

People v Price

2021 NY Slip Op 34006(U)

June 3, 2021

Supreme Court, Westchester County

Docket Number: Ind. No. 20-00621-01

Judge: Robert A. Neary

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**FILED
AND
ENTERED
ON 6-3-2021
WESTCHESTER
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

- against -

DECISION AND ORDER

DEMEATRICE PRICE,

Ind. No. 20-00621-01

Defendant.

-----X
NEARY, J.

The defendant, Demeatrice Price, has been charged with the crimes of Attempted Murder in the Second Degree (B Felony), Attempted Assault in the First Degree (C Felony) and Criminal Possession of a Weapon in the Second Degree (C Felony). The defendant has made an omnibus motion which consists of a Notice of Motion and an Affirmation and Memorandum of Law in support thereof. In response, the People have filed an Affirmation in

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COUNTY CLERK
COUNTY OF WESTCHESTER

Opposition together with a Memorandum of Law. Having read all of the submitted papers and reviewed the court file, this Court makes the following determination.

A. MOTION FOR DISCOVERY COMPLIANCE PURSUANT TO CPL ARTICLE 245

The defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 245. If any items set forth in CPL Article 245 have not been provided to the defendant pursuant to the Consent Discovery Order in the instant matter, said items are to be provided forthwith.

The People recognize their continuing duty to disclose exculpatory material at the earliest possible date. [See *Brady v. Maryland*, 373 US 83, 83 S Ct. 1194, 10 LE2d 215 and *Giglio v. United States*, 405 US 150, 92 S Ct. 763, 31 LE2d 104]. If the People are or become aware of any material which is arguably exculpatory but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

To any further extent, the application is denied as seeking material or information beyond the scope of discovery. [See *People v. Colavito*, 87 NY2d 423, 639 NYS2d 996, 663 NE2d 308; *Matter of Brown v. Grosso*, 285 AD2d 642, 729 NYS2d 492, *lv. denied* 97 NY2d 605, 737 NYS2d 52, 762 NE2d 930; *Matter of Brown v. Appelman*, 241 AD2d 279, 672 NYS2d 373; *Matter of Catterson v. Jones*, 229 AD2d 435, 644 NYS2d 573; *Matter of Catterson v. Rohl*, 202 AD2d 420, 608 NYS2d 696, *lv. denied* 83 NY2d 755, 613 NYS2d 127, 241 NE2d 279].

B. MOTION TO CONTROVERT THE SEARCH WARRANT AND SUPPRESS TANGIBLE EVIDENCE

This branch of the defendant's motion is granted solely to the extent of conducting a *Mapp* hearing prior to trial to determine the propriety of any search resulting in the seizure of property and whether any evidence was obtained in violation of the defendant's Fourth Amendment rights. [See *Mapp v. Ohio*, 367 US 643, 82 S. Ct. 1684, 6 LE2d 1081].

With respect to any property seized pursuant to a search warrant, the motion to suppress is denied. The Court has reviewed the affidavit in support of the search warrant and finds that it did provide the signing magistrate with probable cause to believe that evidence could be located at the location described in the warrant. The Court has also reviewed the order and return and finds them to be proper in all respects. However, the Court will conduct a hearing to determine whether the items described in the return are within the scope of the warrant and are intended to be offered as evidence at trial.

C. MOTION TO INSPECT AND DISMISS OR REDUCE PURSUANT TO CPL ARTICLE 210

The defendant's motion to inspect the Grand Jury minutes is granted. Upon an *in camera* inspection of the Grand Jury minutes by Court, the motion to dismiss the indictment or reduce a charged offense in the indictment is denied.

The Court has reviewed the minutes of the proceeding before the Grand Jury. The Grand Jury was properly instructed, and the proceedings were properly conducted. [See *People v. Calbud*, 49 NY2d 389, 426 NYS2d 389, 402 NE2d 1140 and *People v. Valles*, 62

NY2d 36, 476 NYS2d 50, 464 NE2d 418]. Moreover, the evidence presented, if accepted as true, would be legally sufficient to establish every element of the offenses charged. [See CPL §210.30(2)]. In addition, the minutes reveal that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, and that it was instructed that only those grand jurors who had heard all the evidence could participate in voting on the matter.

D. MOTION FOR *VENTIMIGLIA* AND *SANDOVAL* HEARING PURSUANT TO CPL 240.43

Immediately prior to commencement of jury selection, the prosecutor shall, upon request of the defendant, notify the defendant of any prior criminal act which the People seek to use in the cross-examination of the defendant as well as all specific instances of the defendant's prior uncharged criminal, vicious or immoral conduct of which the prosecutor has knowledge and which the prosecutor intends to use at trial for the purposes of impeaching the credibility of the defendant. Thereafter, upon the defendant's request, the trial court shall conduct a *Sandoval* and/or *Ventimiglia* hearing prior to the commencement of trial. [See *People v. Sandoval*, 34 NY2d 371 (1974); *People v. Ventimiglia*, 52 NY2d 350 (1981); *People v. Molineux*, 168 NY 264 (1901)].

E. MOTION TO EXCLUDE STATEMENTS PURSUANT TO CPL ARTICLE 710 OR IN THE ALTERNATIVE FOR A *HUNTLEY* HEARING

This branch of the defendant's motion is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine the admissibility and voluntariness of any

statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL §710.30 (1)(a), CPL §710.20(3), CPL §710.60[3][b]; *People v. Weaver*, 49 NY2d 1012, 429 NYS2d 399, 406 NE2d 1335.

F. MOTION TO STRIKE DEMAND FOR ALIBI NOTICE

This motion is denied. Contrary to the defendant's contentions, it is well-settled that CPL §250.00 is indeed in compliance with the constitutional requirements (see *People v. Dawson*, 185 AD2d 854, 587 NYS2d 358, *appeal denied* 80 NY2d 974, 591 NYS2d 143, 605 NE2d 879; *People v. Cruz*, 176 AD2d 751, 574 NYS2d 1006, *appeal denied* 79 NY2d 855, 580 NYS2d 727, 588 NE2d 762; *People v. Gill*, 164 AD2d 867, 599 NYS2d 376, *appeal denied* 76 NY2d 893, 561 NYS2d 555, 562 NE2d 880; *People v. Peterson*, 96 AD2d 871, 578 NYS2d 358) and provides equality in the required disclosure (see *People v. Peterson*, 90 AD2d 871, 578 NYS2d 358; see generally *Wardius v. Oregon*, 412 US 470, 93 S Ct. 2208, 37 LE2d 82).

G. MOTION FOR SUCH OTHER RELIEF AS SHALL SEEM JUST AND PROPER

Upon a proper showing, the Court will entertain appropriate additional motions based upon grounds of which the defendant could not, with due diligence, have been previously aware, or which, for other good cause, could not reasonably have been raised in this motion.

[See CPL §255.20(3)].

This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
June 3, 2021


ROBERT A. NEARY
SUPREME COURT JUSTICE

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