

People v Gonzalez

2018 NY Slip Op 33930(U)

June 4, 2018

Supreme Court, Westchester County

Docket Number: 18-0311

Judge: Susan M. Capeci

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

- against -

JOSE GONZALEZ,
Defendant.

CAPECI, J.,

FILED
JUN 6 2018
TIMOTHY G. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

DECISION & ORDER

Indictment No:18-0311

The defendant, having been charged by indictment with burglary in the second degree (P.L. 140.25 (2)), petit larceny (P.L. 155.25), criminal mischief in the fourth degree (P.L. 145.00 (1)), and criminal contempt in the first degree (P.L. 215.51 (B)(v)), now makes this motion seeking omnibus relief.

The defendant has submitted an affirmation from his attorney in support of his omnibus motion, in which he seeks the following relief: 1) 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; 2) motion to suppress statements on the ground they were involuntarily made, and obtained as a result of his arrest without probable cause, or a Huntley/Dunaway hearing; 3) motion to suppress evidence of his identification, or a Wade hearing; 4) suppression of physical evidence recovered in this case, as a result of his unlawful arrest without probable cause, or a Mapp hearing; 5) a bill of particulars; 6) disclosure of materials not previously provided through consent discovery, and Brady material; 7) a Sandoval/Ventimiglia hearing; and 8) leave to file additional pre-trial motions as necessary.

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, 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 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)).

2. MOTION TO SUPPRESS STATEMENTS/PROBABLE CAUSE

The defendant's motion for suppression of statements is denied as moot, as the People have not served him with a CPL 710.30 notice of any statements, and have not indicated that they are seeking to offer any other statements in evidence.

Further, the defendant was arrested pursuant to an arrest warrant, following the filing of a felony complaint, and has not contested the validity of the warrant, made available to him as part of consent discovery. Since he has not specifically contested the validity of the warrant, it is presumed to be based upon probable cause (CPL

120.10 (1); People v Boone, 269 AD2d 459 (2d Dept 2000); People v Bullock, 42 Misc3d 141(A), (App. Term 9th & 10th J.D. 2014)). His motion for a probable cause hearing is thus denied.

In any event, the defendant's arrest was based upon information provided to police officers by an identified citizen, his ex-wife, which was presumed reliable (People v Boykin, 187 AD2d 661 (2d Dept 1992); People v Newton, 180 AD2d 764 (2d Dept 1992)). Police officers at the scene also observed a shattered glass door at the victim's home.

3. MOTION TO SUPPRESS IDENTIFICATION EVIDENCE

The defendant moves to preclude the introduction of any evidence obtained from a pre-trial identification procedure since the People have not served the defendant with notice of any identification pursuant to CPL 710.30. The defendant's motion is denied as premature, as the People have not indicated that they intend to introduce any such identification evidence at trial.

4. MOTION FOR SUPPRESSION OF PHYSICAL EVIDENCE

The defendant's motion for a Mapp hearing is denied. With respect to evidence recovered from the defendant's apartment and from his car, this evidence was obtained pursuant to a presumptively valid search warrant which he has not moved to controvert (People v Hornedo, 303 AD2d 602 (2d Dept 2003)). The search warrants and supporting application were provided to the defendant as part of consent discovery.

Since the defendant was arrested pursuant to a presumptively valid arrest warrant, as discussed in Point 2, supra, any evidence recovered from the defendant's person was seized incident to his lawful arrest (People v Belton, 55 NY2d 49 (1992)).

In addition, the defendant has not demonstrated standing to contest the recovery of any evidence recovered from the victim or her home. It is the defendant who must establish standing by showing a legitimate expectation of privacy in the place searched (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.

5. MOTION FOR A BILL OF PARTICULARS

The People have already supplied the defendant with a bill of particulars in this case, as part of consent discovery. The indictment or bill of particulars must state such specifics "as may be necessary to give the defendant and the court reasonable information as to the nature and character of the crime charged" (People v Morris, 61 NY2d 290, 294 (1984)). The bill of particulars provided which was served pursuant to and simultaneously with the consent order was sufficient to adequately inform the defendant of the substance of his alleged conduct and to enable him to prepare and conduct a defense (see People v Sanchez, 84 NY2d 440 (1994); People v Byrnes, 126 AD2d 735, 736 (2d Dept 1987)). The defendant's motion for any further bill of particulars is denied.

6. 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.

7. MOTION FOR A SANDOVAL/VENTIMIGLIA HEARING

The defendant's motion for a Ventimiglia hearing is denied at this time since the People have not represented 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.

8. MOTION FOR A RESERVATION OF RIGHTS TO FILE FURTHER PRE-TRIAL MOTIONS

The defendant requests leave to make further motions as necessary. The defendant's motion is denied. CPL 255.20 is controlling with respect to the time frame for making pre-trial motions and there have been no allegations of good cause for making further motions outside of those time constraints.

This decision constitutes the Order of the Court.

Dated: White Plains, New York
June 4, 2018



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

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