

People v Bones

2017 NY Slip Op 32940(U)

March 10, 2017

County Court, Westchester County

Docket Number: 16-0804-02

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER
-----X
THE PEOPLE OF THE STATE OF NEW YORK

FILED
AND ENTERED
ON 3-10-2017
WESTCHESTER

-against-

DECISION & ORDER
Indictment No.: 16-0804-02

ISAAC BONES &
ROBERT COBB,

Defendant.
-----X
MINIHAN, J.

FILED
MAR 10 2017
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, ROBERT COBB, was indicted on or about September 19, 2016, Westchester County Indictment Number 16-0804-01-02 for acting in concert with co-defendant for the crime of Grand Larceny in the Third Degree (Penal Law § 155.35 [1]); his co-defendant was indicted individually for the crimes of Robbery in the First Degree (Penal Law § 160.15 [3]); Robbery in the Third Degree (Penal Law § 160.05); two counts of Attempted Assault in the Second Degree (Penal Law § 110, 120.05 [2] and [6]); Criminal Possession of a Weapon in the Third Degree (Penal Law § 265.02[1]) and Grand Larceny in the Third Degree (Penal Law § 155.35 [1]).

On December 18, 2016, this court decided the motion and ordered a *Sandoval* and *Rodriguez/Wade* hearings.

On March 3, 2017, defendant filed an Order to Show Cause with an affirmation in support pursuant to CPL 690 seeking to vacate the search warrant signed by the Eastchester Town Court on February 22, 2017 and to suppress property seized as a result of the execution of the search warrant by the Mount Vernon Police Department. In answer, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Upon consideration of these papers, and the Exhibits, this court disposes of this motion as follows:

On January 6, 2017, defendant was charged in Mount Vernon City Court with aggravated harassment in the second degree, for threatening to kill Patrice Rowlett if she did not assist him with removing stolen property from the house where he resided at 418 S. 7th Ave., Mount Vernon. The stolen property is the evidence of the crimes charged in the instant indictment. On February 17, 2017, Miss Rowlett gave a sworn statement to the Eastchester Police Department, which resulted in an application for search warrant at 418 S. 7th Ave., Mount Vernon. The search warrant, annexed as Exhibit "A" to the defendant's moving papers, outlines the crime and the statements made by Ms. Rowlett to the Eastchester Police Department. The search warrant affidavit states that Ms. Rowlett swore that she visited the defendant during his incarceration, where he advised her to forfeit the house at 418 S. 7th Ave., Mount Vernon to the bank since Ms. Rowlett worked for a mortgage foreclosure company and since the owner of the house, his mother, had passed away while the defendant was incarcerated. He also told her to "get rid of the stolen stuff" that was in the house.

According to the search warrant affidavit, the police submitted sworn allegations stating that the officer spoke to an identified witness Miss Patricia Rowlett who entered the defendant's bedroom at the location where she observed assorted men's clothing which appeared to be expensive in nature. Ms. Rowlett recalled observing men's suits and Michael Kors merchandise, some of which contained price tags and security devices. According to the affidavit, she told police that she placed the merchandise in garbage bags, and placed them in the back room on the first floor of the residence. She also indicated that the room was locked and she was the only person with the case.

The property sought to be seized in the search warrant was described as 1) any bags in the back first room containing men's clothing; 2) any men's clothing in the house which has the price tags of security devices still attached; 3) any True Religion men's clothing located within the house; 4) any Michael Kor's clothing; 5) any men's suits and 6) any and all personal identifying information and documents which linked the defendant to the residence.

The search warrant was signed by the Eastchester Town Court on February 22, 2017. Five days later the Mount Vernon Police executed the search with Ms. Rowlett was present. In fact, she allowed the police to enter into the house, and directed them to the back room containing the alleged stolen goods. The Mount Vernon police recovered items including a black and red pair of sweat pants and sweatshirts listed in the search warrant return as items number one, two, seven, and ten. According to the police, the black and red sweat pants and sweatshirts were visible in plain view upon entering the room as they were located in an uncovered bin. One of the police officers that searched the house recognized the red and black clothing to be the same clothing worn by the defendant during the larceny charged in this indictment.

On March 2, 2017, defendant appeared with counsel before this court and denied living at the premises after the search warrant and return were presented in court.

Defendant now moves to vacate the search warrant and to suppress all property seized from the house located at 418 S. 7th Ave., Mount Vernon, NY. Specifically, defendant contends that the search warrant was not supported by probable cause and the specific items that were recovered were beyond the scope of the search warrant, so that they must be suppressed. Defendant claims that the reliability of Patricia Rowlett is called into question because she is a "squatter" at his mother's house and was motivated by keeping the defendant incarcerated on the day he made bail so that she could continue to live at his mother's home. He contends that he did not give permission for the police to enter to search the premises owned by his mother's estate nor did Patricia Rowlett have authority to give permission.

