

People v Thompson

2016 NY Slip Op 33231(U)

June 6, 2016

County Court, Westchester County

Docket Number: Indictment No. 15-0641

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 6-7-2016
WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

ELIZABETH THOMPSON,

JUN 07 2016
COUNTY CLERK
COUNTY OF WESTCHESTER

DECISION & ORDER
Indictment No.: 15-0641

MINIHAN, J.

Defendant ELIZABETH THOMPSON is charged under Westchester County Indictment Number 15-0641 with Assault in the Second Degree (Penal Law § 120.05 [2]); Criminal Possession of a Weapon in the Third Degree (Penal Law § 265.02[1]); and, Menacing in the Second Degree (Penal Law § 120.14[1]). Defendant has filed an omnibus motion consisting of a Notice of Motion, Memorandum of Law and an Affirmation in Support. In answer, the People have filed an Affirmation in Opposition together with a Memorandum of Law. 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:

A.

MOTION for DISCOVERY and INSPECTION
CPL ARTICLE 240

The attorneys entered into a stipulation by way of a Consent Discovery Order consenting to the enumerated discovery in this case. The defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 240. If any items set forth in CPL Article 240 have not been provided to defendant pursuant to the Consent Discovery Order, they are to be provided forthwith.

To the extent defendant seeks a further Bill of Particulars, that request is denied. The Bill of Particulars that was served upon defendant and filed with the Court along with the Consent Discovery Order adequately informs defendant of the substance of her alleged conduct and in all respects complies with CPL 200.95.

Defendant moves this Court to enter an order directing the People to provide the defense with additional material for discovery, inspection and disclosure, beyond that which has been consented to by the People and the defense through the execution of a Consent Discovery Order. The People oppose so much of the defendant's as seeks discovery outside the Consent Discovery Order on the ground that disclosure and inspection provided through consent discovery practice constitutes all statutorily required discovery.

In this regard, it is well-settled that the courts have no authority to order discovery for which there exists no statutory basis (*see Matter of Pirro v La Cava*, 230 AD2d 909 [2d Dept

1996]; *Matter of Catterson v Jones*, 229 AD2d 435 [2d Dept 1996]). Here, defendant's motion seeks discovery and inspection of material to which the People have not consented, and defendant has failed to demonstrate that the People have unjustifiably refused to permit her inspection of any material discoverable pursuant to CPL 240.20 or 240.40. Accordingly, except to the extent that defendant's discovery application has been specifically granted herein, it is denied as seeking material or information beyond the scope of discovery (*see People v Colavito*, 87 NY2d 423 [1996]; *Matter of Brown v Grosso*, 285 AD2d 642 [2d Dept 2001]; *Matter of Brown v Appelman*, 241 AD2d 279 [2d Dept 1998]; *Matter of Catterson v Jones*, 229 AD2d 435 [2d Dept 1996]; *Matter of Catterson v Rohl*, 202 AD2d 420 [2d Dept 1994]).

As to defendant's demand for exculpatory material, the People have acknowledged their continuing duty to disclose exculpatory material at the earliest possible date upon its discovery (*see Brady v Maryland*, 373 US 83 [1963]; *Giglio v United States*, 405 US 150 [1972]). The People have also recognized that they have a duty to comply with *People v Rosario*, (9 NY2d 286 [1961]). In the event that the People are or become aware of any material which is arguably exculpatory but which they are unwilling to provide to defendant as part, they are directed to immediately provide such material to the Court, on notice to defendant, for an *in camera* inspection and the Court will make a determination as to whether to direct the People to disclose this material to defendant.

B.

MOTION to STRIKE NOTICE of IDENTIFICATION
CPL 710.30

The defendant's motion to strike notice is denied. Said notice is in conformity with the statutory requirements of CPL 710.30.

The People's motion to amend the CPL 710.30 notice is granted. The notice indicating an identification at approximately 1:34 a.m. on February 7, 2015 to read at 1:34 a.m. on February 8, 2015.

C.

MOTION to SUPPRESS IDENTIFICATION TESTIMONY
CPL ARTICLE 710

Defendant's motion to suppress identification testimony is summarily denied. The identification in this case was confirmatory and raises no *Wade* issues requiring a hearing to resolve (*see People v Rodriguez*, 79 NY2d 445 [1992]; *see also People v Wharton*, 74 NY2d 921 [1989]; *People v Morales*, 37 NY2d 262 [1975]; *People v Gissendanner*, 48 NY2d 543 [1979]). The procedures, which are set forth in the identification notices, (three single confirmatory identifications each by a witness to the crime who has known the defendant for many years) are not identifications subject to suppression on grounds raised by defendant.

