

People v Fernandez

2016 NY Slip Op 33233(U)

June 30, 2016

County Court, Westchester County

Docket Number: Indictment No. 15-0592-02

Judge: Barbara G. Zambelli

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND
ENTERED

ON _____ 2016

WESTCHESTER
COUNTY CLERK

THE PEOPLE OF THE STATE OF NEW YORK

DECISION & ORDER

- against -

Indictment No.: 15-0592-02

DANILO FERNANDEZ and EDGAR RODRIGUEZ,

Defendants.

ZAMBELLI, J.

FILED
JUN 30 2016
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant has been indicted for criminal possession of a weapon in the second degree, assault in the second degree, and attempted assault in the third degree allegedly committed on or about April 5, 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/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]).

3. 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 (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).

4. MOTION FOR DISCOVERY AND INSPECTION / 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. 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, the People are directed to submit the material or information to the Court, which will conduct an in camera examination to resolve the issue. The People recognize their duty to comply with People v. Rosario, 9 N.Y.2d 286; CPL §240.44, §240.45.

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 (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]).

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 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 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 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.

6. REQUEST FOR ADDITIONAL 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).

This Decision constitutes the Order of the Court.

Dated: White Plains, New York
June 30, 2016


BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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