

People v Antico

2018 NY Slip Op 33941(U)

September 24, 2018

Supreme Court, Westchester County

Docket Number: 18-0503

Judge: Susan M. Capeci

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<p>FILED AND ENTERED ON <u>9-27</u> 2018 WESTCHESTER COUNTY CLERK</p>

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

DECISION & ORDER

- against -

ALEXANDER ANTICO,
Defendant.

Indictment No: 18-0503

FILED

SEP 27 2018

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CAPECI, J.,

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant, having been charged by indictment with assault in the second degree (P.L. 120.05 (2)) and criminal possession of a weapon in the fourth degree (P.L. 265.01 (2)), now makes this motion seeking omnibus relief.

The defendant has submitted an affirmation from his attorney and memorandum of law in support of his omnibus motion, in which he seeks the following relief: 1) inspection of the grand jury minutes by the Court and the defendant, and thereafter, for the dismissal of the indictment and/or reduction of the charges contained therein; 2) dismissal of the indictment in the interest of justice; 3) suppression of physical evidence recovered in this case, as a result of his unlawful arrest without probable cause, or a Dunaway/Mapp hearing; 4) a Sandoval/Ventimiglia hearing; 5) motion for a further bill of particulars; 6) disclosure of materials not previously provided through consent discovery, and Brady material; and 7) leave to make further pre-trial motions as necessary.

The People have submitted an affirmation in opposition in which they consent to provide discovery limited to the parameters of CPL article 240, as well as Brady

material. They also consent to a Sandoval hearing, and to an in camera inspection of the grand jury minutes by the Court to assess legal sufficiency, but otherwise oppose the motion. The Court now finds as follows.

1. MOTION TO INSPECT/DISMISS/REDUCE

This application is granted to the extent that the Court has conducted an in camera inspection of the minutes of the Grand Jury proceedings. Upon review of the evidence presented, this Court finds that all counts of the indictment were supported by sufficient evidence and that the instructions given were appropriate. There was no infirmity which would warrant a dismissal of the instant indictment. Accordingly, that branch of the motion which seeks dismissal of the indictment is denied. The Court further finds no facts which would warrant releasing any portion of the minutes of the grand jury proceedings to the defense (CPL 210.30 (3)).

2. MOTION TO DISMISS IN THE INTEREST OF JUSTICE

The defendant moves for dismissal of the charges in the interest of justice, arguing that he has no criminal history and that this incident occurred as a result of his suffering a bipolar episode due to being off his medication. He asserts that he has now been in treatment for his mental illness consistently.

The defendant's motion to dismiss the charges in the interest of justice is denied. A criminal charge may be dismissed in furtherance of justice pursuant to CPL 170.40 where there exists "some compelling factor or circumstance clearly demonstrating that conviction or prosecution of the defendant would constitute or result in an injustice" (People v Clayton, 41 AD2d 204 (2d Dept 1973)). Such relief is to be exercised

sparingly, "in the unusual case that cries out for fundamental justice beyond the confines of conventional considerations" (People v Belge, 41 NY2d 60 (1976)).

After consideration of all the factors contained in CPL 170.40, the court finds that dismissal in the interest of justice is not warranted under the circumstances of this case. The defendant is charged with having entered the home of a stranger, grabbed a knife and stabbed his brother. As aptly noted by the People, he may be a danger to the community, and any sentence imposed, if he is convicted, may include treatment. The defendant's motion is thus denied.

3. MOTION TO SUPPRESS PHYSICAL EVIDENCE/ PROBABLE CAUSE HEARING

The defendant contends that all evidence recovered in this case, including items recovered at the scene as well as clothing he was wearing, should be suppressed because they were obtained as a result of his arrest without probable cause. He further argues he should not have been arrested since he was suffering from a psychiatric condition and could not form the intent to commit the crimes charged.

The defendant's motion for suppression of physical evidence or for a Dunaway/Mapp hearing is denied as he has not asserted any specific factual allegations, sworn or otherwise, in support of his claim of illegal arrest (People v Mendoza, 82 NY2d 415 (1993)). Whether he seeks to assert a psychiatric defense in this case would have no bearing on the existence of probable cause for his arrest.

