

<b>People v Mott</b>
2016 NY Slip Op 33243(U)
December 19, 2016
County Court, Westchester County
Docket Number: Indictment No. 15-0848
Judge: Barbara G. Zambelli
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FILED

DEC 19 2016

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

- against -

JEREMY MOTT,

Defendant.

DECISION & ORDER

Indictment No.: 15-0848

-----X  
ZAMBELLI, J.

The defendant has been indicted for attempted murder in the second degree, attempted assault in the first degree, assault in the second degree, criminal possession of a weapon in the second degree, reckless endangerment in the first degree and endangering the welfare of a child allegedly committed on or about June 14, 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 affirmation 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 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. 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]).

2. MOTION TO PRECLUDE STATEMENTS

The defendant moves in advance to preclude the People from introducing any statements 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 notices after the statutory period and state that “upon information and belief” no statements of defendant requiring CPL §710.30 notice exist. 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.

3. MOTION TO SUPPRESS IDENTIFICATION

The People noticed one identification of the defendant from a photo array. Defendant argues that the identification was unduly suggestive and that any in court identification would be tainted by prior identification. The People oppose the motion and argue that the identification was not unduly suggestive, that the witness knows the defendant “very well” and that in any event, the witness would have an independent source for the identification based upon the witness’ viewing of the crime.

Defendant’s motion is granted insofar as a hearing shall be held immediately before trial as to whether the identification was merely confirmatory (People v. Rodriguez, 79 N.Y.2d 445), or in the alternative, whether any police procedures employed were unduly

suggestive, and, if so, whether an independent source exists for an in-court identification by the witness (People v. Pacquette, 17 N.Y.3d 87; People v. McLemore, 264 A.D.2d 858).

4. MOTION TO SUPPRESS PHYSICAL EVIDENCE

Defendant concedes that the People have not notified him of any physical evidence or property recovered that they intend to introduce at trial, but moves anyway to suppress the physical evidence recovered in this case, arguing that any evidence recovered would be in violation of his Fourth Amendment rights, as he submits that he had not been engaged in any unlawful activity at the time of, or prior to, his arrest.

The People oppose the motion. They argue that probable cause existed for defendant's arrest based upon the fact that he was identified as the person who shot into a crowd of people from a photo array by a witness thereof. As to any evidence recovered from the scene of the crime or from the victims, the People argue that defendant lacks standing to challenge the recovery of said evidence.

The defendant's motion is denied as moot. To the extent that defendant moves to suppress evidence recovered at the crime scene or from any victims, his motion is denied as he has failed to establish any expectation of privacy in the locations where any such evidence may have been recovered.

5. 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).

6. 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.

Dated: White Plains, New York  
December 19, 2016

  
BARBARA G. ZAMBELLI  
COUNTY COURT JUDGE

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