

**People v Malavase**

2017 NY Slip Op 33284(U)

September 29, 2017

County Court, Dutchess County

Docket Number: 1603/2017

Judge: Edward T. McLoughlin

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT : DUTCHESS COUNTY

PRESENT: HON. EDWARD T. McLOUGHLIN  
Dutchess County Court Judge

DECISION AND ORDER  
OMNIBUS MOTION

-----  
THE PEOPLE OF THE STATE OF NEW YORK

Ind. No. 95/2017

Plaintiff,

WILLIAM V. GRADY, ESQ.  
District Attorney by  
Cindy Murphy, Esq.  
Attorney for Plaintiff

- against -

ADAM SCOTT MALAVASE,

Defendant.

THOMAS K. PETRO, ESQ.  
Attorney for Defendant

- 
- Notice of Motion \_\_\_\_\_ X
- Affirmation in Support \_\_\_\_\_ X
- Defendant's Affidavit \_\_\_\_\_ X
- Affirmation in Response \_\_\_\_\_ X

The foregoing documents were considered in deciding this motion.

The defendant has been indicted for Robbery in the Second Degree, a Class C Armed Violent Felony (Penal Law §160.10 [2] [b]) and Robbery in the Third Degree, a Class D Felony (Penal Law §160.05).

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

BILL OF PARTICULARS

The defendant seeks a further Bill of Particulars pursuant to the Criminal Procedure Law.

The People have already served a detailed Bill of

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[\* 2]  
Particulars at the time of the defendant's arraignment on July 17, 2017.

The People have complied sufficiently with the requirements of CPL §200.95. The 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 defendant 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 the defendant's arraignment on July 17, 2017, the People provided a document entitled Voluntary Statement of Disclosure. In all other respects, the defendant's motion for discovery and inspection is denied.

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.

#### SANDOVAL HEARING

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

#### 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,

[\* 3]  
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. Ventimiglia, they should do so within 45 days of this Order or 30 days prior to trial - whichever is sooner.

#### 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 NY2d 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 NY2d 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 NY2d 389, 394-95).

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

#### 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].

#### SUPPRESSION OF PHYSICAL EVIDENCE

Defendant moves to suppress property seized at the time of his arrest and in subsequent searches conducted by the police. The People oppose the defendant's motion and request the Court deny the same.

While the People have provided detailed information surrounding the events at the time of the defendant's arrest, the defendant's moving papers establish a factual dispute requiring a pre-trial hearing. People v. Bryant, 8 NY3d 530.

The defendant's motion to suppress the items of physical evidence taken from his custody and control is granted solely to the extent that a hearing on the motion will take place prior to trial. CPL §710.60 [4]; Dunaway v. New York, 442 US 200.

#### 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.

#### 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.

The foregoing constitutes the decision and order of the Court.

Dated: Poughkeepsie, New York  
September 29, 2017



HON. EDWARD T. McLOUGHLIN  
COUNTY COURT JUDGE

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