

People v Williams

2013 NY Slip Op 34070(U)

February 5, 2013

County Court, Westchester County

Docket Number: 12-1101

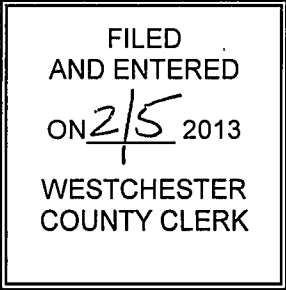
Judge: Barry E. Warhit

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER

JAERUE WILLIAMS,

Defendant.

Indictment No. 12-1101

-----X

WARHIT, J.

Defendant, JAERUE WILLIAMS, having been indicted for on or about August 12, 2012 having committed one count of Burglary in the second degree, one count of Petit Larceny, and two counts of Criminal Mischief in the fourth degree, has filed an omnibus motion consisting of a Notice of Motion and an Affirmation in Support thereof. In response thereto, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Subsequently, Respondent filed a Reply Affirmation to which the People responded by Supplemental Affirmation in Opposition to Motion to Unseal.

Upon consideration of these papers, the stenographic transcript of the grand jury minutes and the Consent Discovery Order entered in this case, this Court disposes of this motion as follows:

I. DEMAND FOR DISCOVERY

The branch of Defendant's motion for Discovery, Disclosure and Inspection is granted to the extent provided for by New York State Criminal Procedure Law (CPL) Article 240. Accordingly, to the extent they have not already done so, the People are forthwith to provide the items delineated at Article 240 in addition to those items agreed to in the Consent Discovery Order entered in this matter.

It bears note that the People have acknowledged their continuing duty to disclose exculpatory material at the earliest possible date (see, Brady v. Maryland, 373 US 83, 83 S. Ct. 1194, 10 LE2d 215 and Giglio v. United States, 405 US 150, 92 S.Ct. 763, 31 LE2d 104). If the People become aware of any material, which is arguably exculpatory that they are not willing to consent to immediately disclose, the People are directed to bring this material before the court promptly for in camera inspection and a judicial determination concerning whether disclosure is required.

In all other respects, Defendant's application for discovery and inspection is denied as it seeks material and information beyond the scope of discovery (see, People v. Colavito, 87 NY2d 423; Matter v. Brown v. Grosso, 285 AD2d 642, lv. denied, 97 NY2d 605, 737 NYS2d 52; Matter of Brown v. Appelman, 241 AD2d 279; Matter of Catterson v. Jones, 229 AD2d 435; Matter of Catterson v. Rohl, 202 AD2d 420, lv. denied, 83 NY2d 755).

II. MOTION TO STRIKE IDENTIFICATION NOTICES AND PRECLUDE IDENTIFICATION EVIDENCE

It is well settled that Criminal Procedure Law 710.30(1) requires the People to provide notice to Defendant specifying the evidence intended to be offered. The purpose of said notice requirement is to afford Defendant adequate information to seek suppression and prepare for suppression hearings (People v. Greer, 42 NY2d 170 [1977]).

In this instance, the People affixed three (3) separate identification notices to the indictment. The first indicates that subsequent to the charged crimes, a witness identified Defendant on or about August 12, 2012, in the Village of Larchmont, from a video recording. The second notice reports that on or about August 17, 2012 in the City of White Plains, a witness identified Defendant from a photograph. The final notice states that a witness, while appearing before the grand jury on September 20, 2012, identified Defendant from a photograph.

This court finds the information provided is sufficient to permit Defendant to move for suppression, which he has, and is further sufficient to permit Defendant to prepare for suppression hearings (People v. Rodney, 85 NY2d 289, 291-92 [1995], citing People v. Lopez, 84 NY2d 425 [1994]). Moreover, to the extent Defendant has moved for suppression, any defects in the notice requirement are excused (see, People v. Holmes, 170 AD2d 534 [1991]). Accordingly, this branch of Defendant's motion is denied.

III. MOTION TO SUPPRESS IDENTIFICATION EVIDENCE

As above discussed, the People timely served identification notices. Defendant has moved for suppression of these pre-trial identification procedures and of any prospective in-court identification testimony of the witnesses who participated in the procedures. Alternatively, the defendant seeks a pre-trial Wade hearing.

The People contend the identification procedures and allege each was appropriate and that the resulting identifications are impervious to suggestion to the extent each of the individuals involved had extensive prior knowledge of the defendant.

Based upon the foregoing, Defendant's application for suppression of identification evidence is granted to the limited extent that a pre-trial suppression hearing shall be held to determine whether any of the three noticed identifications is the result of procedures which were unduly suggestive and conducive to irreparably mistaken identification (United States v. Wade, 388 US 218). If evidence is adduced at the hearing which demonstrates the identification procedures at issue were unduly suggestive, the People shall have the opportunity to demonstrate independent source for any in-court identification testimony (People v. Chipp, 75 NY2d 327, 552 NE2d 608, 553 NYS2d 72).

