

People v Fiore
2016 NY Slip Op 33245(U)
May 17, 2016
County Court, Westchester County
Docket Number: Indictment No. 15-0686-02
Judge: Barbara G. Zambelli
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FILED
AND
ENTERED ON
_____ 2016
WESTCHESTER
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

- against -

NICHOLAS FIORE and MICHAEL CACCAVALE

Defendants.

-----X
ZAMBELLI, J.

DECISION & ORDER

Indictment No.: 15-0686-02

FILED
MAY 17 2016
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant has been indicted for robbery in the second degree and criminal possession of a weapon in the third degree allegedly committed on or about March 24, 2015 in the County of Westchester. He now moves by notice of motion with supporting affirmation and memorandum of law 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 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

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

2. MOTION FOR DISCOVERY AND INSPECTION / BRADY 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. 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]).

The People are reminded of the continuing obligation to provide exculpatory information to the defendant (Brady v. Maryland, 373 U.S. 83). Exculpatory information includes any information that would be "favorable to the defense, material either to guilt or punishment, or affecting the credibility of prosecution witnesses" (People v. Baxley, 84 N.Y.2d 208, 213). The People are directed to disclose any such information to the defense. Where a question exists as to whether a particular item should be disclosed, they are directed to submit the material or information to the Court, which will conduct an in camera examination to resolve the issue. To the extent that defendant seeks disclosure of agreements between the People and witnesses, the application is granted upon the People's acknowledgment of their duty to disclose same (Giglio v United States, 405 US 150).

3. MOTION TO SUPPRESS STATEMENTS

The People have served the defendant with two CPL §710.30 notices - one

regarding an oral statement made on March 27, 2015 and one regarding an electronically recorded statement made on April 2, 2015. Defendant moves to suppress the statement on the grounds that it was made while defendant was in custody without benefit of Miranda warnings or counsel and was involuntary and was the product of his illegal arrest. Defendant submits that when he was home in Yonkers when he was arrested by the police, he was minding his own business, did not have any weapons nor was he doing anything criminal.

The People oppose the motion and argue that as an initial matter, defendant was not arrested until April 2, 2015, so his March 27, 2015 statement cannot be the product of any allegedly illegal arrest. They also dispute that defendant was arrested at his home and argue that he was arrested at 608 W. 192nd Street New York, New York. The People further argue that probable cause existed for defendant's arrest on April 2, 2015 based upon the totality of the evidence recovered pursuant to the police investigation of the crime. The People submit that the police obtained, inter alia, video surveillance evidence of the crime and were able to link this crime to robberies of gas stations in other jurisdictions (for which the police also reviewed surveillance video) and that these crimes had very similar *modus operandi*, with the perpetrators following a distinctive pattern of brandishing a black handgun while wearing a brown camouflage pattern face covering, white gloves and dark colored jacket or sweatshirt. The People submit that the police were able to link the vehicle associated with the other robberies to defendant, and investigation revealed that the vehicle was used exclusively by him. When that vehicle was impounded and searched pursuant to a warrant (Section 4, infra), the police recovered a brown camouflage pattern

face covering therein and other clothing which matched that of the suspects in the other robberies. In addition to the physical evidence, the People also argue that the co-defendant made a statement wherein he implicated defendant in the crime. The People therefore submit that probable cause existed for the defendant's arrest. As to defendant's statements, regarding the March 27 statement, the People argue that this statement was voluntarily made by the defendant. The People submit that defendant was not in custody for these statements, but rather the police had responded to a report of suspicious persons and found the two defendants with their vehicle stuck off the road and that the statements were made in response to preliminary investigative questioning by the police, that defendant was not handcuffed or taken into custody and was free to leave, and did, after speaking with the police. As to defendant's April 2 statement, the People submit that this statement was voluntarily made after the defendant was given his Miranda warnings and indicated that he understood the same by proceeding to speak with the police.

Defendant's motion is granted to the extent that the Court will conduct a hearing prior to trial to determine if the noticed statements were the product of an illegal seizure, whether Miranda warnings were necessary and, if so, whether the defendant was so advised and made a knowing, intelligent and voluntary waiver thereof, or whether the statements were otherwise involuntarily made within the meaning of CPL §60.45

4. MOTION TO SEVER

Defendant moves to sever his case from that of his co-defendant. However, the co-defendant pleaded guilty on March 27, 2016. Thus, defendant's motion is moot.

5. MOTION TO CONTROVERT THE SEARCH WARRANT

The defendant seeks suppression of the physical evidence in this case recovered

pursuant to the search warrant issued for the white 2012 Scion IQ. Defendant, who has been provided with a copy of the search warrant affidavit, argues that the affidavit fails to demonstrate that this vehicle was used or present at the scene of the robbery herein. He also argues that the warrant is overbroad because it allowed the seizure of “personal belongings or paperwork or other items evincing ownership of or connection to the subject, vehicle and location, or any contraband recovered” and that the search exceeded the scope of the warrant. The People oppose the motion and argue that the search warrant set forth probable cause for the search and that it was not overbroad or executed outside of its scope.

Upon this Court’s review of the four corners of the search warrant affidavit, the Court finds that the warrant was supported by probable cause (see People v. Keyes, 291 A.D.2d 571 (2d Dept. 2002)). Indeed, the warrant affidavit lays out in significant detail the police investigation of the crime at issue herein and how the vehicle and the defendant were implicated in the investigation. Contrary to defendant’s argument, there is no requirement that the vehicle be an instrumentality of the crime in order to be the proper subject of a search warrant, and such a vehicle may be searched so long as there is a reasonable belief that evidence of the crime may exist therein (see People v. Tambe, 71 N.Y.2d 492, 503 (1988)). Additionally, after a review of the warrant itself, the Court finds that it particularly described the items to be seized and was not overbroad. Defendant’s argument regarding ownership paperwork is unavailing (see People v. Armstrong, 267 A.D.2d 120, 121 (1st Dept. 1999), lv. denied, 94 N.Y.2d 945 (2000)) and there is no evidence that the warrant was executed outside of its scope. Accordingly, the motion to controvert the warrant and to suppress physical evidence recovered thereunder is denied.

6. 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).

7. 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
May 17, 2016



BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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