

People v Warren

2016 NY Slip Op 33070(U)

October 25, 2016

County Court, Broome County

Docket Number: 16-354

Judge: Kevin P. Dooley

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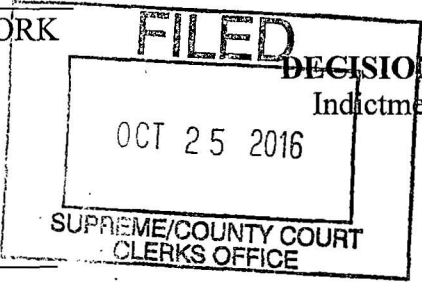
STATE OF NEW YORK
COUNTY COURT :: COUNTY OF BROOME

THE PEOPLE OF THE STATE OF NEW YORK

-v-

MICHAEL R. WARREN,
Defendant.

KEVIN P. DOOLEY, J.



DECISION AND ORDER
Indictment No. 16-354

On August 12, 2016, a Broome County Grand Jury handed-up Indictment No. 16-354, charging the above-named defendant with two counts of Burglary in the Second Degree, class C felonies, and two counts of Attempted Burglary in the Second Degree, class D felonies. The indictment alleges that on four separate occasions, the defendant burglarized or attempted to burglarize two residences on Tompkins Street in Binghamton.

The defendant was arraigned in Broome County Court on August 17, 2016. On September 13, 2016, the defendant filed with the Court an Omnibus Motion seeking certain Orders and relief in connection with the indictment filed against him.¹ The People's response was filed on October 18, 2016. The following constitutes the Decision and Order of the Court.

GRAND JURY MOTIONS

The defendant moves for an Order, pursuant to CPL 210.30, for inspection of the stenographic minutes of the Grand Jury proceeding for the purpose of determining whether the evidence before the Grand Jury was legally sufficient to support the charges contained in the indictment, and/or whether the Grand Jury proceedings were defective within in the meaning of CPL 210.35. The People have no objection to the Court examining the Grand Jury minutes and provided a copy of the same for the Court's review on October 12, 2016. Upon examination of the minutes, the Court finds that release of the minutes to the defense is not necessary to assist the Court in making its determination of the motion. Accordingly, the defendant's request for release of the Grand Jury minutes is denied.

¹ By Decision and Order dated October 11, 2016, the Court denied the defendant's motion, contained in the Omnibus Motion, for the disqualification of the District Attorney's Office and assignment of a special prosecutor.

In reviewing the legal sufficiency of the evidence presented, the Court must view the evidence in a light most favorable to the People and determine whether the evidence, if unexplained or uncontradicted, would be sufficient to support a guilty verdict after trial. The Court's inquiry is limited to assessing whether the facts, if proven, and the logical inferences flowing therefrom, provide proof of every element of the crimes charged and the defendant's commission of those crimes. Its inquiry does not include weighing the proof or examining its adequacy, or determining whether there was reasonable cause to believe the accused committed the crimes charged, as the resolution of such questions is exclusively the province of the Grand Jury. *People v. Jensen*, 86 NY2d 248 (1995).

Upon examination, the evidence presented to the grand jury was legally sufficient to establish the commission by the defendant of the offenses charged in the indictment or lesser included offenses thereof. In addition, there were no defects in the grand jury proceedings within the meaning of CPL 210.20 (1) (c). Therefore, the defendant's motion to dismiss the remaining counts of the indictment is denied.

MOTIONS FOR DISCOVERY AND OTHER PRE-TRIAL DISCLOSURES

As part of his Omnibus Motion, the defendant filed a Discovery Demand. In his response on August 5, 2016, the prosecutor states that the defendant was provided with "all discoverable materials in the People's possession as part of the Broome County District Attorney's voluntary disclosure policy." The prosecutor states that he will provide a CD-R of the photographs taken, upon receipt of a blank CD-R, and will make any physical evidence available for inspection upon request.

The prosecutor provided a response to the defendant's request for a Bill of Particulars and also responded that he is aware of his obligation under *Brady*, is not currently in possession of any such evidence, but will provide any such information if and when it becomes available. The prosecutor also responded that almost all *Rosario* material has been turned over pursuant to the Broome County District Attorney's voluntary disclosure policy, and any remaining materials will be provided pursuant to CPL 240.45.

If the defendant believes he has not received discovery materials to which he is entitled, he can move for an Order to compel specific disclosure, preclude evidence, or other applicable relief.

REQUESTS AND MOTIONS FOR PRE-TRIAL HEARINGS

Request for Sandoval/Ventimiglia Hearing

The defendant requests that the Court conduct a pre-trial hearing to determine the admissibility at trial, either during the People's direct case or for the purpose of cross-examination, of the defendant's prior criminal convictions and/or uncharged criminal conduct. In his response, the prosecutor does not object to the Court conducting such a hearing. Therefore, a pre-trial hearing will be conducted on November 18, 2016, at 3:00 p.m. At the hearing, the prosecutor must also set forth any *Molineux* evidence he seeks to introduce in the People's case-in-chief.

Motions for Preclusion and/or Suppression of Statements

Although defense counsel states that he was provided with a copy of the police reports and the written statement allegedly obtained from the defendant, the Court is unable to determine, from the defendant's motion and the prosecutor's response, when that disclosure was made and whether the police reports contain the sum and substance of any and all oral statements of the defendant. A pre-trial hearing will be conducted on November 18, 2016, at 3:00 p.m. to determine whether any statements and admissions of the defendant exist for which timely notice was not provided.

A pre-trial hearing will be conducted on November 18, 2016 at 3:00 p.m. to determine whether any of the defendant's statements and admissions for which timely notice was provided were involuntarily made or obtained in violation of the defendant's constitutional rights.

Motion for Preclusion and/or Suppression of Identification Evidence

The defendant also moves for preclusion of any identification for which timely notice was not provided under CPL 710.30. Defense counsel says that the only identification procedure of which he is aware is a "show-up" which occurred after the defendant was handcuffed and observed by a witness who was 50 yards away. The Court is unable to determine from the prosecutor's response whether there were any other identification procedures conducted.

Therefore, a pre-trial hearing will be conducted on November 18, 2016, at 3:00 p.m. to determine whether any identification procedures were conducted for which notice was not given.

The prosecutor confirms that one of the complaining witnesses observed the defendant being taken into custody while the witness was on the telephone with a "911 operator," reporting the attempted burglary that had just occurred. The prosecutor argues that the identification was not the result of a "police-arranged" identification procedure, and is therefore, not subject to suppression. Therefore, a pre-trial hearing will be conducted on November 18, 2016, at 3:00 p.m. to determine whether the identification of the defendant by the complaining witness was the result of a "police-arranged" procedure. *See People v. Dixon*, 85 NY2d 218, 223 (1995).

Motion to Suppress Physical Evidence

The defendant moves for suppression of any items seized from the defendant, including his clothing, as a result of his arrest on the ground he was arrested without probable cause. The prosecutor responds that the only evidence seized from the defendant was the clothing he was wearing, and that the People do not intend to offer that evidence at trial. Therefore, the defendant's motion to suppress the physical evidence seized is moot and need not be addressed by the Court.


MOTION FOR FURTHER RELIEF

Criminal Procedure Law Section 255.20 provides that absent a showing of good cause, all pre-trial motions must be filed at the same time and within 45 days of arraignment. Therefore, good cause must be established before the Court will consider granting the defense leave to renew or make further motions.

The above constitutes the Decision and Order of Court.

It is so Ordered.

Dated: October 25, 2016
Binghamton, New York


HON. KEVIN P. DOOLEY
Broome County Court Judge