

People v Guajardo

2016 NY Slip Op 33021(U)

March 15, 2016

County Court, Orange County

Docket Number: 0213/2016

Judge: Robert H. Freehill

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ORIGINAL

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X

THE PEOPLE OF THE STATE OF NEW YORK

-against-

KRYSTLE GUAJARDO,

Defendant.

-----X

FREEHILL, ROBERT H., J.C.C.

Indictment No. 2015-734

Index No. 0213/2016

DECISION AND ORDER

Defendant is charged in this indictment with the crimes of Criminal Sale of a Controlled Substance in the Fifth Degree and Criminal Possession of a Controlled Substance in the Fifth Degree.

By this omnibus motion the defendant has moved for certain pretrial relief which the Court decides, having considered: 1.) the defendant's notice of motion and affirmation; 2.) the People's affirmation in response; and 3.) the transcript of Grand Jury proceedings.

Motion to Inspect Grand Jury Minutes
Motion to Dismiss or Reduce Indictment

The motion is granted to the extent that the Court has reviewed the minutes of the Grand Jury and finds that the indictment is based upon legally sufficient evidence and that the Grand Jury was properly instructed with respect to the applicable law.

Motion to Be Provided with *Brady* Material

The motion is granted to the extent that the District Attorney is directed to disclose to defendant's attorney any and all documents, materials and/or information, if any, required to be disclosed pursuant to *Brady v Maryland*, 373 US 83.

Motion for an Order Directing the Preservation of Rosario Material

The People are required to preserve and to disclose Rosario material at the appropriate time (CPL 240.45[1]). Because the failure to preserve and/or disclose Rosario may result in sanctions from the Court, no order is required at this time.

Motion Pursuant to *Geaslen*

The motion is granted to the extent that the District Attorney is ordered to provide to defendant's attorney, within five (5) days from the date of the notice of entry of this order, any information required to be disclosed pursuant to *People v Geaslen*, 54 NY2d 510.

Motion for a *Sandoval* Ruling

The motion is granted to the extent that a hearing is hereby ordered which will be held immediately prior to trial to determine which, if any, bad acts or convictions may be used as impeachment in the event that the defendant elects to testify at trial. The Court further orders the District Attorney to disclose to defendant's attorney any and all bad acts and convictions which will be used to impeach defendant three days prior to the commencement of trial in accordance with CPL §240.43.

Request For Bill of Particulars

The defendant's motion for the particulars sought is granted to the extent provided by the District Attorney in the Voluntary Disclosure Form previously tendered and as provided in the affirmation in response to the motion herein. In all other respects this branch of defendant's motion is denied.

Motion to Preclude Statements

The motion is granted to the extent that the People may not offer statements of defendant

[* 3]
except for those made by defendant during the criminal transaction.

Motion to Suppress Identification Testimony

Defendant moves to suppress in-court identification testimony of an undercover narcotics police officer concerning the identification of the defendant as the person who sold drugs to him. According to the affirmation submitted by the People in response to this motion, the viewing of defendant by an undercover narcotics officer “occurred at a place and time sufficiently connected and contemporaneous to the arrest itself as to constitute the ordinary and proper completion of an integral police procedure.” (*People v Wharton*, 74 NY2d 921 [1989]; *People v Adio*, 111 AD3d 757 [2d Dept 2013]; *People v Harrell*, 208 AD2d 647 [2nd Dept 1994]). According to the People’s affirmation, the transaction occurred at 8:25 a.m. on July 8, 2015 and the identification procedure consisting of the viewing of a single photo occurred at 10:15 a.m. on that same date. This prompt confirmatory viewing is not an identification procedure which warrants a *Wade* hearing (*People v Allen*, 162 AD2d 538 [2nd Dept 1990]).

Motion to Request Timely Hearings

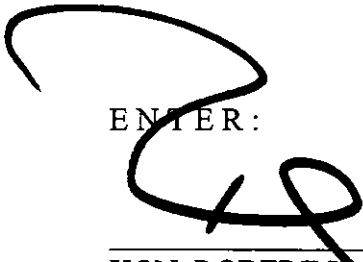
Defendant requests that any pretrial hearings be held sufficiently prior to the time of the commencement of trial so as to allow for the transcription of the hearing minutes for use by the defendant at trial. Unless such request for transcribed minutes is withdrawn by defendant’s counsel at the conclusion of any such pretrial hearing, this Court will deem defendant’s request herein as one made in a timely fashion and any necessary and reasonable adjournment of trial proceedings for the purpose of transcribing hearing minutes will be granted as deemed necessary by the Court (*People v Peacock*, 31 N.Y.2d 907 [1972]).

Renewal of Motions

Defendant's blanket request for leave to make further motions is denied with leave to renew within the context of a further motion seeking specific relief.

The foregoing constitutes the Decision and Order of the Court.

Dated: Goshen, New York
March 15, 2016



ENTER:

HON. ROBERT H. FREEHILL
County Court Judge

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