IV. MOTION TO SUPPRESS PHYSICAL EVIDENCE

Defendant has moved for suppression of physical evidence recovered from his person, including his keys, phone, sneakers, watches and clothing. Despite Defendant's contention that the arrest was without probable cause, the People have supplied the court and Defendant with a certified copy of a "Warrant" for Defendant issued by the New York State Department of Parole. Said warrant, issued August 17, 2012, directed and authorized any parole officer, peace officer or any law enforcement officer to arrest and detain Defendant.

Defendant herein has not made any allegations concerning the validity of the warrant or challenged the veracity of the allegations upon which said warrant was issued. Accordingly, Defendant's application for suppression of the evidence taken from Defendant's person on grounds that the arrest was lacking in probable cause is denied as is Defendant's application for a suppression hearing on this basis.

With respect to Defendant's application for suppression of any and all property obtained in relation to subsequent searches of a cellular telephone recovered from Defendant's person and of his residence and vehicle, this branch of Defendant's motion to suppress is denied. This court has reviewed the affidavits submitted in support of each of the various search warrants issued in relation to this Defendant. Upon such review, this court finds they each provided the signing judge with sufficient facts to establish probable cause to believe evidence could be found in the location to be searched.

The People are directed to provide copies of the orders and returns for each of the search warrants that were issued to the court for its review and to also provide same to Defendant. Upon receipt of same, upon request of Defendant, the court will conduct a hearing to determine whether the items described in each return are within the scope of the warrant and are intended to be offered as evidence at trial.

Through Reply Affirmation, Defendant has moved to unseal the affidavits associated with each search warrant application. The People have filed a Supplemental Affirmation in Opposition to Motion to Unseal. In rendering the within decision, this court has considered the assertions and arguments made in each and has also conducted an in camera review of the Affidavits and Search Orders.

Based upon the foregoing, Defendant's application for unsealing is granted, upon consent and without limitation as to the Affidavit and Search Order directing search of cell towers and of the Defendant's cellular telephone as ordered respectively on August 17, 2012 and August 22, 2012 by the Supreme Court (Neary, J.).

Further, as to the warrants issued on August 18, 2012 (Neary, J.) authorizing the search of Defendant's person, car, and apartment and on August 28, 2012 (Hubert, J.) for forensic testing of the interior of Defendant's vehicle, Defendant's application is granted to the extent that the People shall provide

forthwith redacted copies of the Affidavits and Search Orders. The redaction of witness names has been considered by this court and found to be required to maintain the safety and confidentiality of the People's witnesses (see, People v. Castillo, 80 NY2d 578 [1992] cert..denied,, 507 US 1033).

Finally, with respect to the affidavit and search warrant, issued on August 15, 2012 for the Sprint Nextel records relating to Defendant's cell phone usage, the People's application for a protective order is granted for two reasons. First, although this affidavit and search warrant were presented during the investigation stage of the within case, these documents have scant bearing upon the charges under the indictment and are more related to charges now pending against Defendant under Westchester County Indictment Number 12-1435.

Secondly, this court finds the within instance appropriate to seal the affidavit and warrant to protect the confidentiality of the witnesses. This court conducted an in camera review of the search warrant affidavit and finds that it cannot be redacted sufficiently to protect the identity of the witness (see, People v. Williams, 192 AD2d 882, 883 [2d Dept. 1993]). There is legal precedent for such sealing.

Court have recognized that a defendant's interest in availing himself of the exclusionary rule may be subordinated to safety precautions necessary to encourage citizens to participate in law enforcement (see, Castillo, 80 NY2d 578, citing Stone v Powell, 428 US 465, 486); see also, People v Darden, 34 NY2d

177, 181; and, People v Castro, 29 NY2d 324, 326).

The court is cognizant that maintaining the supporting affidavit and search warrant issued August 15, 2012 under seal will limit Defendant's ability to suggest reasons why probable cause is or may be lacking. Nevertheless, this does not deprive the defendant of due process or effective assistance of counsel since in an instance such as this, where a search warrant has been issued, the court does "no more than insure that there was a substantial basis for the magistrate's conclusion that probable cause existed" (Id., citing People v Johnson, 66 NY2d 398, 405). The court does not re-evaluate the accuracy of the underlying information. Moreover, as above states, based upon its in camera review of these documents, this court finds they are significantly more applicable to the charges Defendant faces under Docket 12-1435 than the present case.

V. MOTION FOR SANDOVAL AND VENTIMIGLIA HEARINGS

Defendant has moved for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into the defendant's prior criminal convictions, prior uncharged criminal, vicious or immoral conduct. The People have consented to such hearing.

Accordingly, it is ordered that immediately prior to trial a hearing shall be conducted pursuant to People v. Sandoval (34 NY2d 371, 357 NYS2d 849). At said hearing, the People shall be required to notify the defendant of all specific instances of his criminal, prior uncharged criminal, vicious or immoral conduct of which they have

knowledge and which they intend to use in an attempt to impeach the defendant's credibility if he elects to testify at trial (CPL § 240.43).

