

<b>People v Dejesus-Vazquez</b>
2020 NY Slip Op 32064(U)
May 2, 2020
County Court, Orange County
Docket Number: 2017-038
Judge: Nicholas DeRosa
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COUNTY COURT : ORANGE COUNTY  
STATE OF NEW YORK

**ORIGINAL**

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

IND. NO. 2017-038

INDEX NO. **0822-207**

EGBERTO DEJESUS-VAZQUEZ,

DECISION AND ORDER

Defendant.

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DE ROSA, N.

Defendant is charged in this indictment with the crimes of **Criminal Possession of a Controlled Substance in the Third Degree**, a Class B Felony, in violation of §220.16(1); **Criminal Possession of a Controlled Substance in the Seventh Degree**, a Class A Misdemeanor, in violation of §220.03 and **Criminally Using Drug Paraphernalia in the Second Degree**, A Class A Misdemeanor, in violation of §220.50(3) of the Penal Law of the State of New York.

Defendant has moved for certain pre-trial relief which the Court, having considered: 1) the defendant's notice of motion and affirmation, submitted by Richard N. Lentino, Esq. 2) the People's affirmation in response, submitted by Matthew E. Healy, Esq., Senior Assistant District Attorney, Orange County District Attorney's Office, 3) Sur Reply Affirmation submitted by Richard N. Lentino, Esq., and 4) the transcript of Grand Jury proceedings, decides as follows.

MOTION TO INSPECT GRAND JURY MINUTES

Defendant's motion is granted to the extent that the Court has reviewed the minutes of the Grand Jury *in camera*. The Court finds that release of the minutes is not necessary to the determination of this motion. The Court further 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

Defendant's motion is granted to the extent that the information was previously provided or inspection was consented to in the People's Voluntary Disclosure Form and/or Affirmation in Response. In all other respects, defendant's application is denied.

MOTION TO CONTROVERT SEARCH WARRANT

Defendant's motion to suppress physical evidence seized based upon the search warrant is denied without a hearing. The Court has reviewed the warrant in this case and finds that the supporting affidavit sets forth sufficient facts to establish probable cause to believe that contraband would be found in the premises searched. Further, the premises to be searched were specifically and adequately identified in the warrant. Therefore, the warrant is proper on its face.

MOTION FOR A SANDOVAL AND VENTIMIGLIA HEARING

Defendant's motion is granted to the extent that a hearing is hereby ordered which will be held to determine which, if any, bad acts or convictions may be used as impeachment in the event that the defendant elects to testify at trial. The Court will also order a hearing to determine, which, if any, bad acts or convictions may be used as evidence in the People's direct case. The District Attorney is ordered to disclose, in accordance with CPL Section 240.43, any and all acts which he intends to use for purposes of impeaching defendant at trial, as well as any and all acts and/or convictions to be presented as evidence in chief.

MOTION FOR BRADY MATERIAL

Defendant's motion is granted to the extent that the District Attorney is directed to disclose to defendant any and all documents, materials and/or information, if any, required to be disclosed pursuant to Brady v. Maryland.

MOTION FOR RECUSAL

Defendant moves for recusal of the Orange County District Attorney's Office on the ground that the District Attorney represented the defendant in 2013 on an unrelated federal case prior to his election.

Removal is warranted only when necessary to protect a defendant from actual prejudice arising from a conflict of interest or a substantial risk of an abuse of confidence.

[\* 4]  
People v. Holmes, 117 AD2d 480 (3<sup>rd</sup> Dept 1986); Schumer v. Holtzman, 60 NY2d 46 (1983).

There has been no showing of actual prejudice or a substantial risk of an abuse of confidence. As a result, defendant's motion for recusal is denied without prejudice.

**MOTION FOR RESERVATION OF FURTHER MOTIONS**

CPL Section 255.20 provides defendant with the procedure to make further motions. No order of the Court is necessary at this time.

**CONFERENCE/HEARING DATE**

This matter is scheduled for conference on **May 11, 2017**. All parties are directed to be present.

The foregoing constitutes the Decision and Order of the Court.

Dated: Goshen, New York  
May 10, 2017

E N T E R.

  
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HON. NICHOLAS DE ROSA  
COUNTY COURT JUDGE

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