

People v Williams

2016 NY Slip Op 33242(U)

June 27, 2016

County Court, Westchester County

Docket Number: Indictment No. 15-0859

Judge: Barbara G. Zambelli

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FILED
AND
ENTERED
ON _____ 20__
WESTCHESTER
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK

DECISION & ORDER

- against -

Indictment No.: 15-0859

TYRELL WILLIAMS,

Defendant.

ZAMBELLI, J.

FILED
JUN 27 2016
TIMOTHY X IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant has been indicted on criminal sale of a controlled substance in the third degree, criminal possession of a controlled substance in the third degree and criminal possession of a controlled substance in the seventh degree allegedly committed on or about March 4, 2015 in the County of Westchester; criminal sale of a controlled substance in the third degree, criminal possession of a controlled substance in the third degree and criminal possession of a controlled substance in the seventh degree allegedly committed on or about March 10, 2015 in the County of Westchester, and criminal sale of a controlled substance in the third degree, criminal possession of a controlled substance in the third degree and criminal possession of a controlled substance in the seventh degree allegedly committed on or about March 11, 2015 in the County of Westchester. He now moves by notice of motion with supporting affirmation for omnibus relief. The People's response consists of an affidavit in opposition and a memorandum of law. Upon consideration of these papers, as well as review of the grand jury minutes and exhibits and the consent

discovery order entered in this case, the motion is disposed of as follows:

1. MOTION TO DISMISS FACIALLY INSUFFICIENT INDICTMENT

This motion is denied. The form and content of the indictment satisfies the requirements of CPL 200.50, and is sufficient to inform the defendant of the charges against him so as to enable him to prepare a defense (see People v. Iannone, 45 NY2d 589).

2. MOTION TO INSPECT/DISMISS/REDUCE

This application is granted to the extent that the Court has conducted an in camera inspection of the minutes of the grand jury proceedings. Upon review of the evidence presented, this Court finds that all counts were supported by sufficient evidence and that the instructions given were appropriate. There was no other infirmity which would warrant a dismissal of the indictment. Contrary to defendant's contention, the indictment is not duplicitous, as defendant is charged with three separate, distinct crimes for each alleged sale of drugs, which crimes each have their own elements. As to defendant's allegation that this case is purportedly "barred by a previous prosecution", defendant fails to offer any facts at all in support of this contention, including failing to identify the prior prosecution to which he refers, and his motion on this ground is therefore summarily denied. Lastly, to the extent that defendant argues that the indictment should be dismissed because the police lacked probable cause for his arrest, this argument lacks merit, as this is not a proper basis for dismissal of an indictment (People v. Winn, 232 A.D.2d 438, 439 (2d Dept. 1996), lv. denied, 89 N.Y.2d 948 (1997); CPL §210.20). Accordingly, that branch of the motion which seeks dismissal of the indictment is denied. The Court further finds no facts

which would warrant releasing any portion of the minutes of the grand jury proceedings to the defense (CPL §210.30[3]).

3. MOTION FOR DISCOVERY AND INSPECTION /
BRADY / GIGLIO / ROSARIO MATERIAL

This application is granted to the limited extent of ordering that the People are to provide the defendant with materials and information, the disclosure of which is required pursuant to the provisions of CPL §240.44 and §240.45. As to the defendant's demand for exculpatory material, the People have indicated their awareness of their continuing obligation to disclose any such material immediately upon its discovery. Where a question exists as to whether a particular item should be disclosed, the People are directed to submit the material or information to the Court, which will conduct an in camera examination to resolve the issue. The People recognize their duty to comply with People v. Rosario, 9 N.Y.2d 286; CPL §240.44, §240.45. To the extent that deals or agreements, if any, have been made with witnesses, the same must be disclosed. The People further recognize their duty to comply with Giglio v. United States, 405 U.S. 150.

The defendant's demand for disclosure of items or information to which he is entitled pursuant to the provisions of CPL §240.20(1) (a) through (l) is granted upon the People's consent. The application is otherwise denied as it seeks items or information which are beyond the scope of discovery and the defendant has failed to show that such items are material to the preparation of his defense (CPL §240.40 [1][a]).

4. MOTION TO SUPPRESS PHYSICAL EVIDENCE

The defendant seeks suppression of all evidence in this case, including the cocaine alleged to have been sold by him to the undercover officer, on the grounds that he was

illegally stopped and searched by the police officers who were acting without a warrant, consent or reasonable suspicion or probable cause that he had committed a crime; he further alleges that his identification in this case is the fruit of the poisonous tree of his illegal arrest. Defendant alleges that he was going about his business in a public place, on a public street, and acting in a lawful manner when he was arrested by the police; defendant further denies being in possession of cocaine. He alleges that he was stopped by the police based upon information provided by the complaining witness and conveyed to various police officers via radio transmission, and challenges that reliability of that radio transmission, which he submits was insufficient to establish probable cause for his arrest.

The People oppose the motion and argue, as to the allegation of illegal arrest, that contrary to defendant's allegation regarding being arrested pursuant to a radio run transmission, while the indictment charges defendant with crimes which allegedly occurred in March, 2015, defendant was not arrested until after he was indicted in this matter and an arrest warrant was issued for his arrest. The People further argue that no evidence was recovered pursuant to defendant's arrest, making his motion academic, and that in any event, defendant lacked an expectation of privacy in the apartment in which he was arrested and that the police had the consent of one of the resident's of the apartment to enter therein. As to the cocaine allegedly sold by defendant to the undercover, the People argue that this evidence was not the product of any illegal arrest and that defendant relinquished any expectation of privacy in this property when it was sold to the undercover.

