

People v Jones

2017 NY Slip Op 33296(U)

August 17, 2017

County Court, Orange County

Docket Number: 4551-2017

Judge: Craig Stephen Brown

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.



ORIGINAL

STATE OF NEW YORK
 COUNTY COURT : ORANGE COUNTY

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

DECISION & ORDER

-against-

, Ind. No. 2017-446
 Index No. 4551-2017

DUANE JONES,

Defendant.

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

Defendant DUANE JONES moves for the following relief:

1. Inspection of the Grand Jury Minutes, dismissal or reduction of the Indictment and release of the Grand Jury Minutes: For an Order of the Court, pursuant to Criminal Procedure Law (hereinafter CPL) Sections 201.30, 210.20, 210.35, granting inspection of the Grand Jury Minutes, Dismissal of the Indictment, or a reduction of the charges.
2. Order for Disclosure: For an Order of the Court directing the People to disclose all exculpatory evidence pursuant to Brady v. Maryland, 373 U.S.83 (1963) and Giglio v. United States, 405 U.S.150 (1972).
3. Order for Preservation of Rosario Material: For an Order of the Court directing the People to locate and preserve all Rosario material pursuant to People v. Rosario, 9 N.Y. 2d 286 (1961), CPL §240.44(1) and 240.45(1)(a) and People v. Bramble, 207 A.D.2d 407 (2nd Dept. 1994).
4. Order for Disclosure: For an Order of the Court directing the People to disclose all information pursuant to People v. Geaslen, 54 N.Y.2d 510 (1981).
5. Motion for Sandoval Hearing: For an Order of the Court, pursuant to People v. Sandoval, 34 N.Y.2d 371 (1974), for a pre-trial hearing to determine whether the people can use any prior criminal convictions for impeachment purposes if the defendant chooses to testify.
6. Order for Disclosure: For an Order of the Court, pursuant to CPL §240.43, for disclosure of all specific instances of the defendant's prior uncharged criminal, vicious, or immoral acts the People intend to use at trial for impeachment purposes.
7. Bill of Particulars: For an Order of the Court, pursuant to CPL sections 255.10(1)(d), 255.20, 200.95(1), 200.95(2), 200.95(4), 200.95(5), and 200.95(6).

- [* 2]
8. Order for Disclosure: For an Order of the Court, pursuant to CPL §240.20, granting disclosure to the defense.
 9. Motion to Suppress Evidence: For an Order of the Court, pursuant to CPL §710.41(1), 710.60(1), 710.50(1)(c), 710.20, Dunaway v. New York, 442 U.S. 200 (1979), Mapp v. Ohio, 367 U.S.643 (1961), Wong Sun v. United States, 371 U.S.471 (1963), People v. Banks, 85 N.Y.2d 558 (1995) and related cases, summarily suppressing all physical evidence, including alleged narcotics and gun, allegedly seized from defendant as fruits of an unlawful seizure, the subsequent unlawful detention, the subsequent unlawful arrest and/or the subsequent unlawful search and/or seizure of physical evidence based on an alleged search warrant which was not supported by probable cause, *or in the alternative*, for a pre-trial Dunaway/Mapp hearing. All evidence obtained subsequent to this illegal detention should be suppressed as fruits of an unlawful seizure.
 10. Order for Preclusion of Statements: For an Order of the Court, pursuant to CPL §710.30(1), 710.30(2), 710.30(3) and relevant case law cited herein, precluding the People from offering evidence at trial of any statements not included in, or sufficiently described in, the People's CPL §710.30 notice.
 11. Motion to Suppress Statements: For an Order of the Court, pursuant to CPL §710.40(1), 710.60(1)(c) and 710.20(3), as well as People v. Huntley, 15 N.Y.2d 72 (1965) and People v. Weaver, 49 N.Y.2d 1012 (1980), summarily suppressing any admissions sufficiently set forth in the People's CPL §710.30 notices, *or in the alternative*, for a pre-trial Huntley hearing.
 12. Order for Pre-Trial Hearings to be conducted at least 20 days before Trial: For an Order of the Court, pursuant to People v. Sanders, 31 N.Y.2d 463 (1973) and People v. Peacock, 31 N.Y.2d 907 (1972), directing that all pre-trial hearings be conducted a minimum of twenty (20) days prior to the commencement of trial.
 13. Motion for Leave to File Additional Motions: For an Order of the Court, pursuant to CPL §255.02(2), 255.20(3) and People v. Frigenti, 91Misc.2d 139, 397 N.Y.S.2d 313 (1977), for leave to file additional motions.

