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POINT I

THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENDANT'S MOTION FOR A HEARING PURSUANT TO MAPP/DUNAWAY AS THERE WERE FACTUAL ISSUES AS TO WHETHER THERE WAS PROBABLE CAUSE FOR THE ARREST.

A. The Barebones Allegations Contained In The Affidavit Of Eugene Eimers Are, In Context, Sufficient To Require A Mapp/Dunaway Hearing.

Under the New York Court of Appeals' holding in *People v. Mendoza*, 82 N.Y.2d 415 the barebone facts in Mr. Eimers' affidavit were, in context, sufficient to create a factual issue and the Trial Court erred when it denied the application for a Mapp/Dunaway hearing.

In his affidavit Mr. Eimers stated the barebone facts: on the date and time in question he was in his residence and he was not involved in any criminal activity. In the context of this case there is little else of consequence that he could say to create a factual issue. The police's warrantless entry and arrest of Mr. Eimers at 108 Argyle Avenue in Selden, New York, where he lived, is undisputed. In preparing the affidavit, the information available to Mr. Eimers, through the discovery furnished by the prosecution, provided an insufficient nexus as to what led the police to his home and why they suspected Mr. Eimers' involvement in the crimes

alleged. These facts were unknown to him and his barebone factual assertions were, in context, sufficient to warrant a Mapp/Dunaway hearing.

The Trial Court erred in denying the application for a Mapp/Dunaway hearing and Mr. Eimers conviction must be vacated and this case returned to the Trial Court.

B. The Sufficiency Of The Allegations In The Affidavit Supporting The Omnibus Motion Must Be Evaluated Under Three Basic Criteria: The Pleadings, The Context And Access To Information.

The New York Court of Appeals held in *People v. Mendoza*, 82 N.Y.2d 415, 604 N.Y.S.2d 922, 624 N.E.2d 1017 (1993) that the sufficiency of the factual allegations in a motion should be evaluated by the (1) the face of the pleadings, (2) assessed in conjunction with the context of the motion, and (3) defendant's access to information.

It is fundamental that a motion may be decided without a hearing unless the papers submitted raise a factual dispute on a material point which must be resolved before the court can decide the legal issue. *People v. Mendoza*, 82 N.Y.2d 415, 426, 604 N.Y.S.2d 922, 624 N.E.2d 1017 (1993) quoting *People v. Gruden*, 42 N.Y.2d 214, 397 N.Y.S.2d 704, 366 N.E.2d 794 (1977).

It is incumbent upon the pleader, where possible, to provide objective facts from which the court can make independent factual determinations.

People v. Mendoza, 82 N.Y.2d at 427 quoting *People v. Reynolds*, 71 N.Y.2d 552, 528 N.Y.S.2d 15, 523 N.E.2d 291 (1988).

However, seemingly barebones allegations may, in context, be sufficient to require a hearing and whether a defendant has raised factual issues requiring a hearing can only be determined with reference to the People's contentions. *People v. Mendoza*, 82 N.Y.2d at 427.

The Court of Appeals in *Mendoza* made a hypothetical comparison of two types of cases with identical factual allegations asserted by the defendant. In one case the allegations by defendant were sufficient where the police claim that defendant was standing on a street corner acting suspiciously or furtively. In that case, the Court of Appeals held, the barebones allegations by defendant are sufficient because there was little else of consequence that a defendant can say.

The last factor that the Trial Court must examine is the information available to the defendant. The Court of Appeals held that it would be unreasonable to construe the CPL to require precise factual averments when, in parallel circumstances, defendant similarly does not have access to or awareness of the facts necessary to support suppression.

C. The Defendant's Barebones Allegations, In This Context, Are Sufficient To Warrant A Mapp/Dunaway Hearing And The Trial Court Committed Reversible Error In Denying The Defendant's Application.

Mr. Eimers was arrested inside the house at 108 Argyle Avenue in Selden, New York – this is undisputed. In the affidavit supporting the Omnibus Motion he states that he was in his residence and was not involved in any criminal activity. (A9) At some point the police approached the house and spoke to a Mr. Thomas Lorig, another resident of 108 Argyle Avenue. (A24) According to the statement provided by Mr. Lorig, he urged the police to enter the house because he saw Mr. Eimers bleeding. (A24)

The police then entered the house and arrested Mr. Eimers. (A24)

The discovery provided to Mr. Eimers' attorney did not provide any information about how the police came to believe that the suspect was inside 108 Argyle Avenue or why they suspected Mr. Eimers of committing this crime. A close inspection of all the witnesses statements and documents generated by the police do not give any indication as to why the police came to 108 Argyle Avenue or why the police suspected Mr. Eimers was involved. (A24-27) None of the witnesses knew the suspect in the crime personally, the description of the suspect by witnesses was vague and in some cases they could not see his face and none of the witnesses knew precisely where the suspect went after the commission of the crime.

The vague descriptions of the suspect by witnesses and lack of knowledge as to who the suspect was and where he went after the

commission of the crime was all the information that was provided to Mr. Eimers through discovery. He did not have access to the information that led the police to his door and all that he could state was that he was in his residence when the police entered and that he was not involved in any criminal activity.

In the context of this case Mr. Eimers would not be able to say anything else but I was in my residence and I was not involved in any criminal activity. Given these facts, the context of the arrest and the amount of information that Mr. Eimers had access to, a barebones assertion akin to what was stated in the affidavit is sufficient to warrant a Mapp/Dunaway hearing.

The affidavit supporting the Omnibus Motion is consistent with the Court of Appeals holding in *Mendoza*. That Court held that the seemingly barebones allegations may, in context, be sufficient to require a hearing.

In a more recent case the New York Court of Appeals held that where the defendant lacked critical information that only the People could provide – i.e. the factual predicate for the arrest, then the defendant was not in a position to allege facts disputing the basis for his arrest. *People v. Bryant*, 8 N.Y.3d 530, 838 N.Y.S.2d 7, 869 N.E.2d 7 (2007). Similarly, in this case Mr. Eimers had no information as to why the police came to 108 Argyle

Avenue where he lived and arrested him because he was not in a position to allege facts disputing the basis for his arrest and that information was not provided by the People.

The Trial Court erred when it denied Mr. Eimers a Mapp/Dunaway hearing and the conviction in this case must be reversed and remanded to the Trial Court.

D. The Trial Court's Reasoning For Denying The Map/Dunaway Hearing Was Inconsistent With The Court Of Appeals Holdings In Mendoza and Bryant And The Conviction Must Be Reversed

The Trial Court held in its opinion that the bald assertion of innocence is insufficient to support the granting of a hearing. This is wholly inconsistent with the holdings of the Court of Appeals in *People v. Mendoza*, 82 N.Y.2d 415, 426, 604 N.Y.S.2d 922, 624 N.E.2d 1017 (1993) and *People v. Bryant*, 8 N.Y.3d 530, 838 N.Y.S.2d 7, 869 N.E.2d 7 (2007).

The Trial Court did not take into consideration the factors set out by the Court of Appeals that the motion should be evaluated by the (1) the face of the pleadings, (2) assessed in conjunction with the context of the motion, and (3) defendant's access to information.

Given these factors and the context in which Mr. Eimers was arrested and his access to information, the barebones allegations contained in his

affidavit were sufficient to grant a hearing and the Trial Court must be reversed.