

People v Darder

2021 NY Slip Op 33908(U)

November 10, 2021

County Court, Broome County

Docket Number: Indictment No. 21-230

Judge: Kevin P. Dooley

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This opinion is uncorrected and not selected for official publication.

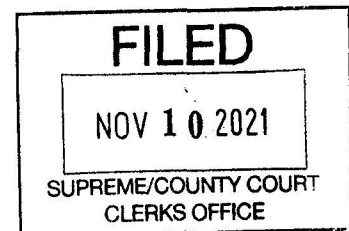
STATE OF NEW YORK
COUNTY COURT :: COUNTY OF BROOME

THE PEOPLE OF THE STATE OF NEW YORK

-v-

MARIO R. DARDER IV,
Defendant.

KEVIN P. DOOLEY, J.



DECISION AND ORDER

Indictment No. 21-230
Docket No. 70428-21

On August 5, 2021, a Broome County Grand Jury handed up Indictment No. 21-230, charging the above-named defendant with Criminal Possession of a Controlled Substance in the Third Degree, a class B felony, Criminal Possession of a Weapon in the Second Degree, a class C felony, Criminal Possession of a Controlled Substance in the Fifth Degree, a class D felony, and two counts of Criminally Using Drug Paraphernalia in the Second Degree, class A misdemeanors. The indictment alleges that on October 26, 2020, the defendant knowingly possesses quantities of heroin and methamphetamine with intent to sell them, as well as a loaded 9mm pistol, a digital scale and packaging material.

The defendant was arraigned in Broome County Court on August 20, 2021. On October 13, 2021, the defendant filed with the Court an Omnibus Motion seeking certain Orders and relief in connection with the indictment filed against him. The People's response was filed on November 9, 2021. The following constitutes the Decision and Order of the Court.

GRAND JURY MOTIONS

The defendant moves for an Order, pursuant to CPL 210.30, for inspection of the stenographic minutes of the grand jury proceeding for the Court to determine whether the evidence before the grand jury was legally sufficient to support the charges contained in the indictment, and whether the grand jury proceedings were defective within the meaning of CPL 210.35. The People have no objection to the Court examining the grand jury minutes and provided a copy of the same for the Court's review on January 18, 2019. Upon examination of the minutes, the Court finds that release of the minutes to the defense is not necessary to assist the Court in making its determination of the motion. Accordingly, the defendant's request for release of the grand jury minutes is denied.

In reviewing the legal sufficiency of the evidence presented, the Court must view the evidence in a light most favorable to the People and determine whether the evidence, if unexplained or uncontradicted, would be sufficient to support a guilty verdict after trial. The Court's inquiry is limited to assessing whether the facts, if proven, and the logical inferences flowing therefrom, provide proof of every element of the crimes charged and the defendant's commission of those crimes. Its inquiry does not include weighing the proof or examining its adequacy or determining whether there was reasonable cause to believe the accused committed the crimes charged, as the resolution of such questions is exclusively the province of the grand jury. *People v. Jensen*, 86 NY2d 248 (1995).

Upon examination, the evidence presented to the grand jury was legally sufficient to establish the commission by the defendant of the offenses charged in the indictment or lesser included offenses thereof. In addition, there were no defects in the grand jury proceedings within the meaning of CPL 210.20 (1) (c). Therefore, the defendant's motion to dismiss the indictment is denied.

MOTIONS FOR PRE-TRIAL DISCLOSURES

As part of his Omnibus Motion, the defendant has filed a motion pursuant to *People v. Rosario*, 9 NY2d 286 (1961), for all written or recorded statements of any witnesses, including transcripts of the grand jury testimony of those witnesses and any information known to the prosecutor relating to any criminal convictions or pending charges of those witnesses. The prosecutor provided these materials, except the transcript of the grand jury testimony of witnesses, through his "CPL 245 Disclosure, Pre-Trial Notices and Demands," dated August 20, 2021, and the disclosures provided through the DEMS program on February 12, 2021, and August 3, 2021. In his "CPL 245 Disclosure, Pre-Trial Notices and Demands," the prosecutor advised that the grand jury transcripts were ordered on August 5, 2021. The prosecutor is directed to file a supplemental certificate of compliance documenting when the grand jury transcripts are disclosed to the defendant.

