

**People v Smith**

2020 NY Slip Op 34766(U)

October 8, 2020

County Court, Westchester County

Docket Number: Indictment No. 19-0085

Judge: Susan Cacace

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COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

**FILED and ENTERED**  
  
**WESTCHESTER  
COUNTY CLERK**

**FILED** ↗

-against-

**OCT 16 2020**

**TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER**

**DECISION & ORDER**

Indictment No. 19-0085

GREGORY SMITH,

Defendant.

-----X  
CACACE, J.

Under the instant indictment, the defendant has been charged with two counts of Criminal Possession of a Controlled Substance in the Third Degree and two counts of Criminally Using Drug Paraphernalia in the Second Degree, arising from events alleged to have occurred on or about October 9, 2018 in the area of 56 Locust Hill Avenue in the City of Yonkers.

By Decision and Order, filed and entered on February 3, 2020, the County Court, Westchester County (Fufidio, J.), ordered a combined pre-trial hearing pursuant to *Mapp v Ohio* (367 US 643) and *Dunaway v New York* (442 US 200) to address the defendant's application seeking the suppression of physical evidence which the People seized pursuant to the execution of a search warrant at the alleged residence of defendant Gregory Smith at 56 Locust Hill Avenue in the City of Yonkers on October 9, 2018. Specifically, by this Decision and Order, the County Court, Westchester County (Fufidio, J.), ordered that the combined *Mapp/Dunaway* hearing to address the defendant's challenge to the execution of the above-referenced search within the scope of the executed search warrant on October 9, 2018. Prior to the commencement of the

court-ordered *Mapp/Dunaway* hearing, the County Court, Westchester County (Fufidio, J.), by Amended Decision and Order, filed and entered September 29, 2020, directed that the previously ordered *Mapp/Dunaway* hearing be expanded to include resolution of the defendant's challenge to the inconsistency between the date of the affiant's oath listed upon the search warrant affidavit and the date of issuance listed upon the search warrant order.

In accordance therewith, this Court conducted a combined *Mapp/Dunaway* hearing on October 1, 2020 to determine the trial admissibility of physical evidence including cocaine, cellular telephones, US currency, plastic sandwich bags and digital scales which were seized from the defendant's person and from within his residence pursuant to the execution of the above-referenced search warrant at 56 Locust Hill Avenue in the City of Yonkers on October 9, 2018. During this combined *Mapp/Dunaway* hearing, City of Yonkers Police Department Detectives Stephen Donohue, Robert McLaughlin and James McDonough testified as witnesses on behalf of the People, whereas, the defense declined to present any witnesses on behalf of the defendant. Upon considering the testimony of these three witnesses, I give credence to the testimonial evidence offered by each one of them. Based upon the evidence adduced at this combined *Mapp/Dunaway* hearing, I make the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

Detective Stephen Donohue of the City of Yonkers Police Department (YPD), presented himself before the Hon. Evan Inlaw, City Court Judge of the City of Yonkers, at approximately 2:20 PM on October 9, 2018, and submitted to him an unsigned search warrant affidavit, which

was admitted into evidence as People's Exhibit #1A, and an unsigned search warrant order, which was admitted into evidence as People's Exhibit #1B, thereby seeking authorization for the search of the premises located in the first apartment on the right side at 56 Locust Hill Avenue in the City of Yonkers (hereinafter, the target location) and any adult persons located therein. Upon being administered an oath to the contents of Exhibit 1A by Judge Inlaw, Det. Donohue placed his signature upon the last page of the affidavit and personally observed Judge Inlaw prepare the jurat by writing the number "9" to reflect the present day of the month, and "December" to reflect the present month, and then personally observed Judge Inlaw write his signature thereupon. Immediately thereafter, Det. Donohue observed Judge Inlaw review Exhibit #1B, and write "October 9<sup>th</sup>" thereupon to reflect the present month and day of the month, which he followed by writing his signature upon the line provided and "2:20pm" to reflect the present time. With regard to the discrepancy between Judge Inlaw's nearly simultaneous writing of both "December" upon the search warrant affidavit and "October" upon the search warrant order, Det. Donohue testified that although he had observed Judge Inlaw mistakenly write the incorrect month of "December" upon the search warrant affidavit, he did not realize the mistaken entry at that time, and he declined to take any corrective action when he recognized Judge Inlaw's mistake the next day.

