renew before the Hearing/Trial Judge.

6. MOTION FOR MAPP HEARING

Defendant denies the allegations in the Bill of Particulars and contends he was simply standing at the location alleged in the bill of particulars when the police grabbed him from behind and searched him. He asserts the police had no basis to approach him and search. Therefore, the gun and his statement must be suppressed.

The People counter that upon the police response to a 911 call reported by a civilian witness of a man with a gun at 18 North Third Ave in Mount Vernon, they observed defendant apparently intoxicated arguing with another individual. The police requested everyone to separate and for defendant to remove his hand from his pocket. Defendant refused and became increasingly aggressive, pushing and shoving the officers. Defendant ran and a police chase ensued. During the chase defendant dropped an operable .40 caliber firearm. The police caught up to him and attempted to place him under arrest while defendant struggled.

The People contend that the police approach and pursuit in this case was in all respects lawful. They contend the defendant's conduct gave rise to probable cause to arrest when defendant pushed and shoved the officers at the initial location. They also contend, in substance, that circumstances escalated to the point providing reasonable suspicion justifying the pursuit of the defendant and lawful recovery of the weapon. They further argue defendant abandoned the firearm and therefore has not established standing to contest the recovery of the firearm.

Defendant's motion is granted solely to the extent that a hearing shall be held immediately prior to trial to determine the lawfulness of the police conduct including whether the recovery of the firearm was the product of an unlawful police pursuit. (See, People v. De Bour, 40 N.Y.2d 210; People v. Martinez, 80 N.Y.2d 444).

#### 7. MOTION FOR A HUNTLEY HEARING

The People have provided two statement notices pursuant to CPL §710.30.

Defendant contends the statements are the product of an unlawful seizure, *supra*, and were involuntary. The People contend the defendant's statements were spontaneous

and therefore Miranda warnings were not required.

Defendant's application is granted to the extent that the Court will conduct a hearing prior to trial concerning the noticed statements for the purpose of determining whether Miranda warnings were required or whether the statements were otherwise involuntarily made within the meaning of CPL §60.45. The hearing will also determine whether the defendant's statements were the product of an unlawful seizure.

This decision constitutes the Order of the Court.

Dated: White Plains, New York  
October 30, 2015

  
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BARBARA G. ZAMBELLI  
COUNTY COURT JUDGE

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

William McDonald, Esq.  
18-25 Queens Boulevard #1201  
Forest Hills, New York 11375

Nancy Barry, Esq.  
Chief Clerk

EXHIBIT A

Assistant District Attorney Cort  
Queens District Attorney's Office

Re: People v. Thomspen

Dear Assigned ADA

I am an attorney representing the defendant in the above-captioned case. This letter constitutes a formal request and demand for a Bill of Particulars and discovery, pursuant to the provisions of C.P.L. §§ 200.95 and 240.20. This demand is incorporated in our omnibus motion.

BILL OF PARTICULARS

In order for the defendant to prepare and conduct his defense adequately, it is necessary and essential that specific items of factual information, not recited in the complaint, including the substance of the defendant's conduct, be supplied to defense counsel.

The defense further requests that any refusal to supply any of the requested information be made in writing setting forth the grounds for such refusal, and a copy of such writing be served upon the undersigned and filed with the court within fifteen (15) days from receipt by you of this request for a Bill of Particulars, pursuant to the provisions of C.P.L. §200.95(4).

DISCOVERY

Pursuant to the provisions of C.P.L. §240.20, please disclose to the defendant and make available for inspection, photographing, copying, and testing, the following:

1. Any written, recorded, or oral statement(s) of the defendant, or a co-defendant to be tried jointly, made to a public servant engaged in law enforcement activity or

to a person then acting under his or her direction or in cooperation with him or her.

2. Set forth:

- a. The exact content of all statements allegedly made by the defendant, or a co-defendant to be tried jointly, in the presence of law enforcement officials. If any such statements were committed to writing by police officers, provide defense counsel with copies of all police reports, memo book entries, and other notes and memoranda which refer to any such statements. If any such statements were committed to writing by other law enforcement officials, provide defense counsel with all reports, notes, and memoranda which refers to any such statements.
- b. State when, where, and to whom any such statement(s) were made.
- c. State the name and address (shield number and command for law enforcement officer) of each person present at the making of each such statement.
- d. State whether Miranda warnings were given to the defendant. If so, then provide the following:
  - i. The name(s), shield number(s), and command(s) of any and all police officer(s) who administered the warnings.
  - ii. State the exact date, time, and location where such warnings were administered.
  - iii. State the exact content of the warnings.
  - iv. State the name(s), shield number(s), and command(s) of all police officer(s) present at the time the warnings were administered.
  - v. State the name(s) and address(es) of all civilian(s) present at the time the warnings were administered.
- e. State whether the prosecution intends to offer any hearsay statement or some statement falling within an exception to the hearsay rule allegedly made by any person.
- f. If so, state who made the statement, at what time, and where such statement was made, under what circumstances, and the contents

of the statement.

