

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM, PART K-6

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

NOTICE OF MOTION

KAREEM BUDDINGTON,

Indictment # N10642-2010

Defendant.

-----X
SIRS:

PLEASE TAKE NOTICE, that upon the annexed affirmation of PATRICK MICHAEL MEGARO, ESQ., the annexed exhibits and the prior proceedings herein, the undersigned will move this Court at **Part K-6**, on **January 26, 2011** at 9:30 a.m., or as soon thereafter as counsel can be heard, for Orders:

1. Inspection of the Grand Jury minutes by the Court, pursuant to CPL § 210.30 (1) and (2), Dismissal of the indictment, pursuant to CPL §§ 210.20, 210.30, 210.35 on the grounds that the evidence presented to the grand jury was legally insufficient to support the charges contained in the indictment, the grand jury proceeding was defective, or in the alternative, Reduction, pursuant to CPL § 210.20 (1-a), of the charges contained in the indictment to lesser included offenses, in the event that the evidence presented to the grand jury was not legally sufficient to establish the greater charges but sufficed to establish those lesser included offenses.
2. Suppressing any and all physical evidence recovered from the defendant, and any other tangible or testimonial fruits of the illegal seizure and search of the defendant, or, in the alternative, directing the holding of a Mapp/Dunaway hearing, pursuant to CPL §§ 710.20(1) and 710.60.
3. Precluding the People from introducing evidence of any statement or identification testimony at trial for which proper notice has not been given pursuant to CPL § 710.30(3);
4. Precluding the People from cross-examining Defendant with any statements he allegedly made or otherwise introducing them into evidence, or in the alternative, holding a hearing to determine the voluntariness of any such statements. CPL § 60.45
5. Pursuant to People v. Sandoval, 34 N.Y.2d 371 (1974), and its progeny, precluding the People from introducing at trial any evidence of the defendant's prior convictions or bad acts.
6. Requiring notice by the People of their intention to introduce into evidence on the People's direct case any prior uncharged conduct of the defendant.

7. Ordering the preservation of all recorded police communications, including, but not limited to: Sprint reports, 911 calls, and radio runs.
8. Reserving to defendant the right to make additional motions as necessary; and
9. For such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that the defense demands that at any proceeding, hearing or trial in this case in which the prosecution calls witnesses to testify, that as to each such witness they instruct his or his to bring to court, or the prosecution causes to be brought to court the following:

a) All written or otherwise recorded statements of the witness made concerning this case, including, but not limited to: memo-books, arrest forms, crime reports, and complaint follow-up forms. People v. Malinsky, 15 N.Y.2d 86 (1965); People v. Rosario, 9 N.Y.2d 286 (1961); Butts v. Justices, 37 A.D.2d 607 (2d Dep't 1971).

b) Any record, paraphrase, or summary of any statement made by the witness written by, or at the request of, the prosecution, whether or not the prosecution believes any such writing constitutes work product since that decision is to be made by the court. People v. Consolazio, 40 N.Y.2d 446 (1976), cert. den., 433 U.S. 914 (1977).

c) All physical evidence. People v. Robinson, 118 A.D.2d 516 (1st Dep't 1986).

Dated: Uniondale, New York
December 16, 2010



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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM, PART K-6

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

-against-

AFFIRMATION

KAREEM BUDDINGTON,

Indictment # N10642-2010

Defendant.

-----X

PATRICK MICHAEL MEGARO, ESQ., an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms the following:

1. I am the attorney of record in the above-captioned matter, and as such I am fully familiar with the facts and circumstances of this case.
2. This affirmation is made in support of the Defendant's motions and for such other and further relief as this Court may deem just and proper.
3. Unless otherwise specified, all allegations of fact are based upon inspection of the record of this case, or upon conversations with Assistant District Attorneys, the Defendant, and counsel's own investigation.

**I. MOTION TO INSPECT GRAND JURY MINUTES,
DISMISS THE INDICTMENT, OR IN THE
ALTERNATIVE REDUCE TO LESSER-INCLUDED CHARGES**

4. The Defendant respectfully requests that this Court inspect the Grand Jury minutes and dismiss the indictment, or in the alternative, reduce the charges therein to less-included charges, pursuant to Article 210 of the Criminal Procedure Law, on the grounds that the evidence before the Grand Jury was legally insufficient to establish the commission of the charges or any lesser-included offense.
5. Pursuant to CPL § 210.20(1), the defendant further requests that this Court

dismiss the indictment upon inspection of the Grand Jury minutes if the Court determines that:

(a) the indictment or any count thereof is defective, within the meaning of CPL § 210.25

(b) the evidence before the Grand Jury was not legally sufficient to establish any of the offenses charged or any lesser-included offense

(c) the Grand Jury proceeding was defective, within the meaning of CPL § 210.35

(d) the indictment does not conform to the requirements of CPL § 200.50

regarding form and content

(e) the indictment does not conform to the requirements of Article 190 of the Criminal Procedure Law as to:

(i) the rules of evidence, and

(ii) the legal instructions or charge by the Assistant District Attorney, or the lack of such necessary legal instructions or charge as required by law

(f) there exists some other jurisdictional or legal impediment to the conviction of the defendant for the offenses charged

(g) Whether the presenting District Attorney properly charged the Grand Jury on the automobile presumption of possession. People v. Nelson, 127 Misc.2d 583 (Kings Co. Sup. Ct. 1985); People v. Jobson, 119 Misc.2d 985 (Nassau Co. Ct. 1983).