Subsequent thereto on October 9, 2018, Det. Donohue, Det./Lt. Justin Barbato, Det. James McDonough, Det. Robert McLaughlin, Det. Robertson and Police Officer Nicholas Minichino (hereinafter, the warrant execution team) responded to the target location at approximately 8:45 PM, when P.O. Minichino knocked on the entry door to that apartment and announced "police". In response thereto, a male child, identified as Jameek Smith, opened the

door and permitted entry to the warrant execution team, all of whom proceeded to the interior of the target location. Upon entering the target location, Det. Donohue initially observed an adult male, identified as Kenneth Goode, seated on the sofa situated to his right, and then continued walking with Det./Lt. Barbato down a hallway to the far end of the apartment until they reached, what he described as, the front left bedroom. From within that bedroom, Det./Lt. Barbato recovered a red-colored scale, and Det. Donohue recovered a brown powdery substance in a paper towel which he then-believed to be heroin. After seizing the brown powdery substance, Det Donohue proceeded to the kitchen area of the apartment and recovered a glass jar from the freezer containing a substance which he then-believed to be phencyclidine hydrochloride (PCP).

Upon his own entry into the target location, Det. McLaughlin initially observed Kenneth Good seated on the sofa situated to his right, and then continued walking down a hallway to the far end of the apartment until he reached, what he described as, the front right bedroom. Once outside of that bedroom, Det. McLaughlin shouted "police" and pushed the door open, when he observed the defendant standing next to a night stand while attempting to stuff a black plastic bag into the top drawer of same. In response, the defendant left the black plastic bag in the night stand drawer, and Det. McLaughlin escorted him from that bedroom to Det. McDonough in the living room. While then situated in the living room, Det McLaughlin observed four (4) cellular telephones, including two (2) Apple I-phones and two (2) Samsung Galaxy phones, resting upon a coffee table, which he seized therefrom.

Once he received the defendant from Det. McLaughlin, Det. McDonough searched the defendant's person in the living room and recovered \$482.00 US currency from his pocket, before seating him down upon the sofa. Det. McDonough then proceeded to walk to the far end

of the apartment with Det. Mike Muller, and entered the front right bedroom. Once within the bedroom, Det. McDonough and Det. Muller searched the night stand and dresser located therein, from which they recovered \$3,755.00 US currency, mail bearing the defendant's name, a digital scale, a box of sandwich bags, and a larger black plastic bag containing four (4) baggies of what he then-believed to be crack cocaine.

#### Conclusions of Law

As defined by both the Decision and Order, and the Amended Decision and Order of the County Court, Westchester County (Fufidio, J.), as referenced herein, the scope of the instant *Mapp/Dunaway* hearing was limited to address the defendant's challenge to the inconsistency between the date of issuance listed upon the search warrant affidavit and the date of issuance listed upon the search warrant order, and the defendant's further challenge to the execution of the search within the scope of that search warrant order relating to the search and seizure of physical evidence from within the target location on October 9, 2018.

Turning first to consider the defendant's challenge to the inconsistency between the date of issuance listed upon the search warrant affidavit and the date of issuance listed upon the search warrant order, the Court notes that the uncontroverted testimony within the record reveals that the local criminal court judge who signed and authorized the search warrant order for the target location, that being Judge Evan Inlaw of the City Court, City of Yonkers, had inadvertently written "December" to reflect the date/month when the search warrant affidavit was sworn to before him by Det. Donohue, rather than correctly identifying and writing the date/month as

“October”. Although it is regrettable that a typographical error was made by the issuing judge who subscribed the search warrant order (People’s Exhibit #1B) itself when he denoted the date/month of his administration of an oath to Det. Donohue relating to the contents of the search warrant affidavit (People’s Exhibit #1A), as the record indicated that the search warrant order (People’s Exhibit #1B) was in full compliance with the requirements of CPL 690.45(2) to the extent that it correctly reflected the time and date on which the issuing judge directed the issuance of same, this Court finds that there is no legal basis to invalidate the search warrant order, nor to suppress any evidence seized thereunder (*see People v Horton*, 32 AD2d 707 [unintentional dating error does not invalidate search warrant]; *see also People v Shetler*, 256 AD2d 1234 [typographical error in search warrant does not invalidate search]; *People v Turner*, 153 Misc.2d 116; *People v Pietramala*, 84 Misc.2d 496).

