

**People v Wilson**

2017 NY Slip Op 33292(U)

October 30, 2017

County Court, Orange County

Docket Number: 4451-2017

Judge: Craig Stephen Brown

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
COUNTY COURT : ORANGE COUNTY

-----X  
PEOPLE OF THE STATE OF NEW YORK,

-against-

DENNIS WILSON, JR.,

Defendant.

-----X  
CRAIG STEPHEN BROWN, J.C.C.

DECISION & ORDER

Ind. No. 2017-447  
Index No. 4451-2017

Defendant Dennis Wilson, Jr. moves for an order granting the following relief:

- A. For an order for a bill of particulars pursuant to CPL §200.90;
- B. For an order of preclusion pursuant to CPL§240.20, §240.40 and CPL §240.70;
- C. For an order suppressing physical evidence or, in the alternative, for a pre-trial hearing;
- D. For an order for disclosure pursuant to *Brady v. Maryland*;
- E. For an order suppressing any and all confessions or admissions or, in the alternative, for a pre-trial hearing;
- F. For an order suppressing the blood test results or, in the alternative, for a pre-trial hearing;
- G. For a *Sandoval* hearing;
- H. For a *Ventimiglia* hearing; and
- I. For a *Huntley* hearing.

The following papers were read:

Notice of Motion - Affirmation of Brandon C. Ozman, Esq.  
Discovery Demand - Affidavit of Service

Jason Rosenwasser, Esqs.'s Affirmation in Opposition - Affidavit of Service	5 - 6
Grand Jury Minutes - Indictment - Voluntary Disclosure Form	7 - 9
Minutes of Application for Compulsory Blood Order	10
Search Warrant Application - Search Warrant	11 - 12

Upon the foregoing papers it is hereby ORDERED that the defendant's motion is decided as follows:

**MOTION FOR A BILL OF PARTICULARS (PARAGRAPH 5)**

The request for information set forth in paragraphs numbered 5(a), 5(c), 5(d)[conduct], 5(f), 5(j)[photos and electronic recordings], and 5(k) of defendant's counsel's affirmation is denied as such information was previously provided in the Voluntary Disclosure Form.

The remaining requests for information are not required to be provided within a bill of particulars (See, CPL §200.95).

**MOTION FOR DISCOVERY AND INSPECTION (PARAGRAPH 10)**

The request for information set forth in paragraphs 10(a), 10(b), 10(d), 10(f), 10(p), 10(r), and 10(u) of defendant's counsel's affirmation is denied as such information is not discoverable pursuant to CPL §240.20.

The request for information set forth in paragraphs 10(c), 10(e), 10(j), 10(o), 10(q), 10(s), 10(t), and 10(v) is denied as the People have provided such information or consented to the inspection thereof. (See, *Voluntary Disclosure Form*, including paragraph 19 thereof.)

The request for information set forth in paragraphs 10(g), 10(i), and 10(l) is granted. The People are directed to provide such information, if any, within ten days of the date of this order.

The request for information set forth in paragraphs 10(h), 10(k), 10(m), and 10(n) is denied as no field tests were administered in this case.

### **MOTION TO SUPPRESS BLOOD AND BLOOD TEST RESULTS**

Defendant seeks to suppress the defendant's blood which was seized by the police. A compulsory blood order was issued by this Court in accordance with Vehicle and Traffic Law §1194. The Court has reviewed the transcript of the application for such order and finds that it was validly issued based upon reasonable cause. Further, a search warrant to seize defendant's blood samples from St. Luke's Hospital was issued. The Court has reviewed the application for the search warrant and finds that the search warrant was based upon probable cause. Accordingly, the defendant's motion to suppress defendant's blood and blood test results must be denied.

### **BRADY MATERIAL**

Defendant's motion is granted to the extent that it is hereby ordered that the District Attorney provide defendant with any and all documents and materials as required under *Brady v. Maryland*.

### **MOTION TO SUPPRESS STATEMENTS**

The motion is granted to the extent that a hearing is hereby ordered pursuant to CPL §710.64(4) to determine the admissibility of statements allegedly made by the defendant.