As to the defendant's allegation that his arrest was unsupported by probable cause, his motion is summarily denied, as according to consent discovery, defendant was arrested on April 15, 2016 pursuant to a warrant issued by this Court (Zambelli, J.) on September

2, 2015, after defendant had been indicted, a copy of which warrant was provided to defendant in consent discovery. Thus, the drugs could not have been the product of any illegal arrest and the motion to suppress them is denied. In any event, as the People contend that no further evidence was recovered from the defendant pursuant to his arrest, the motion is otherwise denied as academic.

5. MOTION TO PRECLUDE UNNOTICED IDENTIFICATIONS

The defendant moves in advance to preclude the People from introducing any identifications at trial which were not noticed to the defendant pursuant to CPL §710.30. The People have indicated their awareness of the requirements of CPL §710.30 in regard to the need to show good cause if they intend to serve such a notice after the statutory period. Defendant does not allege that the People have actually served any such notices outside of the statutory time frame. The defendant's motion is therefore denied as moot with leave to renew in the event that the People seek to serve such notices in the future.

6. MOTION TO SUPPRESS IDENTIFICATIONS

The People noticed four identifications of the defendant - one in person on March 4, 2015 at the scene of the crime, which they alleged occurred when the undercover backup officer identified the defendant during the drug transaction; one which occurred on March 4, 2015, when a Mount Vernon Detective retrieved defendant's photo from police records; one which occurred on March 4, 2015, when the undercover officer who allegedly bought the drugs from defendant identified him from a single photo, and one which occurred when the undercover officer testified before the grand jury. The defendant seeks suppression of the identifications on the grounds that they were unduly suggestive and conducive to a substantial likelihood of irreparable misidentification, which suggestiveness,

defendant submits, could have been eliminated if defendant had the opportunity to avail himself of a lineup with counsel. Defendant also alleges that these identifications were the fruit of the poisonous tree of his illegal arrest, as set forth above.

The People oppose the motion and argue that, as to defendant's claim of illegal arrest, that his motion on this ground should be summarily denied, as all of the identifications occurred prior to defendant's arrest in this matter. As to the first identification, the People submit that it was made by the backup undercover officer who had a clear vantage point from which to observe the alleged sale, and thus that this was not an "identification" within the meaning of CPL §710.30. They further argue that, "at most", the identification was merely confirmatory as this officer was familiar with the defendant prior to the noticed observation. As to the second identification, the People argue that this identification was also not an identification within the meaning of CPL §710.30, as the Detective merely located the defendant's photo from police records to show to the undercover. As to the third identification, the People submit that this identification was merely confirmatory, as the undercover officer had allegedly observed defendant during their face to face drug transaction which had occurred approximately 40 minutes earlier and the officer was trained to note defendant's appearance during the transaction. Lastly, as to the identification before the grand jury, the People argue that this identification also was not an identification within the meaning of CPL §710.30, or was at most confirmatory, because at that point the undercover had allegedly viewed the defendant during three drug transactions and familiarized himself with defendant's appearance. The People further argue that in any event, the witnesses have independent bases upon which to identify the defendant based upon their respective observations of

him prior to and during the alleged drug transactions.

The defendant's application is granted only to the extent that a hearing shall be held prior to trial to determine whether any police identification procedures were employed, and if so, whether they were unduly suggestive, and, if so, whether an independent source exists for in-court identifications.

However, as to defendant's allegation that the identifications are the fruit of his illegal arrest, defendant's motion is summarily denied, as the identifications occurred prior to defendant's arrest in this matter, which occurred pursuant to arrest warrants issued on September 2, 2015 and February 19, 2016, respectively. Thus, the identifications could not actually be the product of any illegal arrest herein.

7. MOTION TO SUPPRESS PRIOR BAD ACTS (SANDOVAL AND VENTIMIGLIA)

Granted on consent of the People to the extent that this Court directs that a hearing be held immediately prior to trial. Prior to the commencement of jury selection, the People will disclose to defendant all specific instances of his prior uncharged crimes and bad acts they expect to introduce at trial for impeachment purposes (CPL §240.43). Defendant must then sustain his burden of informing the Court of the prior convictions and misconduct which might unfairly affect him as a witness in his own behalf (People v. Matthews, 68 NY2d 118, 121-122). In the event the People seek to introduce defendant's prior bad acts on their direct case, the burden is on the People to seek a Ventimiglia hearing to determine the admissibility of such evidence (People v. Ventimiglia, 52 NY2d 350).

8. MOTION TO CONDUCT PRETRIAL HEARINGS 20 DAYS BEFORE TRIAL

This motion is denied. In accordance with the long standing practice of the Westchester County Court, pre-trial hearings granted on a post-indictment motion to

suppress are held immediately prior to trial unless otherwise ordered by the Supervising Judge of the Trial Assignment Part.


9. REQUEST FOR ADDITIONAL MOTIONS

The defendant's request for permission to make additional pretrial motions is denied. Additional motions will only be considered upon good cause shown pursuant to CPL §255.20(3).

This Decision constitutes the Order of the Court.

This matter is restored to the Court's calendar on June 30, 2016 at 9:30am and all attorneys are directed to appear.

Dated: White Plains, New York
June 21, 2016


BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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