D.

MOTION to INSPECT GRAND JURY MINUTES and to DISMISS
the INDICTMENT and MOTION to INSPECT and REDUCE INDICTMENT
CPL ARTICLE 210

That branch of defendant's motion which seeks to have the Court inspect the minutes of the Grand Jury is granted to the limited extent that the Court has conducted, with the consent of the People, an *in camera* inspection of the stenographic transcription of the proceedings of the Grand Jury related to this matter. Upon such review, the Court finds no basis upon which to grant defendant's application to dismiss the indictment or to reduce the charges contained therein.

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 Cohen*, 52 NY2d 584 [1981]; *People v Iannone*, 45 NY2d 589 [1978]).

The Grand Jury was properly instructed (*see People v Valles*, 62 NY2d 36 [1984]; *People v Calbud*, 49 NY2d 389 [1980]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]). With respect to the defendant's application seeking the dismissal of the instant indictment due to the alleged inadequacy of the legal instructions provided to the grand jurors during the presentation of this matter, the Court recognizes that a grand jury need not be instructed with the same degree of precision that is required when the Court instructs a petit jury (*People v Calbud*, 49 NY2d 389; *People v Valles*, 62 NY2d 36). Based upon its *in-camera* review of the grand jury minutes, the Court finds that the legal instructions provided to the grand jurors by the assistant district attorney were adequate and complete. The evidence presented, if accepted as true, is legally sufficient to establish every element of each offense charged (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.

Since this Court does not find release of the Grand Jury minutes or any portion thereof necessary to assist it in making any determination and as defendant has not set forth a compelling or particularized need for the production of the Grand Jury minutes, her application for a copy of the Grand Jury minutes is denied (*People v Jang*, 17 AD3d 693 [2d Dept 2005]; CPL 190.25[4][a]).

E.

MOTION to SUPPRESS PRIOR CONVICTIONS and IMMORAL ACTS

Defendant moves for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into defendant's prior criminal convictions, prior uncharged criminal, vicious or immoral conduct should she elect to testify at a trial of this matter. 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[1974]). At the hearing, the People shall give notice to defendant of all specific instances of her 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 should she choose to testify at trial (CPL 240.43).

At this hearing, defendant will bear the burden of identifying any instances of her prior misconduct that she submits the People should not be permitted to use to impeach her credibility. Defendant shall be required to identify the basis of her belief that each event or incident may be unduly prejudicial to her ability to testify as a witness on her own behalf (*see People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

Defendant's application for a hearing, pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]) is denied since the People do not represent that they intend to use evidence of any prior bad act or uncharged crimes of the defendant during their case in chief (*see People v Molineaux*, 168 NY2d 264 [1901]). Denial of this application is with leave to renew should the People seek to introduce such evidence.

F.

MOTION to STRIKE SCANDALOUS and PREJUDICIAL STATEMENTS
CPLR 3024(b)

Defendant moves to strike certain language from the indictment on the grounds that it contains surplusage, prejudicial, irrelevant and/or prejudicial. The language contained in this indictment identifies the defendant's acts as public, rather than private, wrongs and such language is not prejudicial. The motion to strike is accordingly denied (*see People v Gill*, 164 AD2d 867 [2d Dept 1990]; *People v Winters*, 194 AD2d 703 [2d Dept 1993]; *People v Garcia*, 170 Misc 2d 543 [Westchester Co. Ct. 1996]).

G.

MOTION to STRIKE DEMAND for ALIBI NOTICE

Defendant's motion to strike the alibi notice is denied. Contrary to the defendant's contentions, it is well-settled that CPL 250.00 is indeed in compliance with the constitutional requirements (*see People v Dawson*, 185 AD2d 854 [2d Dept 1992]; *People v Cruz*, 176 AD2d

751 [2d Dept 1991]; *People v Gill*, 164 AD2d 867 [2d Dept 1990]) and provides equality in the required disclosure (*People v Peterson*, 96 AD2d 871 [2d Dept 1983]; *see generally Wardius v Oregon*, 412 US 470 [1973]).

H.

MOTION for OTHER RELIEF

The defendant's motion is denied.

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

Dated: White Plains, New York
June 6, 2016


Honorable Anne E. Minihan, JCC

TO:

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