### **SUPPRESSION OF DEFENDANT'S BLOOD BASED UPON PHYSICIAN-PATIENT PRIVILEGE**

The defendant's motion to suppress the defendant's blood sample based upon the physician-patient privilege is denied. It is well settled "that the physician-patient privilege does not apply to the actual blood sample itself." (*People v. Elysee*, 49 AD3d 33, 43 [2<sup>nd</sup> Dept., 2007],

[\* 4]  
*affirmed by 12 NY3d 100 [2009]; See also, People v. Drayton, 56 AD3d 1278 [4<sup>th</sup> Dept., 2008].)*

**MOTION TO PRECLUDE BLOOD TEST RESULTS DUE TO  
NON-COMPLIANCE WITH NYS DEPARTMENT OF HEALTH  
RULES AND REGULATIONS**

Defendant's motion to preclude is denied with leave to renew. The Court notes that the two-hour rule relied upon by the defendant is inapplicable where, as here, the blood was seized by a Court order. Further, the defendant alleges that there was a violation of 10 NYCRR 59.2(c)(3)[sic] in that the defendant's skin was prepped with an alcohol or phenol antiseptic. (See, 10 NYCRR 59.2(d)). However, the use of alcohol or phenol to prep the skin surface would not warrant preclusion or suppression of the blood samples.

**MOTION TO SUPPRESS EVIDENCE OF ANY  
PHYSIOLOGICAL OR PERFORMANCE TESTS**

Defendant's motion to suppress is denied. The defendant has failed to set forth any basis for suppression.

**MOTION TO DISMISS IN THE INTEREST OF JUSTICE**

The defendant's motion for dismissal is denied. In considering a motion for dismissal, the Court must consider the following:

- “(a) the seriousness and circumstances of the offense;
- (b) the extent of harm caused by the offense;
- (c) the evidence of guilt, whether admissible or inadmissible at trial;
- (d) the history, character and condition of the defendant;
- (e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant;
- (f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;

- [\* 5]
- (g) the impact of a dismissal upon the confidence of the public in the criminal justice system;
  - (h) the impact of a dismissal on the safety or welfare of the community;
  - (i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion; [and]
  - (j) any other relevant fact indicating that a judgment of a conviction would serve no useful purpose.” (CPL §210.40[1]).

Upon such consideration, the Court finds that dismissal would not be in the furtherance of justice. Accordingly, the defendant’s motion must be denied.

#### **MOTION FOR A SANDOVAL HEARING**

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 provide defendant's attorney with a true copy of defendant's DCJS Summary Case History and to disclose to defendant's attorney any and all acts about which it intends to use as impeachment. The above information must be provided to defendant’s attorney at least three days, excluding Saturdays, Sundays and holidays, prior to the commencement of jury selection.

#### **MOTION PURSUANT TO VENTIMIGLIA**

Defendant’s motion for relief, pursuant to *People v Ventimiglia*, 52 NY2d 350, is denied with leave to renew in the event that the District Attorney seeks to introduce evidence at trial of defendant’s prior bad acts or convictions.

#### **MOTION TO INSPECT GRAND JURY MINUTES**

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 FOR LEAVE TO FILE ADDITIONAL MOTIONS**

Defendant's motion for leave to file additional motions is granted only to the extent set forth in CPL §255.20(3).

**HEARINGS IN ADVANCE OF TRIAL**

The defendant's motion for the scheduling of pre-trial hearings a minimum number of days prior to trial is denied with leave to renew.

**ADJOURNED DATE**

This matter is scheduled for a conference on October 31, 2017 at 9:15 A.M. The defendant, defendant's counsel, and District Attorney are directed to be present.

The aforesaid constitutes the Decision and Order of the Court.

Dated: October 30, 2017  
Goshen, New York

ENTER

  
HON. CRAIG STEPHEN BROWN  
COUNTY COURT JUDGE

TO: BRANDON C. OZMAN, ESQ.  
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