The following papers were read:

Notice of Motion -Affirmation of Gary R. Somerville, Esq. - Annexed Exhibits	1 - 3
Janine M. Kovacs, Esq.'s Affirmation in Response - Affidavit of Service	4 - 5

Search Warrant Application - Search Warrant

6 - 7

Grand Jury Minutes - Indictment - Voluntary Disclosure Form

8 - 10

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

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 PURSUANT TO *BRADY V. MARYLAND*

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 FOR *ROSARIO* MATERIAL

Defendant's motion for an order directing the District Attorney to obtain, preserve and/or provide defendant with prior statements of witnesses is denied. Disclosure at this time of prior statements of witnesses is premature and defendant has available remedies if the District Attorney does not comply with the provisions of CPL §§240.44 & 240.45.

MOTION PURSUANT TO *GEASLEN*

Granted to the extent that the District Attorney is ordered to provide to defendant's attorney, within ten (10) days from the date of this Order, any information required to be disclosed pursuant to *People v. Geaslen*.

**MOTION FOR A SANDOVAL HEARING AND FOR DISCLOSURE
PURSUANT TO CPL §240.43**

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 acts¹ 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 FOR A BILL OF PARTICULARS

The request for a Bill of Particulars is denied on the basis that it was previously provided in the Voluntary Disclosure Form.

MOTION FOR DISCOVERY

The defendant's application for discovery is granted to the extent that the People are directed to provide, within ten (10) days of the date of this Order, the information sought in paragraphs 38(b), 38(c), 38(k) (photos and drawings), 38(n) (reports), and 38(q) of defendant's counsel's affirmation.

The request for information sought in accordance with CPL §240.20(1)(h) is denied based upon the District Attorney's representation that no such information is presently known.

[* 5]
However, the People are reminded of their continuing obligation pursuant to CPL §240.60 to disclose such information.

All other discovery requests are denied.

MOTION TO SUPPRESS PHYSICAL EVIDENCE

Defendant's motion to suppress physical evidence seized pursuant to a search warrant is denied. The Court has reviewed the application for the issuance of the search warrant and finds that the warrant was based upon probable cause and that the reliability of the confidential informant has been established. In addition, "probable cause for the search warrant was established through independent police observations" and other evidence. (People v. Crooks, 27 NY3d 609, 615 (2016)).

MOTION TO SUPPRESS STATEMENTS

The Motion is granted to the extent that a hearing is hereby ordered pursuant to CPL §710.60 (4) to determine the admissibility of statements allegedly made by the defendant.

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.

MOTION TO LEAVE TO FILE ADDITIONAL MOTIONS

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

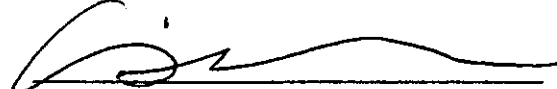
ADJOURNED DATE

This matter is scheduled for a conference to be held on August 21, 2017, at 9:15 A.M. The defendant, the defendant's counsel, and assistant District Attorney are directed to be present.

The aforesaid constitutes the Decision and Order of the Court.

Dated: August 17, 2017
Goshen, New York

ENTER



HON. CRAIG STEPHEN BROWN
COUNTY COURT JUDGE

TO: GARY R. SOMERVILLE, ESQ.
Attorney for Defendant
P.O. Box 241
Goshen, New York 10924

ORANGE COUNTY DISTRICT ATTORNEY
Attorney for the People
40 Matthews Street
Goshen, New York 10924