6. Alternatively, the defense further requests that this Court reduce any and all counts of the indictment pursuant to CPL § 210.20(1-a).

II. MOTION TO SUPPRESS PHYSICAL EVIDENCE

7. The Defendant moves to suppress the physical evidence seized by the police in this case, and any other tangible or testimonial fruits of his seizure and search by the police, including observations of the Defendant's post-seizure conduct, on the ground that he was seized and searched in violation of his rights under the Fourth and Fourteenth Amendments to the United States Constitution and Article 1, Section 12 of the New York State Constitution. See Dunaway v. New York, 442 U.S. 200 (1979); Wong Sun v. United States, 371 U.S. 471 (1963); People v. Rossi, 80 N.Y.2d 952 (1992); People v. DeBour, 40 N.Y.2d 210 (1976); Aguilar v. Texas, 378 U.S. 108 (1964); Spinelli v. United States, 393 U.S. 410 (1969); People v. Bigelow, 66 N.Y.2d 417 (1985). In the alternative, the defendant requests a hearing on the issues raised.

A. Standing

8. According to the sworn allegations of Police Officer Glenn Ziminski on the Criminal Court Complaint, on November 12, 2010, at approximately 12:35 a.m. at the intersection of Dickens and Mott Avenue in Far Rockaway, Queens County, New York, the Defendant was stopped and arrested inside a car. Further, according to Police Officer Glenn Ziminski, a substance alleged to be marijuana was recovered from inside a bag and a box on the seat next to the Defendant. Accordingly, the Defendant has standing to challenge the stop of the car and the search thereof, as well as the search of his person resulting therefrom. See People v. Wesley, *supra*; People v. Gonzalez, 68 N.Y.2d 950 (1986); People v. Campbell, 121 A.D.2d 121 (1st Dept. 1986); People v. Jose Torres, NYLJ 11/17/03, P.19, col. 1 (Sup. Ct. Queens Co.) (O'Dwyer, J.). Additionally, because it appears that Defendant is being charged with possession of a controlled substance

pursuant to the automobile presumption pursuant to Penal Law § 220.25, the Defendant has standing. See People v. McMillan, 69 N.Y.2d 514 (1987), People v. Wesley, 73 N.Y.2d 351 (1989).

B. Suppression As A Result Of Illegal Seizure And Search

9. Based on the limited information available to the defense, and sworn allegations of Police Officer Glenn Ziminski on the Criminal Court Complaint, on November 12, 2010, at approximately 12:35 a.m. at the intersection of Dickens and Mott Avenue in Far Rockaway, Queens County, New York. Prior to the stop, the car was not being driven in an erratic, suspicious or otherwise unlawful manner. The car was in perfect running condition, nor was there anything unlawful about the appearance of the car. The Defendant was then stopped by the police without a warrant, and ordered out of the car and taken into custody while the police officers conducted a thorough search of the interior and the Defendant's person. Based upon the sworn allegations of Police Officer Glenn Ziminski on the Criminal Court Complaint, the police recovered what is alleged to be a large quantity of marijuana from the same car in which the Defendant had been seated.

10. At the time of the Defendant's warrantless seizure and arrest by the police, he had not been engaged in any unlawful or suspicious conduct. There were no weapons or drugs or other contraband in plain view in the car. Moreover, any contrary information was not communicated to the police by a reliable source with personal knowledge. The Defendant specifically challenges the reliability and basis of knowledge of any informant who may have transmitted information to the police. Therefore, his warrantless seizure and arrest by the police was unjustified, in that it was not based on reasonable suspicion

or probable cause.

11. Because the defense has not been provided with police reports or other information in the exclusive possession of the District Attorney's office or its agents that would be necessary to establish the basis for his seizure and search by the police, the Defendant is not in a position to fully controvert the allegations contained in the information. Pursuant to People v. Burton, 6 N.Y.3d 584 (2006), People v. Mendoza, 82 N.Y.2d 415 (1993), the Defendant should not be denied a Dunaway hearing because of his lack of access to such information. In Burton, the Court of Appeals specifically ruled that a Defendant moving to suppress physical evidence need not admit actual possession of the contraband in order to be entitled to a suppression hearing. All that is required is that the Defendant plead, using whatever sworn allegations are at his disposal, including the allegations in the criminal court complaint, that he had a reasonable expectation of privacy and that he suffered an intrusion into his Fourth Amendment rights. Clearly, that burden has been met by the foregoing allegations.