At the hearing, the defendant shall bear the burden of identifying any instances of his prior misconduct that he submits the People should not be permitted to use to impeach his credibility. The defendant shall be required to identify the basis of his belief that each event or incident may be unduly prejudicial to his ability to testify as a witness on his own behalf (see, People v. Matthews, 68 NY2d 118, 506 NYS2d 149; People v. Malphurs, 111 AD2d 266, 489 NYS2d 102, lv. denied 66 NY2d 616, 494 NYS2d 1039, 483 NE2d 243).

Defendant's application for a hearing, pursuant to People v. Ventimiglia, is denied since the People have not indicated an intention to use evidence of any prior bad act or uncharged crimes of the defendant during its case in chief (52 NY2d 350, 438 NYS2d 261, 420 NE2d 59; and see, People v. Molineaux, 168 NY2d 264, 61 NE 286). If the People move to introduce such evidence, the defendant shall have the opportunity to renew this aspect of his motion.

VI. MOTION TO STRIKE PREJUDICIAL LANGUAGE

This branch of Defendant's motion is denied. The language concluding the indictment merely identifies the defendant's acts as public, rather than private wrongs and such language should not be stricken as prejudicial (People v. Winters, 194 AD2d 703, lv. denied 82 NY2d 761; see, People v. Gill, 164 AD2d 867, appeal denied, 76 NY2d 893; People v. Garcia, 170 Misc.2d 543) The defendant's remaining contentions are without merit and his application is accordingly denied.

VII. MOTION TO DISMISS FACIALLY INSUFFICIENT INDICTMENT

The motion is denied. The indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's commission thereof with sufficient precision as to clearly apprise the defendant of the conduct which is the subject of the indictment (CPL § 200.50). The indictment charges each and every element of the crimes, and alleges that the defendant committed the acts which constitute the crimes at a specified place during a specified time period and, therefore, is sufficient on its face (People v. Iannone, 45 NY2d 589; see, People v. Cohen, 52 NY2d 584).

VIII. MOTION TO INSPECT, DISMISS AND REDUCE

Defendant's has been granted to the extent that this court conducted an in camera inspection of the stenographic transcription of the grand jury proceedings. Upon such review, the court finds no basis upon which to grant defendant's application to the indictment or reduce any offense charged therein.

The Grand Jury was properly instructed (see, People v. Calbud, 49 NY2d 389; and see, People v. Valles, 62 NY2d 36). The evidence presented, if accepted as true, is legally sufficient to establish every element of each offense charged (see, CPL §210.30[2]). Additionally, the minutes reveal a quorum of the grand jurors was present during the presentation of evidence, that the Assistant District Attorney properly instructed the Grand Jury on the law and only permitted those grand jurors who heard all the evidence to vote the matter.

Based upon the in camera review this Court does not find release of the Grand Jury minutes or any portion thereof necessary to assist it in making any determinations. As Defendant has not set forth a compelling or particularized need for the production of the grand jury minutes, Defendant's application for a copy of the grand jury minutes is, at this time, denied.

IX. MOTION FOR A BILL OF PARTICULARS

A Bill of Particulars was served by the People in connection with the Consent Discovery Order entered on October 15, 2012. The previously served Bill fo Particulars adequately informs Defendant of the date, time and place of his alleged criminal conduct as well as of the substance of such alleged conduct. Based upon the foreging, this court finds that, in all respects, the previously served Bill of Particulars complies with CPL § 200.95.

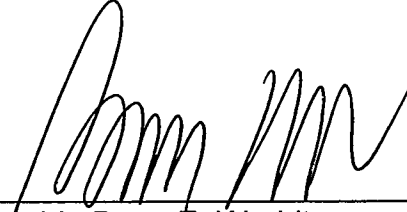
X. MOTION TO STRIKE ALIBI DEMAND

This aspect of Defendant's motion is denied. Contrary to Defendant's assertions, it is well-settled that CPL § 250.00 is in accord with constitutional requirements (see, People v. Dawson, 185 AD2d 854, appeal denied 80 NY2d 974; and see, People v. Cruz, 176 AD2d 751, appeal denied 79 NY2d 855; see also, People v. Gill, 164 AD2d 867, appeal denied 76 NY2d 893; and see, People v. Peterson, 96 AD2d 871). Moreover, CPL § 250.00 provides equality in the required disclosure (see People v. Peterson, 90 AD2d 871; see generally,

Wardius v. Oregon, 412 US 470).

The foregoing constitutes the opinion, decision and order of this Court. .

Dated: White Plains, New York
February 5, 2013



Honorable Barry E. Warhit
Westchester County Court

HON. JANET DiFIORE
District Attorney, Westchester County
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601
BY: Adrienne Chapoulie
Assistant District Attorney

LAW OFFICES OF JOHN F. RYAN, ESQ.
Legal Aid Society of Westchester County
One North Broadway, 9th floor
White Plains, New York 10603
BY: Elizabeth Hume, Esq.