

People v Meisel

2018 NY Slip Op 34018(U)

November 26, 2018

Supreme Court, Westchester County

Docket Number: 18-06180

Judge: Susan M. Capeci

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<p>FILED AND ENTERED ON <u>11-28</u>-2018 WESTCHESTER COUNTY CLERK</p>
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

- against -

FILED

DECISION & ORDER

Indictment No:18-0618D

MATTHEW MEISEL,
Defendant.

NOV 28 2018

TIMOTHY C. IDONI
~~COUNTY CLERK~~
COUNTY OF WESTCHESTER

-----X
CAPECI, J.,

The defendant, having been charged by indictment with three counts of criminal contempt in the first degree (P.L. 215.51 (c)), 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 Dunaway/Mapp hearing; 3) a Sandoval/Ventimiglia hearing; 4) 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; 5) motion to strike statement notices as insufficient; 6) motion to suppress statements alleged to have been made by the defendant, or a Huntley hearing; and 7) motion for severance and separate trials on each count.

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 arrests without probable cause.

The defendant is charged with three counts of criminal contempt in the first degree, each having occurred on a separate date and involving three separate arrests. The first arrest occurred on June 6, 2017, in the Village of Ardsley, when defendant was observed in a vehicle occupied by his father, in violation of an order of protection. The second arrest occurred on June 11, 2017, and the third occurred on May 18, 2018, with both the second and third arrest occurring at 12 Darwood Place in Greenburgh at the home of the defendant's parents, in violation of an order of protection. The defendant asserts there was no search warrant to enter the home and that his parents did not provide consent to enter. As for the first arrest, he asserts the police officer had no basis to approach the vehicle and question him.

The defendant's motion for suppression of physical evidence based upon a lack of probable cause for each of his arrests is granted to the extent that the Court will hold a Dunaway/Mapp hearing on the issue of probable cause for each of his arrests, as noted above, and thereupon, whether suppression of any physical evidence is warranted.

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 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)).

5. MOTION TO STRIKE STATEMENT NOTICES

The defendant has been served with three CPL 710.30 notices of statements made by him. The first involves an oral statement made at 10:33 am on June 6, 2017, at the Ardsley Acres Motel, 560 Saw Mill River Road, Ardsley, NY to Officer Roemer of the Ardsely Police Department, the substance of which is set forth in the notice. The second notice involves an oral statement, recorded electronically, made at 9:33 pm on June 11, 2017, at 12 Darwood Place, Greenburgh, NY to members of the Greenburgh Police Department with the content being referred to on the attached disk containing a "body cam" video. The third notice similarly involves a an oral statement, recorded electronically, made at 2:15 pm on May 17, 2018, at 12 Darwood Place, Greenburgh, NY to members of the Greenburgh Police Department with the content being referred to on the attached disk containing a "body cam" video.

The defendant contends the second two notices are insufficient because they contain hours of video footage and the People do not specify what statements they

intend to use. The People respond that the notices are sufficient as they have provided the defendant with the entirety of the actual statements, and there is no requirement that they summarize the content for him.

The defendant's motion to strike the CPL 710.30 notices as insufficient is denied, as each of the notices informed him of the time, place and manner the statements were made, and he was provided with the entirety of the statements (see People v Lopez, 84 NY2d 425 (1994)). Further, the defendant has moved for suppression of the statements (see People v Figueras, 199 AD2d 409, 410 (2d Dept 1993)).

6. MOTION TO SUPPRESS STATEMENTS

The defendant's motion for suppression of statements as set forth in each of the three 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.

As noted under Point 2, the defendant has been granted a Dunaway/Mapp hearing on the issue of probable cause for his arrest and the suppression of any statements as a result may also be considered based upon the outcome of that hearing (see People v Mendoza, 82 NY2d 415 (1993); CPL 710.60(3)(b)).

7. MOTION FOR SEVERANCE/SEPARATE TRIALS

The defendant seeks severance of each of the charged counts for trial, arguing that it would be prejudicial to him to have all three tried together as they each involve the same charged offense, and that there is substantially more proof on the second two cases where there is a police body camera video.

The People oppose the motion to sever, arguing that these offenses are properly joinable in a single indictment pursuant to CPL 200.20 (2)(b) because they involve the same victims, the defendant's parents, and the commission of each offense would be directly admissible as to each of the other counts as necessary background information of the parties' relationship, and to establish motive, and intent. They further contend the offenses are joinable under CPL 200.20 (2)(c) as the same or similar in law. In addition, the defendant has shown no basis for a discretionary severance of the charges.

Two offenses are "joinable" when, they are based upon the same act or upon the same criminal transaction (see CPL 200.20 (a)), or even though based upon different criminal transactions, "such offenses or the criminal transactions underlying them, are of such nature that either proof of the first offense would be material and admissible as evidence in chief upon a trial of the second, or proof of the second would be material and admissible as evidence in chief upon a trial of the first" (CPL 200.20(2)(b); see also CPL 100.45(1) [applying CPL 200.20 to misdemeanor informations]).

Two offenses are also "joinable" even though based upon different criminal transactions, and even though not joinable pursuant to CPL 200.20(2)(b), when such offenses are defined by the same or similar statutory provisions and consequently are

“the same or similar in law” (CPL 200.20 (2)(c)).

The defendant’s motion to sever each of the 3 counts of criminal contempt in the first degree from each other and to hold separate trials is denied. Evidence of each of these counts of criminal contempt in the first degree would be admissible upon the trial of the other counts to demonstrate the nature of the parties’ relationship, absence of mistake, and to show the intentional violation of the order of protection (see People v Harvey, 5 Misc2d 751 (Crim. Ct, NY Co. 2004); see also People v McCloud, 121 AD3d 1286, 1289 (3d Dept 2014); People v Lee, 275 AD2d 995 (4th Dept 2000)). Each of these incidents involved the same victims, and would require their testimony as to many similar facts and overlapping evidence (see People v Scott, 276 AD2d 380 (2d Dept 2000); People v Paraschiv, 169 AD2d 739 (2d’ Dept 1991)).

In addition, the 3 incidents set forth in the indictment each charge the defendant with criminal contempt in the first degree pursuant to P.L. 215.51(c), and thus each of the charges are the same or similar in law and are joinable on that basis (see People v Edwards, 160 AD2d 720 (2d Dept 1990)). The defendant’s motion for severance is therefore denied.

This decision constitutes the Order of the Court.

Dated: White Plains, New York
November 26, 2018



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

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