

People v Mercado

2017 NY Slip Op 33301(U)

December 6, 2017

County Court, Orange County

Docket Number: 2017-416

Judge: Craig Stephen Brown

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
COUNTY COURT : ORANGE COUNTY

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PEOPLE OF THE STATE OF NEW YORK,

DECISION & ORDER

-against-

, Ind No. 2017-416
Index #4645/2017

WILFREDO MERCADO,

Defendant.

-----X
CRAIG STEPHEN BROWN, Judge.

Defendant Wilfredo Mercado moves for an order granting the following relief:

1. Pursuant to CPL §255.20(3), leave to file the instant motion after the date set by the Court for good cause shown;
2. Pursuant to CPL §§210.20(1)(b) and 210.30(2), inspection of the Grand Jury minutes and dismissal of the indictment on the ground that the evidence before the Grand Jury was legally insufficient to establish the defendant's commission of the offenses charged in the indictment;
3. Pursuant to CPL §210.30(3), release to the defendant of the Grand Jury testimony in this case, so that the defendant may assist the Court in determining the legal sufficiency of the evidence before the Grand Jury;
4. Pursuant to CPL §210.20(1)(c), dismissal of the indictment on the ground that the Grand Jury proceeding was defective within the meaning of CPL §210.35;
5. Dismissal of the indictment on the ground that the Grand Jury

proceeding failed to conform to Article 190 of the CPL to such degree that the integrity of such proceeding was impaired;

- 6. Pursuant to §240.20, inspection and disclosure of all evidence in this matter, specifically including the applications that were submitted in support of the search warrants that were executed and, also, all *Brady* material;
- 7. Pursuant to CPL §710.20(3), suppression of the defendant's statements to law enforcement on the grounds that said statements were involuntarily given, **or, in the alternative**, a hearing to adjudicate the issue;
- 8. Pursuant to §710.20(6), suppression of all in-court identifications of the defendant at trial on the grounds that the previous out-of-court identification of the defendant was unduly suggestive, **or, in the alternative**, a hearing to adjudicate the issue; and
- 9. The right to make further motions as may become necessary throughout the course of discovery.

The following papers were read:

Notice of Motion -Affirmation of Raymond D. Sprowls, Esq. - Annexed Exhibits	1 - 3
Jason Rosenwasser, Esq.'s <i>Affirmation</i> in Response - Affidavit of Service	4 - 5
Grand Jury Minutes - Indictment - Voluntary Disclosure Form	6 - 8

Upon the foregoing papers it is hereby ORDERED that the defendant's motion is decided as follows:

**LEAVE TO FILE INSTANT MOTION AFTER DATE
SET BY COURT**

The defendant's application for leave to file a late omnibus motion is granted in the interest of justice and for good cause shown.

**MOTION TO INSPECT GRAND JURY MINUTES AND
DISMISS INDICTMENT**

The motion is granted to the extent that the Court has reviewed the minutes of the Grand Jury and finds that the Indictment is based upon legally sufficient evidence and that the Grand Jury was properly instructed with respect to the applicable law.

**MOTION FOR DISCOVERY AND INSPECTION
(PARAGRAPHS 20 - 29)**

The request for information set forth in paragraphs 20(a)-(f) of defendant's counsel's affirmation is granted. The People are directed to provide such information (unless already provided) within ten (10) days of the date of this Order.

The request for copies of the two search warrant applications and search warrant returns is granted to the extent that:

1) The People are directed to provide the defendant, within ten (10) days of the date of this Order, redacted copies of the search warrant applications and copies of the search warrant returns; and

2) The People are directed to provide the Court, within ten (10) days of the date of this Order, unredacted copies of the search warrant applications (for possible future *in camera* review) and copies of the search warrant returns.

[* 4]

The request for information set forth in paragraphs 29(a), 29(b), 29(c), and 29(d) is denied as such information is not discoverable pursuant to CPL §240.20.

The request for information set forth in paragraph 29(e) (reports only) is granted and the People are directed to provide such information (unless already provided) within ten (10) days from the date of this Order.

The request for information set forth in paragraph 29(f) (*Rosario* material) is denied as premature. In the event that the District Attorney fails to comply with the obligations set forth in CPL §§240.44 and 240.45, the defendant has available remedies.

MOTION PURSUANT TO *BRADY V. MARYLAND*

The defendant's motion is granted to the extent that it is hereby ordered that the District Attorney provide defendant with any and all documents and materials as required under *Brady v. Maryland*.

MOTION TO SUPPRESS STATEMENTS

The motion is granted to the extent that a hearing is hereby ordered pursuant to CPL §710.60(4) to determine the admissibility of statements allegedly made by the defendant.

MOTION TO SUPPRESS IDENTIFICATION EVIDENCE

The motion is granted to the extent that a *Rodriguez* hearing is ordered, pursuant to CPL §710.60(4), to determine whether the identification procedure was confirmatory. (*See, People v. Rodriguez*, 79 NY2d 445 [1992]). In addition, the People's request that any identification hearing be bifurcated, pursuant to *People v. Chipp*, 75 NY2d 327 [1990], is granted.

MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS

Defendant's motion for leave to file additional motions is granted only to the extent set forth in CPL §255.20(3).

ADJOURNED DATE

This matter is scheduled for a conference to be held on December 7, 2017 at 9:15 A.M.

The defendant, defendant's counsel, and District Attorney are directed to be present.

The aforesaid constitutes the Decision and Order of the Court.

Dated: December 6, 2017
Goshen, New York

ENTER



HON. CRAIG STEPHEN BROWN
COUNTY COURT JUDGE

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