

People v Morales

2018 NY Slip Op 33762(U)

June 13, 2018

Supreme Court, Westchester County

Docket Number: 17-1110D

Judge: Susan M. Capeci

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FILED
AND
ENTERED
ON 6-15 2018
WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

DECISION & ORDER

- against -

Indictment No:17-1110D

MIGUEL MORALES,
Defendant.

FILED

-----X

JUN 15 2018

CAPECI, J.,

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant, having been charged by indictment with assault in the second degree (P.L. 120.05 (2)), attempted assault in the first degree (P.L. 110/120.10 (1)), and criminal possession of a weapon in the fourth degree (P.L. 265.01 (2)), now makes this motion seeking omnibus relief.

The defendant has submitted an affirmation from his attorney and a memorandum of law in support of his omnibus motion, in which he seeks the following relief: 1) disclosure of materials not previously provided through consent discovery, and Brady material; 2) suppression of physical evidence recovered in this case, as a result of his unlawful arrest without probable cause, or a Mapp hearing; 3) a Sandoval/Ventimiglia hearing; 4) an order striking prejudicial language from the indictment; 5) inspection of the grand jury minutes by the Court and the defendant, and thereafter, for the dismissal of the indictment and/or reduction of the charges contained therein; 6) motion to strike the People's alibi demand; and 7) motion to suppress statements alleged to have been made by the defendant, or a Huntley hearing.

The People have submitted an affirmation in opposition in which they consent to

provide discovery limited to the parameters of CPL article 240, as well as Brady material. They also consent to a Sandoval hearing, to a Huntley hearing, and to an in camera inspection of the grand jury minutes by the Court to assess legal sufficiency, but otherwise oppose the motion. The Court now finds as follows.

1. MOTION FOR DISCOVERY AND INSPECTION/ BRADY

The defendant has been provided with consent discovery in this case, as well as a bill of particulars. Therefore, 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 (k) 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); People v Bianco, 169 Misc2d 127 (Crim. Ct, Kings Co. 1996)).

The defendant's demand for the production of Rosario material at this time is premature (see CPL 240.45(1); Catterson v Rohl, 202 AD2d 420 (2d Dept 1994)). Further, there is no statutory right to disclosure of all police reports concerning an ongoing investigation (Brown v Grosso, 285 AD2d 642 (2d Dept 2001); see also Pirro v LaCava, 230 AD2d 909 (2d Dept 1996)).

The People have acknowledged their continuing obligation to provide exculpatory information to the defendant (Brady v Maryland, 373 US 83), and are directed to disclose any such information to the defense.

2. MOTION TO SUPPRESS PHYSICAL EVIDENCE

The defendant contends that all evidence recovered in this case should be suppressed because it was obtained as a result of his arrest without probable cause.

The defendant's motion for suppression of physical evidence or for a Dunaway/Mapp hearing is denied as he has not asserted any specific factual allegations, sworn or otherwise, in support of his claim of illegal arrest (People v Mendoza, 82 NY2d 415 (1993)). In any event, the defendant's arrest was based upon information provided to police officers by identified citizens, the victim and her son, which was presumed reliable (People v Boykin, 187 AD2d 661 (2d Dept 1992); People v Newton, 180 AD2d 764 (2d Dept 1992)). Upon their arrival at the scene in response to a 911 call, the officers also observed the victim to have been wounded and covered in blood. Any evidence recovered from the defendant's person was thus seized incident to his lawful arrest (People v Belton, 55 NY2d 49 (1982)).

Further, with respect to evidence recovered from the home where the incident occurred, that house was the residence of the defendant, as well as the victim, who is his sister, and her son. "The police may lawfully conduct a warrantless search when they have obtained the voluntary consent of a party who possesses the requisite degree of authority and control over the premises or personal property in question" (People v Watson, 101 AD3d 913, 914 (2d Dept 2012); People v Williams, 160 AD3d 665 (2d Dept 2018) [Police officers entered the defendant's bedroom, which he shared with the complainant, upon the complainant's consent - recovery of physical evidence from that location deemed lawful]). Since both the victim and her son resided there and consented to the police entry, the police officers were lawfully present in the home.

Thus, recovery of evidence observed in plain view, including the kitchen knife, was lawful (People v Velasquez, 110 AD3d 835 (2d Dept 2013)).

The defendant does not have standing to contest the seizure of any evidence that may have been recovered from the victim (People v Ramirez-Portoreal, 88 NY2d 99 (1996); People v Oliver, 39 AD3d 880 (2d Dept 2007)). The defendant's motion to suppress physical evidence is therefore denied.

3. MOTION FOR A SANDOVAL/VENTIMIGLIA HEARING

The defendant's motion for a Ventimiglia hearing is denied at this time since the People do not represent that they are seeking to introduce any of defendant's prior bad acts on their direct case. The defendant's motion may be renewed in the event the People later seek to offer such evidence at trial. The motion for a Sandoval hearing is granted and shall be renewed before the trial Judge.

4. MOTION TO STRIKE LANGUAGE FROM THE INDICTMENT

The defendant's motion to strike allegedly prejudicial language from the indictment is denied. The phrase "against the peace and dignity of the People of the State of New York" merely identifies the defendant's alleged acts as public, rather than private, wrongs (see People v Winters, 194 AD2d 703 (1993); People v Gill 164 AD2d 867 (1990)).

5. 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 of the indictment were supported by

sufficient evidence and that the instructions given were appropriate. There was no infirmity which would warrant a dismissal of the instant 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)).

6. MOTION TO SUPPRESS STATEMENTS

The People served the defendant with two CPL 710.30 notices pertaining to oral statements alleged to have been made by him on August 6, 2017, to New York State police officers. The defendant's motion for suppression of statements as set forth in the CPL 710.30 notices is granted to the extent that the Court will conduct a Huntley hearing prior to trial concerning the noticed statements allegedly made by the defendant for the purpose of determining whether Miranda warnings were necessary and, if so, whether he was so advised and made a knowing, intelligent and voluntary waiver thereof, or whether the statements were otherwise involuntarily made within the meaning of CPL 60.45.

The defendant has not set forth any sworn allegations of fact in support of his conclusory statement of illegal arrest. In the absence thereof, no hearing is warranted on this ground (see People v Mendoza, 82 NY2d 415 (1993); CPL 710.60(3)(b)).

This decision constitutes the Order of the Court.

Dated: White Plains, New York
June 13, 2018



HON. SUSAN M. CAPECI
A.J.S.C.

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