3. Any transcript of testimony relating to the criminal action or proceeding pending against the defendant, given by the defendant, or a co-defendant to be tried jointly, before any governmental unit or investigative body.

4. Any written report or document, or portion thereof, concerning any physical or mental examination, or scientific test or experiment, relating to this criminal action or proceeding which was made by, or at the request or direction of, a public servant engaged in law enforcement activity, or which was made by, or for the treatment or diagnosis of, a person whom the prosecutor intends to call as a witness at trial, or which the Police intend to introduce at trial. This includes, but is in no way limited to:

a. Any medical record(s), EMS report(s), fingerprint test(s), or polygraph test(s) created or performed in connection with this case.

5. Any photograph, drawing or videotape related to this criminal action or proceeding which was made or completed by a public servant engaged in law enforcement activity, or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the People intend to introduce at trial. Include any and all photographs, sketches, or drawings regarding the scene of the alleged crime and/or any items of property involved in this case.

6. Any photograph, photocopy, or other reproduction made by or at the request or direction of a police officer, peace officer, or prosecutor of any property prior to its release pursuant to the provisions of Penal Law § 450.10, irrespective of whether the People intend to introduce at trial the property or the photograph, photocopy, or other reproduction.

7. Any property allegedly obtained from the defendant, or a co-defendant to be tried jointly, during the investigation of this case, or incident to the arrest of the defendant, or a co-defendant to be tried jointly, and any property which the prosecution intends to introduce at trial, whether or not obtained from the defendant, or a co-defendant to be tried jointly.

a. Specify whether said property was recovered from the person of the defendant, or a co-defendant to be tried jointly, or from the defendant's or co-defendant's automobile.

b. Specify the exact type of contraband, fruits, or instrumentality recovered.

c. Specify whether the property was recovered by law enforcement officials, or by private citizen(s) who subsequently turned it over to

law enforcement officials.

- d. Supply defense counsel with the proper voucher(s), or any other written listing, describing such property.
- e. Allow defense counsel an opportunity to inspect said item(s).
- f. Allow defense counsel an opportunity to have an expert examine and conduct relevant tests on said item(s).

8. With respect to any search conducted of the defendant and/or property, state and provide the following:

- a. The exact date, time, and location of any and all search(es), whether pursuant to a warrant or not, of any vehicle, place, or person, in connection with this case.
- b. A complete list of all property of every nature and description seized during any search, whether pursuant to a warrant or not, whether the District Attorney intends to offer such property into evidence, and all voucher(s) issued with respect to such property.
- c. The name(s), address(es), and birth date(s) of any and all person(s) present at the time of such search(es).

9. Any tape(s), videotape(s), or other electronic recording(s) which the prosecutor intends to introduce at trial, irrespective of whether such recording(s) were made during the course of the criminal transaction, including, but in no way limited to, any 911 tape(s) relevant to this prosecution.

10. With respect to the information regarding the crime charged herein, state the following:

- a. The exact date, time, and location when the information was first brought to the attention of the police.
- b. The name(s), address(es), and birthdate(s) of any person(s) giving said information.
- c. The manner said information was conveyed to the police (i.e., by 911 call, walk-in, "Crime Stoppers," etc.).
- d. Any description of the perpetrator supplied by any of the aforesaid person(s).

- e. The mental or physical state of the aforesaid person(s). This includes, but is in no way limited to, whether the complainant was intoxicated or under the influence of alcohol or drugs at the time of the crime alleged herein.
- f. Whether any prosecution witness who has furnished information to the District Attorney was (or ever has been) a registered or unregistered informant or police officer, detective, District Attorney, or any other law enforcement official, including those in jurisdictions outside of the County of New York. If so, then state:
  - i. The name(s), address(es), and birthdate(s) of any such witness(es).
  - ii. The name(s), shield number(s), command(s), and jurisdiction(s) of such law enforcement official(s), and to whom they report.
  - iii. Set forth all instances in which any such person provided information, including particulars of date(s), time(s), and location(s), and set forth the status of all case(s) in which any such person provided information, giving particulars as to the name(s) of the defendant(s), docket number(s), and disposition(s).

11. State whether any investigation was conducted at the scene of the crime alleged herein and the results of any such investigation.

