

People v Johnson

2019 NY Slip Op 34941(U)

March 29, 2019

Supreme Court, Westchester County

Docket Number: Indictment No. 18-1018

Judge: Susan M. Capeci

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FILED
AND
ENTERED
ON 4-2-2019
WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

DECISION & ORDER

- against -

FILED

Indictment No:18-1018

RICHARD JOHNSON,
Defendant.

APR - 2 2019

-----X
CAPECI, J.,

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) and 265.03 (3)), two counts of criminal possession of a weapon in the third degree (P.L. 265.02 (1) and 265.02 (3)), 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 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) preclusion of statements not noticed to the defendant on a timely basis, and suppression of statements alleged to have been made by the defendant, or a Huntley hearing; 3) suppression of physical evidence recovered in this case, as a result of his claimed unlawful arrest without probable cause, or a Dunaway/Mapp hearing; 4) disclosure of materials not previously provided through consent discovery, and Brady material; 5) a further bill of particulars; 6) a Sandoval/Ventimiglia hearing; and 7) leave 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 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 TO PRECLUDE/SUPPRESS STATEMENTS

The People served the defendant with a CPL 710.30 notice indicating a statement made by him, oral and electronically recorded, made on August 16, 2018 at 11:26 pm at the Mount Vernon Police Department to members of the police department. The notice gave the sum and substance of the defendant's statement, and indicated that the disk of the electronic recording of the statement would be provided to him at arraignment.

The defendant's motion to preclude his videotaped statement is denied, as he was clearly given notice of it in the CPL 710.30 notice. Moreover, the notice was sufficient as it informed him of the time, place and manner the statements were made (see People v Lopez, 84 NY2d 425 (1994)). Further, the defendant has moved for suppression of the statements contained in the videotape (see People v Figueras, 199 AD2d 409, 410 (2d Dept 1993)). The defendant's motion to preclude any statements that have not been noticed to him is denied as premature, as the People have not indicated they are seeking to introduce any such statements at trial.

The defendant's motion for suppression of oral, electronically recorded 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 specific factual allegations in his motion with respect to the illegality of his arrest (see Point 3, infra), 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]).

3. MOTION TO SUPPRESS PHYSICAL EVIDENCE/ PROBABLE CAUSE HEARING

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 a Dunaway hearing on the issue of probable cause for his arrest 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)). The defendant's arrest was based upon information provided to police officers by an identified citizen, which was presumed reliable (People v Boykin, 187 AD2d 661 (2d Dept 1992); People v Newton, 180 AD2d 764 (2d Dept 1992)). Moreover, the victim in this case, his former girlfriend, identified him to the police by name and description. Any evidence recovered from his person was thus seized incident to his lawful arrest (People v Belton, 55 NY2d 49 (1982)).

The defendant has raised a factual issue with respect to the recovery of the gun, magazine and ammunition from his vehicle upon his arrest. The People assert that these items were observed by police officers in plain view, in the backseat of the defendant's vehicle. The defendant asserts that although he was arrested while walking on the street, the police officers began searching his nearby vehicle, and only found the items noted above after removing a pillow from the rear seat. In view of this factual issue, the defendant's motion for a Mapp hearing as to the seizure of the noted items from his vehicle is granted (People v Mendoza, supra).

The defendant's additional motions for a Payton hearing and to controvert

search warrants are denied. The defendant was not arrested in his home, and thus no Payton hearing is applicable (Payton v New York, 445 US 573 (1980)). The People have indicated there were no search warrants or applications in this case.

4. 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.

5. 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 (1st 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.

6. 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.

7. MOTION FOR A RESERVATION OF RIGHTS TO MAKE FURTHER MOTIONS

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.

This decision constitutes the Order of the Court.

Dated: White Plains, New York
March 29, 2019



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

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