

People v Carattini

2021 NY Slip Op 34115(U)

September 22, 2021

Supreme Court, Westchester County

Docket Number: Ind. No. 21-00277-02

Judge: Robert A. Neary

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TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

FILED
AND
ENTERED
ON 9-22-2021
WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

- against -

CESAR CARATTINI and ERIC CARATTINI,

Defendants.

-----X

NEARY, J.

DECISION AND ORDER

Ind. No. 21-00277-02

The defendant, Eric Carattini, has been charged with the crimes of Criminal Possession of a Controlled Substance in the Third Degree (two counts) and Tampering with Physical Evidence. The defendant has made an omnibus motion which consists of a Notice of Motion and an Affirmation in Support thereof. In response, the People have filed an Affirmation in 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.

I. and II. MOTION TO INSPECT GRAND JURY MINUTES TO DETERMINE IF ALL THREE COUNTS IN THE INDICTMENT WERE BASED UPON LEGALLY SUFFICIENT EVIDENCE BEFORE THE GRAND JURY PURSUANT TO CPL SECTION 190.65(1) and MOTION TO DISMISS THE INDICTMENT DUE TO ANY DEFECTS IN THE GRAND JURY PROCEEDING PURSUANT TO CPL SECTIONS 210.20 AND 210.35

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 (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) and 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.

The Court does not find that the release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court in making this determination.

III. MOTION TO PRECLUDE ANY STATEMENTS NOT INCLUDED OR SUFFICIENTLY DESCRIBED IN THE PEOPLE'S CPL SECTION 710.30 NOTICE PURSUANT TO CPL SECTIONS 710.30 AND 710.40

The defendant's motion is denied as speculative and premature.

IV. MOTION TO SUPPRESS ANY STATEMENTS ALLEGEDLY MADE BY THE DEFENDANT PURSUANT TO CPL SECTIONS 225.10, 255.20, 710.20(3) AND(4), 60.45, 710.40, 710.60 AND 710.70 OR IN THE ALTERNATIVE, A HUNTLEY/DUNAWAY 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 whether any statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL §710.30 (1)(a), were involuntarily made by the defendant within the meaning of CPL §60.45 (see CPL §710.20(3), CPL §710.60[3][b]; *People v. Weaver*, 49 NY2d 1012, 429 NYS2d 399, 406 NE2d 1335), obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (see *Dunaway v. New York*, 442 US 200, 99 S. Ct. 2248, 60 LE2d 824).

V. MOTION TO SUPPRESS TANGIBLE PROPERTY SEIZED FROM THE DEFENDANT, SPECIFICALLY DRUGS SEIZED PURSUANT TO CPL SECTION 710.20(1), OR IN THE ALTERNATIVE, A MAPP/DUNAWAY HEAIRNG

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 (see *Mapp v. Ohio*, 367 US 643, 81 S Ct. 1684, 6 LE2d 1081) and whether any evidence was obtained in violation of the defendant's Sixth Amendment right to counsel and/or obtained in violation of the defendant's Fourth Amendment rights. [See *Dunaway v. New York*, 42 US 200, 99 S Ct. 2248, 60LE2d 824].

VI. MOTION TO COMPEL THE PEOPLE TO DISCLOSE TO THE DEFENDANT ALL FAVORABLE EVIDENCE UNDER THE AUTHORITY OF *BRADY V. MARYLAND*, 373 US 82

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 arguable 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.

VII. MOTION TO PRECLUDE FROM INQUIRING INTO THE DEFENDANT'S PAST CRIMINAL HISTORY AND BAD ACTS

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)].

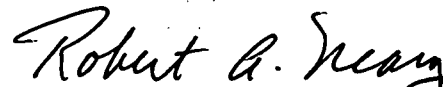
VIII. MOTION TO RESERVE THE RIGHT PURSUANT TO CPL SECTION 255.20(2) TO MAKE ALL FURTHER MOTIONS PREDICATED UPON THE ANSWER TO THE INSTANT MOTION

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
September 22, 2021



ROBERT A. NEARY
SUPREME COURT JUSTICE

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