The defendant also moves for Orders requiring the prosecution to furnish a Bill of Particulars and to disclose all favorable or exculpatory material pursuant to *Brady v. Maryland*, 373 US 83 (1963). The prosecutor has responded to the defendant's request for a Bill of Particular and acknowledges his on-going duty pursuant to *Brady v. Maryland*, 373 US 83

(1963) to provide any *Brady* material to the defendant if he becomes aware of such material in the future.

If the defendant believes he has not received discovery materials to which he is entitled, he can move for an Order to compel specific disclosure, preclude evidence, or other applicable relief pursuant to CPL 245.35 and 245.80.

REQUESTS AND MOTIONS FOR PRE-TRIAL HEARINGS

Request for Sandoval/Ventimiglia Hearing

The defendant requests that the Court conduct a pre-trial hearing to determine the admissibility of the defendant's prior criminal convictions and/or uncharged criminal conduct at trial, either as part of the People's direct case or for cross-examination of the defendant, should he elect to testify. The prosecutor has no objection to the Court conducting such a hearing and alleges that the defendant has two prior convictions the prosecutor seeks to use during cross-examination. Therefore, a hearing pursuant to *People v. Sandoval*, 34 NY2d 371 (1974) will be conducted on November 12, 2021, at 1:30 p.m. At the hearing, the prosecutor must set forth both the convictions and any underlying facts he seeks to use during cross-examination, and any uncharged criminal conduct he seeks to introduce in the People's case-in-chief pursuant to *People v Molineux*, 168 NY 264 (1901).

Motion to Suppress Statements

The defendant moves for an Order suppressing all statements and admissions attributed to her that were made to law enforcement officers on the ground the statements were involuntarily made or obtained in violation of his constitutional rights. The prosecutor has no objection to the Court conducting a hearing pursuant to *People v. Huntley*, 15 NY2d 72 (1965). Therefore, a pre-trial hearing will be conducted on November 12, 2021, at 1:30 p.m., to determine whether any statements of the defendant were involuntarily made or obtained in violation of his right to counsel.

Motion to Suppress Physical Evidence

The defendant moves to suppress the firearm, narcotics, drug paraphernalia and other evidence seized from his vehicle after he was stopped in his vehicle by a Vestal Police officer.

The defendant submits that the officer's request that the defendant consent to a search of his vehicle was not supported by a founded suspicion of criminal conduct and that the defendant did not voluntarily consent to the search. *People v. Dunbar*, 5 NY3d 834 (2005). The prosecutor denies that that the search was conducted without the defendant's voluntary consent. He also argues that the officer had a common law right of inquiry when he questioned the defendant, and that the officer was permitted to request consent to search "at this level of suspicion."

The Court is unable to determine the defendant's suppression motion on the papers submitted. Therefore, a pre-trial hearing will be conducted on November 12, 2021, at 1:30 p.m., to determine whether the police officer had a sufficient basis to request a consent to search and whether the defendant voluntarily consented to the search of his vehicle.

DEMAND FOR RECIPROCAL DISCOVERY

As part of the Certificate of Compliance, the prosecutor served a Demand for Reciprocal Discovery pursuant to CPL 245.20 (4). The defendant is directed to file a response to the Demand by November 26, 2021.

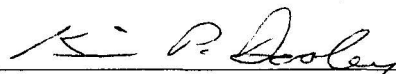
MOTION FOR FURTHER RELIEF

Criminal Procedure Law Section 255.20 provides that absent a showing of good cause, all pre-trial motions must be filed at the same time and within 45 days of arraignment. Therefore, good cause must be established before the Court will consider granting the defense leave to renew or make further motions.

The above constitutes the Decision and Order of Court.

It is so Ordered.

Dated: November 10, 2021
Binghamton, New York



HON. KEVIN P. DOOLEY
Broome County Court Judge