Turning next to consider the defendant’s challenge to the scope of the search resulting in the seizure of physical evidence from within the target location, the Court notes that CPL 690.45(4) provides that a search warrant must contain “a description of the property which is the subject of the search”. In this regard, the Federal and State Constitutions provide that warrants shall not be issued except “upon probable cause ... and particularly describing the place to be searched, and the persons or things to be seized” (U.S. Const 4th Amend; N.Y. Const, art I, § 12; *see People v Cook*, 108 AD3d 1107, 1108, *lv. denied* 21 NY3d 1073). As a corollary principle, it is has been recognized that the necessary degree of particularity will be present where the warrant’s directive is “specific enough to leave no discretion to the executing officer” (*see People v Darling*, 95 NY2d 530, 537, citing *Andresen v Maryland*, 427 US463, 480). However, although “[p]articularity is required in order that the executing officer can reasonably ascertain

and identify ... the persons or places authorized to be searched and the things authorized to be seized[,] ... hypertechnical accuracy and completeness of description” in the warrant is not required (*People v Nieves*, 36 NY2d 396, 401; *see People v Williams*, 140 AD3d 1526, 1527, *lv denied* 28 NY3d 1076; *People v Dewitt*, 107 AD3d 1452, 1453).

In accordance with these principles and the applicable case law, the Court initially finds that the authorization for the seizure of property identified within the challenged search warrant order issued by the City Court, City of Yonkers (Inlaw, J.) was not overly broad, as it specifically included, *inter alia*, “cocaine, crack/cocaine, marijuana, heroin, narcotics paraphernalia, including but not limited to plastic bags . . . records of ownership or use of this location . . . cellular telephones, U.S. Currency”, which clearly encompassed all of the physical evidence seized pursuant to the execution of the search warrant order authorizing the search of the target location on October 9, 2018. Furthermore, upon review of the search warrant affidavit, the Court finds that the factual allegations set forth therein were sufficient to establish the requisite nexus between the itemized property subject to seizure and the criminal conduct being investigated (*see People v Haas*, 55 AD2d 683), and as the challenged search warrant was issued for the purpose of searching for illicit narcotics, the police were authorized to search any area within the target location that could have contained such items, which included night stand drawers (*see People v Brown*, 96 NY2d 80, 90; *see also People v Brooks*, 152 AD3d 1084, 1087). Consequently, contrary to the defendant’s contention, the Court concludes that the YPD did not exceed the scope of the challenged search warrant order when they seized crack cocaine, plastic baggies, US Currency, cellular telephones and specified records from within the target location upon their execution of the challenged search warrant on October 9, 2018, inasmuch as all seized items

were of the expressly specified nature provided therein, and were recovered from places authorized to be searched (see *People v Schaefer*, 163 AD3d 1179, 1181, *lv denied* 32 NY3d 1007; see also *People v Madigan*, 169 AD3d 1467, 1468, *lv. denied*, 33 NY3d 1033; *Cook*, 108 AD3d at 1108–1109; cf. *People v Caruso*, 174 AD2d 1051, 1051).

Based upon the foregoing, the defendant’s application seeking the suppression of those items of physical evidence which were seized from within his alleged residence located at 56 Locust Hill Avenue in the City of Yonkers is hereby denied. Accordingly, the People will be permitted to seek the introduction of such evidence on their direct case upon the trial of this matter.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York  
October 8, 2020



Honorable Susan Cacace  
County Court Judge

**HON. SUSAN CACACE  
WESTCHESTER COUNTY  
COURT JUDGE**

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