

**People v Perkins**

2020 NY Slip Op 34774(U)

June 24, 2020

Supreme Court, Westchester County

Docket Number: Ind. No. 19-980D

Judge: Susan M. Capeci

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

-against-

**FILED**

JUL - 1 2020

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER  
Defendant.

JEBOCKA PERKINS,  
-----X

**FILED  
AND  
ENTERED**  
ON 7-1 2020  
WESTCHESTER  
COUNTY CLERK

DECISION AND ORDER  
UPON MOTION TO  
REARGUE  
Ind. #19-980D

The defendant moves to reargue this Court's Decision and Order dated May 5, 2020, in which his motion for production of additional discovery materials was granted in part, and denied in part. The People respond that they have met their discovery obligations in accordance with this Court's Decision and Order noted above.

On this motion to reargue, the defendant seeks disclosure of the complainant's certificate of conviction, and other materials including the RAP sheet, related to her sealed 2014 conviction of disorderly conduct. The defendant contends that without access to these materials, he cannot be sure whether the complainant's disorderly conduct conviction involved him, or whether these records contain Brady material. The defendant now, upon reargument, requests that the Court review these records in camera to determine whether any of the materials are relevant to the impeachment of the credibility of the complaining witness, and to determine the extent of any such information that should be disclosed.

A motion for leave to reargue "shall be based upon matters of fact or law allegedly

overlooked or misapprehended by the court in determining the prior motion” (CPLR 2221). Since, the defendant did not seek an in camera review of the sealed conviction, it is not properly the subject of a motion to reargue. However, for the sake of expediency, the Court will deal with the application in the context of the present motion to reargue.

The defendant's motion is granted solely to the extent that the Court will order the records of the complaining witness Joyce Morton's 2013 disorderly conduct conviction be unsealed for in camera review by the Court to determine whether any of the materials are relevant to the impeachment of the credibility of the complaining witness, and to determine the extent of any such information that should be disclosed (see People v Davis, 2020 Slip. Op. 20045 decided Feb. 20, 2020 [Crim. Ct, Bronx]). The case will be re-sealed upon completion of the in camera review, except to the extent that the Court deems it appropriate to release any information to the parties in this case. The People shall coordinate with the Court to provide the sealed records.

An examination of the remainder of the defendant's motion indicates that he is in large part seeking additional discovery, apart from reargument of some of the court's findings. These requests for additional discovery will be addressed as follows. The motion to reargue is otherwise denied, except as addressed herein.

Production of the Complaining Witness's Prior Complaints, Statements, and Refusals To Pursue Charges Against the Defendant

The defendant seeks production of prior complaints, statements, and refusals to pursue charges of the victim against anyone in the past, and with respect to the defendant, on the basis that these materials are discoverable as impeachment material

pursuant to CPL 245.20(1)(k). The People respond that the defendant has been arrested numerous times for domestic violence crimes against the victim in this case, and that the victim's prior statements in these cases are not related to the subject matter of this case, and are not likely to be material. Moreover, some of the cases have been sealed and dismissed, and are not accessible to the People.

Based upon the "presumption in favor of disclosure" (see CPL 245.20(7)) in interpreting the mandated disclosure requirements as set forth in CPL 245.20, the Court finds that any prior statements of the complaining witness made to law enforcement in prior cases involving this defendant are discoverable as being material, to the extent they are in the People's possession, custody, and control. As noted in the statute, such potential impeachment material is to be disclosed irrespective of whether the prosecution credits the information (CPL 245.20 (1)(k)). Statements made by the complaining witness in other cases not involving this defendant, if any such statements even exist, have not been shown to relate to the subject matter of this case and are not material.

To the extent that any prior statements of the complaining witness to law enforcement are contained in dismissed or sealed cases, these materials are not available to the People to disclose, pursuant to CPL 160.55. Thus, disclosure of statements from cases that have been dismissed and sealed is not mandated.

#### Disclosure of Efforts by the Complaining Witness to Contact Defendant at the Jail

The defendant previously requested and was granted discovery of any phone records of the complaining witness contacting him at the jail. He now seeks any records

of visits, written letters, or electronic transmissions to him at the jail.

The People respond that they have disclosed every piece of evidence from the Department of Corrections, and that there is no indication that any such evidence of visits, written letters, or electronic transmissions exists. Based upon the People's representation, the Court finds they have met their obligation for disclosure in this regard.

Disclosure of Names and Work Affiliation of Law Enforcement Personnel from GTL

The defendant seeks disclosure of all records of GTL (Global Tel Link), a phone provider for the Westchester County Jail, pertaining to this case.

Since the People indicate they have disclosed all evidence they received from the Department of Corrections as to the phone records in this case, they have met their obligation. Moreover, the People state that GTL is a private company and not a law enforcement agency, and its employees are not law enforcement personnel.

Disclosure of Impeachment and Disciplinary Information as to All Officers Involved

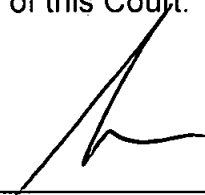
The defendant seeks impeachment and disciplinary information pursuant to CPL 245.20 (1)(k) as to 4 additional police officers that were listed on the People's disclosure form as participating in the arrest or investigation of this case. The People already provided this disclosure with respect to the 4 officers who they have indicated they plan to have testify at trial.

Pursuant to CPL 245.20(1)(k)(iv), the People are required to disclose all evidence and information that tends to: "(iv) impeach the credibility of a testifying prosecution witness..." CPL 245.20(1)(k)(iv). The People have already supplied this

information with respect to the 4 police witnesses that will be testifying at trial, and there is no requirement, under the above statute, for them to do so for non-testifying police witnesses. Moreover, with the recent repeal of Civil Rights Law §50-a, police personnel records are no longer confidential and are available to be obtained by the defendant (see 2020 NY Senate Bill S8496, eff. June 12, 2020).

This constitutes the Decision and Order of this Court.

Dated: June 24, 2020  
White Plains, New York

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

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