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| People v Dos Santos |
| 2018 NY Slip Op 34145(U) |
| December 19, 2018 |
| Supreme Court, Westchester County |
| Docket Number: Indictment No. 18-0980 |
| Judge: Susan M. Capeci |
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FILED
AND
ENTERED
ON 12 21 2018
WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

THE PEOPLE OF THE STATE OF NEW YORK

- against -

JOAQUIN DOS SANTOS,
Defendant.

-----X

CAPECI, J.,

DECISION & ORDER

Indictment No:18-0980

FILED^{re}

DEC 21 2018

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)), criminal possession of a weapon in the fourth degree (P.L. 265.01 (2)), and menacing in the second degree (P.L. 120.14 (1)), now makes this motion seeking omnibus relief.

The defendant has submitted an affirmation from his attorney and 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) 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; 3) suppression of physical evidence recovered in this case, as a result of his unlawful arrest without probable cause, or a Dunaway/Mapp hearing; 4) suppression of the statements alleged to have been made by the defendant as set forth in the CPL 710.30 notice, or a Huntley hearing; 5) a Sandoval/Ventimiglia hearing; and 6) an order striking prejudicial language from the indictment.

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 Huntley hearing limited to his Fifth amendment claims, 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 FOR DISCOVERY AND INSPECTION/ BRADY

The defendant has been provided with consent discovery in this case. 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 INSPECT/DISMISS/RÉDUCÉ

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)).

3. 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, which was presumed reliable (People v Boykin, 187 AD2d 661 (2d Dept 1992); People v Newton, 180 AD2d 764 (2d Dept 1992)). Moreover, upon arriving at the scene, the police observed the defendant holding a hammer and observed his brother with visible injuries. His brother identified him as his attacker. Any evidence recovered from his person was thus seized incident to his lawful arrest (People v Belton, 55 NY2d 49 (1982)).

Further, with respect to any evidence recovered from the home where the

incident occurred, the victim was the owner of the home, and he provided consent to the officers to obtain any such evidence. Any evidence recovered as a result was thus valid (People v Watson, 101 AD3d 913 (2d Dept 2012)). The defendant's motion to suppress physical evidence or for a probable cause hearing is therefore denied.

4. MOTION TO SUPPRESS STATEMENTS

The defendant's motion for suppression of oral statements, as set forth in the CPL 710.30 notice, is granted to the extent that the Court will conduct a Huntley hearing prior to trial concerning the 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.

However, since the defendant made no factual allegations in his motion with respect to the illegality of his arrest, said hearing should not address that issue. While a defendant may be entitled to a hearing on his unsupported claim of "involuntariness" (CPL 60.45, 710.60[3][b]), no sworn allegations of fact are set forth 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]).

5. 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.

6. 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)).

This decision constitutes the Order of the Court.

Dated: White Plains, New York
December 19, 2018



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

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