12. State whether there was any out-of-court identification, or non-identification, of the defendant by any witness(es). If so, then provide the following:

- a. The specific type(s) of identification procedure(s) used. This includes, but is in no way limited to, a single photograph, a photographic array, a show-up, or a line-up.
- b. The exact date(s), time(s), and place(s) of the procedure(s), and the manner in which they were conducted.
- c. If there was a line-up, state the names and addresses of the "fillers" who participated. Further, provide the name(s), shield number(s), and command(s) of all police officer(s) present, the name(s) and address(es) of anyone else present, and photographs of the line-up.

- d. If there was a photographic identification, provide the name(s), shield number(s), and command(s) of all police officer(s) present, the name(s) and address(es) of anyone else present, and the photographs used in the array.

13. State the exact date, time, and location of the offense charged.

- a. The name(s), shield number(s), and command(s) of any and all police officer(s) assisting in or participating in the arrest of the defendant herein, whether or not the People intend to call them as witness(es). *People v. Wanda Harris*, N.Y.L.J., January 2, 1992. p. 22, col. 3 (Crim. Ct. N.Y. Co.) (Kluger, J.).
- b. Provide defense counsel with copies of any and all police department reports, memoranda, or records prepared in connection with the investigation of the crime charged herein, and the arrest of the defendant, including, but not limited to, those made by the New York City Police Department. This demand includes, but is in no way limited to, UF-61, DD-5, Memo Book, On Line Booking Sheet, CCIU, 822 (commonly known as the "script" that accompanies the Intoxicated Driver Examination), and Unusual Occurrence forms.

14. Notify defense counsel of all specific instances of the defendant's prior uncharged (and charged) criminal, vicious, or immoral conduct of which the prosecution has knowledge and which the prosecution intends to use at trial. C.P.L. § 240.43.

15. Anything required to be disclosed, prior to trial, to the defendant by the prosecution, pursuant to the Constitutions of the United States and of the State of New York. This includes, but is in no way limited to, the following:

- a. All evidence within the custody or knowledge of the District Attorney's Office which is favorable to the defendant, in accordance with *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Agurs*, 427 U.S. 97 (1976), and *People v. Simmons*, 36 N.Y.2d 126, 325 N.E.2d 139, 365 N.Y.S.2d 812 (1975). This includes, but is in no way limited to:
  - i. Any statement(s) made by a witness, participant, or other person to any law enforcement officer, or any person acting in concert with such officer, which may be exculpatory, non-incriminatory, inconsistent with prior statements, or otherwise favorable to the defendant, whether or not the District Attorney intends to use such statement(s) in any

future proceeding(s), the existence of which are or should be known, by the exercise of due diligence, to the District Attorney.

- ii. The name(s) and address(es) of all person(s) known to the prosecution to have been present at the scene of the crime on date in question, or who thereafter claim to have observed the defendant at any time prior to the arrest of the defendant, who:
    - (a) The People do not intend to call as witness(es), and the written, recorded, or oral statement(s) of any such person(s).
    - (b) Have been shown photograph(s) of the defendant, or have viewed him/her subsequent to arrest and failed to identify him/her as the perpetrator of the offense.
    - (c) Identified another, at any time, either in person or by photograph, as the perpetrator of the offense.
  - iii. The photographs used in all photographic array(s) shown to any witness, irrespective of whether the defendant was included in the array or identified. *People v. Brown*, 67 N.Y.2d 555, 505 N.Y.S.2d 574, 496 N.E.2d 663 (1986).
  - iv. The photographs of all line-up(s) conducted in connection with the investigation of the defendant, or the incident.
- b. All evidence within the custody or knowledge of the District Attorney's Office which might tend to adversely affect the credibility of any witnesses that the prosecution intends to call at trial, in accordance with *Giglio v. United States*, 405 U.S. 150 (1972), and *People v. Cwikla*, 46 N.Y.2d 434, 414 N.Y.S.2d 102, 386 N.E.2d 1070 (1979). This includes, but is in no way limited to, whether any person(s) to be called by the prosecution are known, or by the exercise of due diligence should be known, by the prosecution to:
- i. Have been charged with a crime. If so, state the nature of, and the facts surrounding, the crime(s) charged.
  - ii. Have been convicted of a crime. If so, state the charge(s) underlying the conviction(s), and provide defense counsel

with the N.Y.S.I.D. number(s).

