

<b>People v Lemus</b>
2018 NY Slip Op 34048(U)
June 25, 2018
County Court, Orange County
Docket Number: 2018-031
Judge: William L. DeProspero
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

COUNTY COURT: ORANGE COUNTY  
STATE OF NEW YORK

-----X

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

IND. NO. 2018-031  
**INDEX # 1635-2018**  
**DECISION AND ORDER**

JOSEPH LEMUS,

Defendant.

-----X

DePROSPO, W.

Defendant is charged in this indictment with the crimes of **CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE THIRD DEGREE**, a class B felony, in violation of section 220.16(1) of the Penal Law of the State of New York and **CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE FOURTH DEGREE**, a class C felony, in violation of section 220.09(1) of the Penal Law of the State of New York.

Defendant has moved for certain pre-trial relief. The Court, having considered the following papers:

- Defendant's notice of motion and affirmation, submitted by Patrick A.H. Watts Esq.,
- People's affirmation in response, submitted by Janine M. Kovacs, Esq., Assistant District Attorney, Orange County District Attorney's Office;
- Grand Jury Minutes-Indictment-Voluntary Disclosure Form;

It is hereby ORDERED that the defendant's motion is decided in the following manner:

**MOTION TO INSPECT GRAND JURY MINUTES**

Defendant's motion is granted to the extent that the Court has reviewed the minutes of the

Grand Jury *in camera*. The Court finds that release of the minutes is not necessary to the determination of this motion. The Court further 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 TO SUPPRESS PHYSICAL EVIDENCE**

Defendant's motion to suppress physical evidence on the ground that the search and seizure was unlawful is denied. *CPL 710.60(1)* requires that a suppression motion be in writing, state the legal ground upon which it is based and "contain sworn allegations of fact, whether of the defendant or of another person or persons, supporting such grounds." The court may summarily deny a motion to suppress if the sworn allegations of fact do not as a matter of law support the ground alleged. *People v. Jones*, 95 N.Y.2d 721, 725 (2001). Factual allegations of innocent conduct at the time of the arrest, which is what is alleged here, do not mandate a hearing as they do not controvert the specific information that was provided by the People in the voluntary disclosure form (VDF). *Jones, supra*; see also *People v. Lopez*, 13 AD3d 152 (1<sup>st</sup> Dept., 2004). Specifically, the People consented to the inspection of the search warrant that was the basis for the search and thereafter, arrest in the present matter. Notably absent from defendant's papers are any factual allegations that would support a motion to suppress given the circumstances and information possessed by the defendant. See *People v. Gadsden*, 273 AD2d 701 (3<sup>rd</sup> Dept., 2000). Thus, the motion for a Mapp/Dunaway hearing is denied.

### **MOTION TO SUPPRESS STATEMENTS**

Defendant's motion is granted to the extent that a hearing is hereby ordered on the issue of the voluntariness of any statement made to law enforcement personnel.

[\* 3]

To the extent that the defendant's motion can be interpreted to raise issues relative to his arrest and/or detention, defendant has not submitted any sworn allegations of fact supporting this branch of the motion. *CPL Section 710.60; People v. Jones*, 95 N.Y.2d 721 (2001); *People v. Mendoza*, 82 NY2d 415 (1993).

**MOTION FOR A SANDOVAL HEARING**

Defendant's 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 acts or convictions may be used as impeachment in the event that the defendant elects to testify at trial. The District Attorney is further ordered to disclose, in accordance with CPL Section 240.43, any and all acts which he intends to use for purposes of impeaching defendant at trial.

**MOTION FOR DISCOVERY AND INSPECTION**

Defendant's motion is granted to the extent that the information was previously provided or inspection was consented to in the People's Voluntary Disclosure Form and/or Affirmation in Response. In all other respects, defendant's application is denied.

**MOTION FOR A BILL OF PARTICULARS**

A bill of particulars is not a discovery device, it serves to clarify the pleading. *People v. Davis*, 41 N.Y.2d 678 (1977). Defendant's motion is denied as the information provided by the People is sufficient to enable defendant to adequately prepare or conduct a defense. CPL §220.95.

**RESERVATION OF RIGHTS**

The defendant's reservation of his right to make further motions is denied and any future motions shall be summarily denied absent the requisite showing pursuant to *CPL § 255.20(3)*.

**CONFERENCE/HEARING DATE**

This case is scheduled for conference on **June 26, 2018** at 9:30 a.m. All parties are directed to appear.

The above constitutes the Decision and Order of the Court.

Dated: Goshen, New York  
June 25, 2018

E N T E R

  
\_\_\_\_\_  
HON. WILLIAM L. DEPROSPO  
COUNTY COURT JUDGE

TO: DAVID M HOOVLER.  
ORANGE COUNTY DISTRICT ATTORNEY  
Attorney for the People  
255-285 Main St.  
Goshen, New York 10924

PATRICK A.H. WATTS, Esq.  
Attorney for Defendant  
878 Melrose Avenue  
Bronx, New York 10451