12. For the foregoing reasons, this Court should suppress the evidence seized from the Defendant and the automobile, and any other tangible or testimonial fruits of the illegal police conduct, including observations of the Defendant's post-seizure conduct. See Mapp v. Ohio, 367 U.S. 643 (1961); Dunaway v. New York, 442 U.S. 200 (1979); Wong Sun v. United States, 371 U.S. 471 (1963); People v. Rossi, 80 N.Y.2d 952 (1992). In the alternative, the defendant requests a hearing on the issues raised.

13. The defense also requests that the District Attorney be ordered to produce at any hearing any and all property allegedly recovered in this case, so that he will have a full opportunity to cross-examine all witnesses without delay. See People v. Robinson,

118 A.D.2d 516 (1st Dep't 1986).

III. MOTION TO PRECLUDE THE OFFERING OF EVIDENCE

14. The defense has not received notice of intent to offer evidence of identification or statement testimony at trial within 15 days of arraignment. CPL § 710.30.

15. No good cause exists why the People could no provide such notice within the time required by CPL § 710.30.

16. The defense therefore requests that any testimony concerning identification or statements be precluded. CPL § 710.30(3); People v. O'Doherty, 70 N.Y.2d 479 (1987); People v. Boughton, 70 N.Y.2d 854 (1987).

IV. MOTION TO PRECLUDE CROSS-EXAMINATION USING STATEMENTS

17. Defendant hereby challenges the use of all statements, whether properly noticed or otherwise, for cross-examination purposes should he elect to testify in his own defence. See People v. Clemons, 166 A.D.2d 363 (1st Dept. 1990) (holding that defendant was entitled to Huntley hearing regarding statements that the People intended to use only for impeachment).

18. Respondent hereby moves to preclude the use of any statements he made as involuntary, or in the alternative, for a hearing to be held before the commencement of any trial or fact-finding hearing to determine the voluntariness of such statements. CPL § 60.45.

V. SANDOVAL MOTION

19. The Defendant requests that the prosecution disclose all specific instances of prior criminal, vicious, or immoral conduct that the prosecutor intends to use at trial for

purposes of impeaching the defendant in the event the defendant chooses to testify.

20. The Defendant further requests that on such notification, the Court make a determination before jury selection as to the admissibility for impeachment purposes of such conduct. People v. Sandoval, 34 N.Y.2d 371 (1974). Such evidence should be suppressed because their use would have no purpose other than to show that he has a propensity to commit crimes, and therefore, is likely to have committed the crimes charged in the accusatory instrument. People v. Schwartzman, 24 N.Y.2d 241 (1969), People v. Shields, 58 A.D.2d 94 (1977), aff'd 46 N.Y.2d 764 (1978).

VI. NOTICE OF DEFENDANT'S PRIOR UNCHARGED CONDUCT

21. Pursuant to People v. Ventimiglia, 52 N.Y.2d 350, the defendant also demands that the People supply the defendant with all specific instances of prior uncharged conduct which the People will seek to offer on its direct case against the defendant, so that a timely hearing may be held as to the admissibility of such uncharged conduct.

VII. NOTICE OF DEMAND FOR PRESERVATION AND PRODUCTION OF ALL RADIO OR OTHER RECORDED POLICE COMMUNICATIONS

22. The defense hereby puts the prosecution on notice that it is requesting production of all recorded police communications related to this case, including but not limited to 911 tapes, any radio runs or Sprint records, and any communications between police officers. The defense is therefore putting the prosecution on notice that they must obtain this material from the police department and prevent its destruction before it is to be produced.

23. The defense hereby puts the prosecution on notice that he is hereby challenging the reliability of any transmitted information the officers in this case may

have relied upon.

VIII. RESERVATION OF RIGHTS

24. The Defendant respectfully requests the right to make any and all further motions as may be necessary based upon information and disclosures which may result from the granting of requests made in this motion. People v. Frigenti, 91 Misc.2d 139 (N.Y. Co. Sup. Ct. 1977), CPL § 255.20.

25. The Defendant reserves the right to be prosecuted only pursuant to a legally sufficient indictment. The Defendant does not waive that right or any other rights by filing this motion. People v. Weinberg, 34 N.Y.2d 429 (1974).

WHEREFORE, your affirgant respectfully requests that this Court grant the relief sought herein in its entirety and reserve to the defense the right to amend or supplement this motion, and for such other and further relief as this Court may deem just and proper.

Dated: Uniondale, New York
December 16, 2010



PATRICK MICHAEL MEGARO

Indictment # N10642-2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CRIMINAL TERM, PART K-6

THE PEOPLE OF THE STATE OF NEW YORK,

-against -

KAREEM BUDDINGTON,

Defendant.

NOTICE OF MOTION, AFFIRMATION

PATRICK MICHAEL MEGARO, ESQ.

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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: 12/16/2010

Signature: 

Service of a copy of the within: _____ is hereby admitted.

Dated: _____

Signature: _____
