

**People v Rodriguez**

2019 NY Slip Op 34389(U)

October 2, 2019

Supreme Court, Westchester County

Docket Number: Indictment No. 19-0241

Judge: Susan M. Capeci

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<p>FILED AND ENTERED</p> <p>ON <u>10-3</u> - 2019</p> <p>WESTCHESTER COUNTY CLERK</p>
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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

DECISION & ORDER

- against -

Indictment No: 19-0241

MARIO RAMOS RODRIGUEZ,  
Defendant.

**FILED**

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OCT 03 2019

CAPECI, J.,

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 third degree (P.L. 265.02 (1)), and menacing on the second degree (P.L. 120.14 (1)), now makes this motion seeking omnibus relief.

The defendant has submitted an affirmation and memorandum of law 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) disclosure of materials not previously provided through consent discovery, and Brady material; 3) a Sandoval/Ventimiglia hearing; 4) motion for a further bill of particulars; 5) suppression of statements alleged to have been made by the defendant, or a Huntley hearing, and suppression of physical evidence recovered as a result of the unlawful statement; and 6) leave to make further pre-trial motions as necessary and to hold any hearings 20 days in advance of trial.

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, 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 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.

### 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 FOR A FURTHER BILL OF PARTICULARS

The People have served the defendant with a bill of particulars as part of consent discovery. The function of a bill of particulars is to define more specifically the crime charged, or in other words, to clarify the pleading, not to serve as a discovery device (People v Davis, 41 NY2d 678 (1977); People v Kyoung Ja Choi, 259 AD2d 423 (1<sup>st</sup> Dept 1999)). 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.

5. MOTION TO SUPPRESS STATEMENTS/PHYSICAL EVIDENCE

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.

The defendant further moves to suppress physical evidence he asserts was recovered as the "fruit" of his unlawfully obtained statement, specifically, blood covered pants he discarded in the garbage. In the event the hearing Court finds his statement to have been unlawfully obtained, his claim as to the suppression of the pants as "fruits of the poisonous tree" may be considered at that time (see People v Urowsky, 89 AD2d 520 (1<sup>st</sup> Dept 1982)).

6. MOTION FOR A RESERVATION OF RIGHTS TO MAKE FURTHER MOTIONS AND TO HOLD HEARINGS TWENTY DAYS IN ADVANCE


The defendant seeks to reserve the right to make further motions as necessary. This 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.

The defendant's further request for any hearings in this case to be held at least 20 days in advance of trial to allow transcription of the hearing minutes is denied. A request for any hearing minutes to be expedited if necessary will be considered at the time it is made.

This decision constitutes the Order of the Court.

Dated: White Plains, New York  
October 2, 2019

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

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