

**People v Carbone**

2019 NY Slip Op 34938(U)

June 25, 2019

Supreme Court, Westchester County

Docket Number: Indictment No. 18-0993

Judge: Susan M. Capeci

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This opinion is uncorrected and not selected for official publication.

FILED  
AND  
ENTERED  
ON 6-25 2019  
WESTCHESTER  
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

THE PEOPLE OF THE STATE OF NEW YORK

- against -

GARY CARBONE,  
Defendant.

-----X

CAPECI, J.,

DECISION & ORDER

Indictment No: 18-0993

**FILED**

JUN 25 2019

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

The defendant, having been charged by indictment with two counts of criminal possession of a weapon in the second degree (P.L. 265.03 (1)(b), 265.03 (3)), three counts of criminal possession of a weapon in the third degree (P.L. 265.02 subd (1), (7) and (8)), 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 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) motion to suppress statements alleged to have been made by the defendant, or a Huntley hearing; 3) suppression of physical evidence recovered in this case, or a Dunaway/Mapp hearing; 4) a Sandoval/Ventimiglia hearing; 5) 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; and 6) a reservation of rights to make further 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, to a Huntley hearing, to a Mapp/Dunaway 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 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.

3. MOTION TO SUPPRESS PHYSICAL EVIDENCE

The defendant moves to suppress all evidence recovered from the home at 20 Dirubbo Drive, Cortlandt, NY. He contends that the police officers entered and searched the home prior to the time the homeowner signed a consent form allowing them to do so. He asserts there was no exigency because he was already in custody and the victim was outside of the house. He seeks suppression of that evidence, or a Mapp/Dunaway hearing.

The defendant's motion for suppression of physical evidence is granted to the extent that the Court will hold a Dunaway/Mapp hearing with respect to the search of the home and seizure of evidence from that location, and thereupon, whether suppression of any physical evidence is warranted.

4. 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.

5. MOTION TO INSPECT/DISMISS/REDUCE

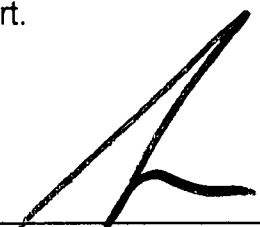
This application is granted to the extent that the Court has conducted an in camera inspection of the minutes of the Grand Jury proceedings. Upon review of the evidence presented, this Court finds that all counts of the indictment were supported by sufficient evidence and that the instructions given 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)).

6. 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 25, 2019



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

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