

**People v DeJesus-Vazquez**

2018 NY Slip Op 33818(U)

October 11, 2018

County Court, Orange County

Docket Number: 2017-038

Judge: William L. DeProspero

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT: ORANGE COUNTY  
STATE OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

IND. NO. 2017-038

INDEX # 0822-2017

**DECISION AND ORDER**

EGBERTO DEJESUS-VAZQUEZ,

Defendant.

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DePROSPO, W.

Defendant/petitioner (hereinafter “defendant”) was charged with the crimes of Criminal Possession of a Controlled Substance in the Third Degree, in violation of section 220.16(1) of the Penal Law of the State of New York, Criminal Possession of a Controlled Substance in the Seventh Degree, in violation of section 220.03 of the Penal Law of the State of New York, and Criminally Using Drug Paraphernalia in the Second Degree, in violation of section 220.50 of the Penal Law of the State of New York in Indictment No. 2017-038.

Upon reading and filing the within Motion for Return of Property with accompanying exhibits dated March 22, 2018, submitted by Defendant *pro se*; Affirmation in Response and accompanying exhibit(s) dated June 1, 2018, submitted by Robert Middlemiss, Esq., Assistant District Attorney, Orange County District Attorney’s Office, defendant’s Reply Affirmation and all other papers and proceedings had herein, defendant’s application is decided as follows:

On August 8, 2017 defendant plead guilty, by affidavit, in County Court, Orange County to one count of Criminal Possession of a Controlled Substance in the Seventh Degree, in full satisfaction of the instant indictment. (See Affidavit of Plea, Exhibit “A” to defendant’s motion).

[\* 2]

Defendant was sentenced to time served.

Presently, defendant moves, *pro se*, for an Order compelling the return of his personal property seized by the City of Middletown Police Department, Middletown, New York, pursuant to search warrants issued in relation to the instant indictment. (See list of property sought, Exhibit "E" to defendant's motion).<sup>1</sup>

In response, the People assert that all property has been released to Ms. Cheryl Hayes, defendant's designated agent, but for two motor vehicles. (See Exhibit "1" to the People's Affirmation in response). The vehicles, they assert, are available for Ms. Hayes to retrieve from a towing company (with possible fees due). The People argue that defendant's motion is rendered moot on these facts and should be dismissed.

Were the facts, as asserted by the People, uncontested, the instant motion may have been moot. However, defendant, in reply, alleges that three (3) additional cell phones and his passport have not been returned. Further, defendant asserts that the People have not addressed the matter of a third vehicle that was also seized.<sup>2</sup> Indeed, in a list of property that was vouchered by the Middletown Police, (Defendant's Exhibit "E"), the property that defendant seeks is listed as having been seized. However, nowhere in the People's response are these items addressed. Additionally, annexed to the People's response as Exhibit "1" is a list of property returned to defendant through his agent, Ms. Hayes. This list does not reflect that the additional property sought by defendant in the present motion was, in fact, returned to him.

Initially, though the criminal case has been terminated, it should be noted that this Court

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<sup>1</sup> It should be noted that though defendant moves pursuant to the Federal Rules of Criminal Procedure, this Court considers the motion under the New York State Criminal Procedure Law.

<sup>2</sup> Defendant complains about the condition of the two motor vehicles, the locations of which have been disclosed to him.

has jurisdiction to order the return of the property seized pursuant to the Affidavit of defendant's plea (Defendant's motion, Exhibit "A", ¶ 3) as well as the Criminal Procedure Law. (*See CPL § 690.55*). This Court, however, has no inherent equity powers beyond those specifically provided for in the Criminal Procedure Law. *See People v. Sash*, 194 Misc.2d 195 (Crim. Ct., New York County, Apr. 5, 2002).

As defendant has demonstrated his entitlement to the property seized, which was expressly addressed in his Plea by Affidavit, defendant's motion seeking an Order for the return of the three (3) cell phones (excluding the 2 that have previously been released) and his passport is granted. Defendant's motion as it relates to his vehicles is denied as the City of Middletown Police Department deny possession of these items and this Court does not possess powers in equity.

Based upon the foregoing, it is hereby

ORDERED, that the City of Middletown Police Department return the three (3) cell phones and passport vouchered and sought by defendant, to the extent that they are still within the possession of the department; and

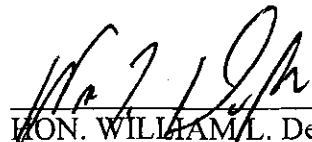
It is further ORDERED, that defendant's motion as it relates to three motor vehicles is denied, without prejudice to commence any civil proceedings in a court of proper jurisdiction.

[\* 4]

The above constitutes the Decision and Order of the Court.

Dated: Goshen, New York  
October 11, 2018

ENTER

  
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HON. WILLIAM L. DePROSPO  
COUNTY COURT JUDGE

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