In any event, the defendant's arrest was based upon information provided to police officers by identified citizens, which was presumed reliable (People v Boykin, 187 AD2d 661 (2d Dept 1992); People v Newton, 180 AD2d 764 (2d Dept 1992)). Further,

evidence of the pants he was wearing was seized pursuant to a validly issued search warrant, which he was advised of as part of consent discovery, and which he has not specifically contested.

With respect to evidence recovered from the apartment where the incident occurred, as that apartment was the residence of a neighbor, the defendant does not have standing to contest the recovery of physical evidence recovered from the apartment (People v Hornedo, 303 AD2d 602 (2d Dept 2003), as he had no legitimate expectation of privacy in this location. Since the defendant did not possess a legitimate expectation of privacy in the place these items were recovered, he does not have standing to contest the seizure of these items (People v Ramirez-Portoreal, 88 NY2d 99 (1996); People v Oliver, 39 AD3d 880 (2d Dept 2007)). The defendant's motion to suppress physical evidence is therefore denied.

4. MOTION FOR A SANDOVAL/VENTIMIGLIA HEARING

The defendant's motion for a Ventimiglia hearing is denied at this time since the People do not represent that they are seeking to introduce any of defendant's prior bad acts on their direct case. The defendant's motion may be renewed in the event the People later seek to offer such evidence at trial. The motion for a Sandoval hearing is granted and shall be renewed before the trial Judge.

5. MOTION FOR A SUPPLEMENTAL BILL OF PARTICULARS

Although the People have already supplied the defendant with a bill of particulars in this case, he seeks a more specific bill of particulars. He argues that the bill of particulars provided to him is insufficient.

The function of a bill of particulars is to define more specifically the crime

charged, or in other words, to clarify the pleading, not to serve as a discovery device (People v Davis, 41 NY2d 678 (1977); People v Kyoung Ja Choi, 259 AD2d 423 (1st Dept 1999). The indictment or bill of particulars must state such specifics "as may be necessary to give the defendant and the court reasonable information as to the nature and character of the crime charged" (People v Morris, 61 NY2d 290, 294 (1984)).

The bill of particulars which was served pursuant to and simultaneously with the consent order was sufficient to adequately inform the defendant of the substance of his alleged conduct and to enable him to prepare and conduct a defense (see People v Sanchez, 84 NY2d 440 (1994); People v Byrnes, 126 AD2d 735, 736 (2d Dept 1987); (People v Mackey, 49 NY2d 274 (1980)). The motion for a further bill of particulars is therefore denied.

6. MOTION FOR DISCOVERY AND INSPECTION/ BRADY

The defendant has been provided with consent discovery in this case, as well as a bill of particulars. Therefore, the defendant's demand for disclosure of items or information to which he is entitled pursuant to the provisions of CPL 240.20(1) (a) through (k) is granted upon the People's consent. The application is otherwise denied as it seeks items or information which are beyond the scope of discovery and the defendant has failed to show that such items are material to the preparation of his defense (CPL 240.40 (1) (a); People v Bianco, 169 Misc2d 127 (Crim. Ct, Kings Co. 1996)).

The defendant's demand for the production of Rosario material at this time is premature (see CPL 240.45(1); Catterson v Rohl, 202 AD2d 420 (2d Dept 1994)). Further, there is no statutory right to disclosure of all police reports concerning an

ongoing investigation (Brown v Grosso, 285 AD2d 642 (2d Dept 2001); see also Pirro v LaCava, 230 AD2d 909 (2d Dept 1996)).

The People have acknowledged their continuing obligation to provide exculpatory information to the defendant (Brady v Maryland, 373 US 83), and are directed to disclose any such information to the defense.

7. MOTION FOR A RESERVATION OF RIGHTS TO MAKE FURTHER MOTIONS

The defendant seeks to reserve the right to make further motions as necessary. This motion is denied. CPL 255.20 is controlling with respect to the time frame for making pre-trial motions and there have been no allegations of good cause for making further motions outside of those time constraints.

This decision constitutes the Order of the Court.

Dated: White Plains, New York
September 24, 2018



HON. SUSAN M. CAPECI
A.J.S.C.

To:
Hon. Anthony A. Scarpino, Jr.
District Attorney, Westchester County
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601
Attn: Kevin Jones, Esq.
Assistant District Attorney

The Quinn Law Firm
Attorneys for Defendant
399 Knollwood Road, Suite 220
White Plains, New York 10603