

People v McInerney

2016 NY Slip Op 33029(U)

June 23, 2016

County Court, Orange County

Docket Number: 2016/083

Judge: Edward T. McLoughlin

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COUNTY COURT : ORANGE COUNTY

PRESENT: HON. EDWARD T. McLOUGHLIN
County Court Judge

DECISION AND ORDER
OMNIBUS MOTION and
PEOPLE'S MOTION FOR
RECIPROCAL DISCOVERY

THE PEOPLE OF THE STATE OF NEW YORK

Ind. No. 2016/083

Plaintiff,

- against -

DANIEL McINERNEY,

DAVID M. HOOVLER, ESQ.
District Attorney
David J. Curtin, Esq.
Assistant District
Attorney for Plaintiff

Defendant.

BRANDON C. OZMAN, ESQ.
Attorney for Defendant

Notice of Motion _____ X
Affirmation in Support _____ X
Affirmation in Response _____ X

The foregoing documents were considered in deciding this motion.

The defendant has been indicted for three counts of Criminal Possession of a Weapon in the Second Degree, a Class C Armed Violent Felony (Penal Law §265.03[3]); four counts of Criminal Possession of a Weapon in the Third Degree, a Class D Felony (Penal Law §265.02[1]); three counts of Criminal Possession of a Firearm, a Class E Felony (Penal Law §265.01-b[1]); Criminal Possession of a Controlled Substance in the Third Degree, a Class B Felony (Penal Law §220.16[1]); Criminal Possession of a Controlled Substance in the Seventh Degree, a Class A Misdemeanor (Penal Law §220.03) and three counts of Criminally Using Drug Paraphernalia in the Second Degree, a

[*2]
Class A Misdemeanor (Penal Law §220.50[2][3]).

By omnibus motion, the defendant seeks various forms of relief.

BILL OF PARTICULARS

The defendant seeks a bill of particulars pursuant to the Criminal Procedure Law. The People have already served a detailed bill of particulars, on March 9, 2016 at the time of the defendant's arraignment.

The People have complied sufficiently with the requirements of CPL §200.95. Defendant's motion for a further bill of particulars is denied.

DISCOVERY AND INSPECTION

Defendant's motion for discovery is granted solely to the extent that the District Attorney is directed to make available to the defendant's attorney any and all property and information required to be disclosed at the appropriate times pursuant to CPL §240.20. At the time of defendant's arraignment on March 9, 2016, the People served a document entitled Voluntary Disclosure Form.

The Prosecution has moved for reciprocal discovery pursuant to CPL §240.30. This motion is granted solely to the extent that the defendant's attorney is directed to make available to the district attorney any and all property and information required to be disclosed pursuant to CPL §240.30.

Both sides are reminded that they are under a continuing obligation to comply with the Court's directive up to and including the time of trial.

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BRADY MATERIAL

Defendant's motion to be provided with all Brady material is granted to the extent that the People have a continuing obligation to provide the defendant with any evidence in their possession or control which is favorable to the defendant as provided in Brady v. Maryland, 373 U.S. 83 and its progeny.

SANDOVAL HEARING

Defendant's motion for a Sandoval Hearing is granted. The hearing will be held on a date prior to the trial.

The District Attorney shall notify defendant's attorney of all specific instances of defendant's alleged criminal convictions, underlying acts, prior uncharged criminal, vicious or immoral conduct of which the District Attorney has knowledge and intends to use at trial for purposes of impeaching the credibility of the defendant. Such notification shall be made in writing with a copy to the Court at least one business day prior to the date scheduled for the hearing.

MOLINEUX

Defendant's motion for a Molineux Hearing is denied as unnecessary at this time since the People have not made any application pursuant to the dictates of People v. Ventimiglia, 52 N.Y.2d 350 to offer evidence of any specific instances of uncharged crimes which they intend to offer in their direct case.

If the People intend to make an application pursuant to People v.

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Ventimiglia, they should do so within 45 days of this Order or 30 days prior to trial - whichever is sooner.

SUPPRESSION OF STATEMENTS

The defendant's motion to suppress statements alleged to have been made by the defendant as contained in the Huntley Notice served by the People is granted solely to the extent that a hearing on the motion will take place prior to trial. (CPL §710.60[4]).

INSPECTION - DISMISSAL - REDUCTION

The motion to inspect the grand jury minutes is granted to the extent that the Court has reviewed the minutes. (CPL 210.30[2][3]).

The motion to release the minutes of the testimony or the instructions to the parties to assist the Court in making a determination of the sufficiency of the evidence or the propriety of the instructions is denied. (CPL 210.30[3]; People v. Fetcho, 91 N.Y.2d 765).

The motion to dismiss or reduce is denied. The indictment is based upon competent and admissible evidence which is legally sufficient to establish and provide reasonable cause to believe that the defendant committed each offense charged therein. (CPL §190.65[1]); People v. Jennings, 69 N.Y.2d 103, 115). The instructions given to the grand jury were adequate to enable the Grand Jury to make an informed and intelligent decision as to whether an indictment was authorized. People v. Calbud, 49 N.Y.2d 389, 394-95).

[* 5]

The motion to dismiss on the ground that the grand jury proceeding was defective (CPL §210.20(1)) and §210.35) is denied.

MOTION TO CONTROVERT SEARCH WARRANT/
SUPPRESSION OF PHYSICAL EVIDENCE

The defendant moves to controvert the search warrant and suppress those items obtained during its execution. Those items include a quantity of narcotics, brass knuckles, three handguns, as well as ammunition for the same, and alleged drug paraphernalia.

The defendant moves to controvert the search warrant for lack of probable cause. In a motion to controvert a search warrant for lack of probable cause, the defendant must demonstrate in his moving papers a question of fact relating to the same. People v. Ortiz and Cortizo, 234 AD2d 74 (1st Dept. 1996), app. den. 89 NY2d 941.

The defendant was provided a copy of the original search warrant, its supporting affidavit, the amended search warrant and its supporting affidavit issued in this matter. His moving papers fail to demonstrate a lack of probable cause regarding those warrants and supporting papers which would require the Court to conduct a pre-trial hearing.

Therefore, the defendant's application is denied.

PRE-TRIAL HEARING TRANSCRIPTS

Transcripts of any pre-trial hearing shall be provided in accord with a schedule to be determined at the pre-trial hearing provided that defendant's attorney makes the request for a transcript at the conclusion of the hearing.

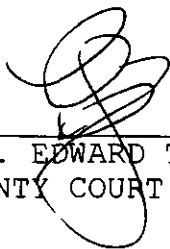
LEAVE TO FILE ADDITIONAL MOTIONS

Defendant's request for leave to file additional motions is denied unless defendant can first make a showing of good cause.

This constitutes the decision and order of this Court.

So ordered:

Dated: Poughkeepsie, New York
June 22, 2016



HON. EDWARD T. McLOUGHLIN
COUNTY COURT JUDGE

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