- iii. Have ever received any promise or consideration of any kind for testifying at trial, including, but in no way limited to, immunity, favorable, special, or different treatment, financial remuneration, or expenses.
- iv. Have ever received any psychiatric care or treatment, or been confined for the purpose of psychiatric care or treatment, under either a civil or criminal commitment. If so, state the nature of, and the facts surrounding, the care or treatment, including date(s) and place(s) of treatment.
- v. Have ever been treated for drug or alcohol abuse, or been confined in a drug or alcohol treatment facility, under either a civil or criminal commitment. If so, state the nature of, and the facts surrounding, the treatment, including date(s) and place(s) of treatment.
- vi. Have been subjected to hypnosis or other externally induced form of memory recall. *People v. Hughes*, 59 N.Y.2d 523, 466 N.Y.S.2d 255, 453 N.E.2d 484 (1983).

If the prosecution is unwilling to exercise due diligence by making such investigation and/or inquiry of its witnesses, the defense demands that it be supplied with the name(s), address(es), birthdate(s), and N.Y.S.I.D. number(s) of such witness(es) sufficiently in advance of trial so that it may make its own investigation or inquiry of them.

16. Furnish defense counsel, now and on a continuing basis, with all evidence or information which may tend to exculpate the defendant, either by tending to establish a defense or by potential impeachment of a prosecution witness, within the meaning of *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Agurs*, 427 U.S. 97 (1976), *People v. Rosario*, 9 N.Y.2d 286, 213 N.Y.S.2d 448, 173 N.E.2d 881 (1961), and *People v. Wright*, 74 Misc. 2d 419, 343 N.Y.S.2d 944 (Sup. Ct. N.Y. Co. 1973). This includes, but is in no way limited to:

- a. Any evidence that the defendant was "merely present" at the scene of the alleged crime but was not a participant.
- b. Any evidence or witness(es) supporting the defendant's defense of mistaken identity.
- c. Any evidence that the complainant was intoxicated or under the

influence of alcohol or drugs at the time of the alleged crime.

- d. Any evidence that the defendant was intoxicated or under the influence of alcohol or drugs at the time of the alleged crime.
- e. Any evidence of physical violence or threats made by the complainant, his/her friends, or his/her agents, against the defendant, his/her family, or his/her friends.
- f. Any evidence concerning prior incident(s) of assaultive conduct by the complainant.
- g. A list of any weapon(s) or dangerous instrument(s) recovered from the complainant or third parties at the scene of the alleged crime on the day of the crime or afterwards.
- h. Any evidence that tends to establish that the defendant was acting justifiably or with the reasonable belief that he/she was being attacked by, or was in danger due to, the complainant, his/her friends, his/her agents, or other third persons present at the scene of the alleged crime on the day of the crime.
- i. The name(s), address(es), birthdate(s), prior criminal record(s), and place(s) of employment of any person(s) present at the scene of the alleged crime who support in any way a version of the facts which tends to exculpate the defendant or who did not see the defendant commit the crimes charged.

Thank you very much for your prompt cooperation. Please furnish me with the above within fifteen (15) days of receipt by you of this demand for discovery. A failure to respond to this demand within this time period shall be deemed a refusal.

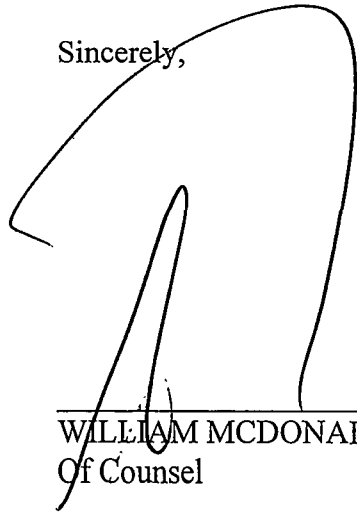
I request that any refusal to supply any of the requested material by made in writing, setting forth the grounds for such refusal, and served upon the undersigned and filed with the court, pursuant to the provisions of C.P.L. § 240.35.

All requests for the names and addresses of witnesses are made pursuant to People v. Rivera, 119 A.D.2d 517, 501 N.Y.S.2d 38 (1st Dept. 1986), People v. Concepcion, N.Y.L.J., July 11, 1990, p. 24, col. 6 (Sup. Ct. Bronx Co.) (Goodman, J.), and People v. Javier Arrellano, N.Y.L.J., May 21, 1991, p. 27, col. 3 (Crim. Ct. Kings Co.) (Cross, J.).

As to each item of discovery demanded and not made available to the defense, please state whether or not you are in possession of such information or property, or if you are in any way aware of its existence. Please state what diligent, good faith efforts you have made in order to ascertain the existence of the demanded information or property.

If you have any questions concerning this demand, please notify me of them in writing prior to the date for which these items are requested.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to be 'W. McDonald', written over a horizontal line.

WILLIAM MCDONALD, ESQ.  
Of Counsel