

People v Rose

2019 NY Slip Op 35007(U)

October 25, 2019

Supreme Court, Westchester County

Docket Number: Index No. 19-0493

Judge: Susan M. Capeci

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FILED
AND
ENTERED
ON 10-25 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 -

CRAIG ROSE,

Defendant.

-----X

DECISION & ORDER

Indictment No:19-0493

CAPECI, J.,

The defendant, having been charged by indictment with three counts of criminal contempt in the first degree (P.L. 215.51 (c)), three counts of criminal mischief in the fourth degree (P.L. 145.00 (1)), four counts of aggravated family offense (P.L. 240.75 (1)), burglary in the first degree (P.L. 140.30 (3)), attempted assault in the second degree (P.L. 110/120.05 (2)), criminal possession of a weapon in the third degree (P.L. 265.02 (1)), stalking in the second degree (P.L. 120.55 (1)(l)), 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) 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) an order striking the notice of statements made by the defendant and the identification notice as defective and insufficient; 4) suppression of statements

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alleged to have been made by the defendant, or a Huntley hearing; 5) suppression of identification evidence, or a Wade hearing; 6) suppression of all physical evidence recovered in this case, including the knife recovered, on the ground that it was unlawfully seized without a warrant and without probable cause for his arrest, or a Dunaway/Mapp hearing; 7) a Sandoval/Ventimiglia hearing; and 8) an order striking the People's demand for an alibi notice.

The People have submitted an affirmation in opposition in which they consent to provide discovery limited to the parameters of CPL article 240 and to provide Brady material, consent to a Sandoval hearing, consent to an in camera inspection of the grand jury minutes by the Court to assess legal sufficiency, and consent to a Huntley/Wade/Dunaway/Mapp hearing, but otherwise oppose the motion. The Court now finds as follows.

1. MOTION FOR DISCOVERY AND INSPECTION/BRADY

The People have provided consent discovery to the defendant 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)).

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/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 other 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 STRIKE NOTICES OF STATEMENTS AND IDENTIFICATION

The People have served the defendant with a CPL 710.30 identification notice in this case, which the defendant moves to strike as defective. This motion is denied, as the notice was sufficient to advise the defendant of the People's intention to offer identification evidence at trial (People v Nolasco, 70 AD3d 972 (2d Dept 2010; see also People v Grajales, 8 NY3d 861 (2007)). In any event, the defendant has moved for suppression of any identification testimony (People v Kirkland, 89 NY2d 903 (1996)).

The People have provided the defendant with a CPL 710.30 notice pertaining to an oral statement, alleged to have been made by him on March 11, 2019, at 2:55 pm to a member of the City of Mount Vernon Police Department, at 459 South Columbus

Avenue. The defendant's motion to strike this notice is denied. The notice provided the substance of the statement, the precise location and to whom the statements were made. Accordingly, the CPL 710.30 notice was sufficient (CPL 710.30[1]; see People v Lopez, 84 NY2d 425 (1994)).

4. MOTION FOR SUPPRESSION OF 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.

As a Dunaway/Mapp hearing will be held (see Point 6, infra), the issue of whether the statement was obtained as the result of his arrest without probable cause may also be considered at such hearing.

5. MOTION FOR SUPPRESSION OF IDENTIFICATION EVIDENCE

The People have served the defendant with an identification notice indicating that he was identified by a witness subsequent to the commission of the crime. Although it is not indicated in the notice, the People now assert that the identifying witness was the victim, who is the defendant's former live-in girlfriend, and that the victim and defendant were thus sufficiently well known to each other. The People nevertheless consent to a Wade hearing, to the extent the defendant is seeking one.

Thus, the defendant's application is granted to the extent that a Wade hearing (United States v Wade, 388 US 218) shall be held prior to trial to determine whether the

identification made subsequent to the commission of the crime on March 11, 2019, was merely confirmatory (see People v Rodriguez (79 NY2d 445 (1992))), and if not, whether the police procedures employed were unduly suggestive or whether an independent source exists for the in-court identifications.

6. MOTION FOR SUPPRESSION OF PHYSICAL EVIDENCE/PROBABLE CAUSE

The defendant moves to suppress all physical evidence recovered in this case, including the knife recovered, asserting that it was obtained as the result of his unlawful warrantless arrest, without probable cause.

A Dunaway/Mapp hearing shall be held, on consent, on the issue of probable cause for the defendant's arrest and the subsequent seizure of evidence, including the knife seized from the home.

7. MOTION FOR A SANDOVAL/VENTIMIGLIA HEARING

The defendant's motion for a Ventimiglia hearing is denied at this time since the People are not presently 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.

8. MOTION TO STRIKE THE PEOPLE'S ALIBI DEMAND

The defendant contends that the People's alibi demand should be stricken since the statute it is based on, CPL 250.20, is unconstitutional pursuant to Wardius v Oregon (412 US 470 (1973)). He claims the statute improperly requires the defense to supply names of alibi witnesses in advance of the People's requirement to provide names of rebuttal witnesses to the defense.

The defendant's motion is denied. New York State courts have specifically found this statute to be constitutional following the United States Supreme Court decision in Wardius v Oregon, supra (People v Dawson, 185 AD2d 854 (2d Dept 1992); People v Gill, 164 AD2d 867 (2d Dept 1990)).

This decision constitutes the Order of the Court.

Dated: White Plains, New York
October 25, 2019



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

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