By affirmation in opposition, the People contend that defendant's motion must be denied because a defendant does not have standing to suppress the evidence recovered, the warrant is supported by probable cause, all the items recovered were either within the scope of the warrant or recovered pursuant to the plain view doctrine and that the warrant was superfluous since police had the consent of a resident at 418 S. 7th Ave., Mount Vernon, Westchester County, New York.

The People contend that since the defendant concedes that the house at 418 S. 7th Ave. is owned by his mother's estate and not him and since he does not claim any property or privacy interest in the home, particularly since he admitted that he did not reside at 418 S. 7th Ave. in open court on March 2, 2017, he does not meet the burden to show an expectation of privacy. Furthermore, the People contend that the defendant provided the police two different addresses on the day of his arrest. Lastly, the People argue that although contends that he had a bedroom at the house, he told Patricia Rowlett to forfeit the house to the bank so that he could not have reasonably believed that he had a property interest and an expectation of privacy of the items in the house that he attempted to voluntarily relinquish to a bank.

The People further argue that the search warrant was supported by probable cause, and that the items seized listed as one, two, seven and ten on the return were legally seized pursuant to the warrant or were in plain view when the warrant was executed. As such, the People argue that defendant's motion to suppress the items should be denied in its entirety.

To the extent that the defendant has standing to challenge the warrant since he had a bedroom and resided before incarceration at the residence, defendant's motion to vacate the warrant is summarily denied since sufficient probable cause was established within the four corners of the warrant to justify the issuance of the warrant (*Franks v Delaware*, 438 US 154 [1978]). The defendant has failed to make the necessary showing that the warrant was based upon an affidavit containing false statements made knowingly or intentionally, or with reckless disregard for the truth (*People v McGeachy*, 74 AD3d 989 [2d Dept 2010]). Even if police did not know that Ms. Rowlett was a "squatter" as the defendant contends with unsworn allegations, he has failed to demonstrate that such is a reckless disregard for the truth or per se dispenses with reliability (*see People v Church*, 31 AD3d 892 [3d Dept 2006]) (Information provided by defendant's tenants was sufficient to establish probable cause for issuance of search warrant for defendant's residence). Here, the record shows that Ms. Rowlett occupied the house, possessed the keys, resided at the house, was familiar with the interior of the house and provided police with consent to search the house while unlocking the room to the door in the house that contained the stolen items. The record demonstrates that she possessed the requisite degree of authority and control over 418 South 7th Avenue. To that end, because she provided consent, it appears that the police could have been justified without a warrant since the police may lawfully conduct a warrantless search when they have obtained the voluntary consent of a party who possesses the requisite degree of authority and control over the premises or personal property in question (*People v Watson*, 101 AD3d 913, 914 [2d Dept 2012]).

Notwithstanding, and contrary to the defendant's contentions, the search warrant was supported by probable cause particularly since Ms. Rowlett is an identified citizen statement as opposed to a confidential informant which statements are presumptively reliable (*see People v Allen*, 209 AD2d 425 [1994]). Moreover, the warrant application was accompanied by the affidavit of a police officer, which was supported by the sworn statement of a named individual, setting out in detail evidence of criminal activity personally known to her which was a sufficient predicate for a finding of probable cause (*see People v Leggio*, 84 AD3d 1116 [2d Dept 2011]).

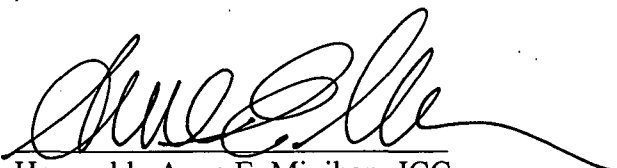
Turning to defendant's motion to suppress items one, two, seven and ten (defendant's red and black sweatshirts and sweat pants) contending that they were outside of the scope of the

search warrant, such motion is denied. A clear reading of the warrant permits a seizure of any and all personal identifying information which would link the defendant to 418 S. 7th Ave. (see search warrant order at Exhibit A, page 2, ¶ f.). As the People have presented sworn allegations that the police officer who conducted the search was familiar with the red and black sweatshirt and sweat pants that the defendant wore on the date of the crime, those items seized tied the defendant to 418 S. 7th Ave. and clearly falls within a plain reading of paragraph F of the search warrant.

In any event, since the items were also discovered in plain view, as they were in an uncovered bin, they were lawfully seized under the plain view doctrine. The plain view doctrine, which “rests on the premise that police should be able to seize incriminating evidence in plain view if they had the right to be where they were when they saw it . . . [L]aw enforcement officers may properly seize an item in ‘plain view’ without a warrant if (I) they are lawfully in a position to observe the item; (ii) they have lawful access to the item itself when they seize it; and (iii) the incriminating character of the item is immediately apparent” (*People v Brown*, 96 NY2d 80, 88-89 [2001]). As such, defendant’s motion is denied.

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

Dated: White Plains, New York
March 10, 2017


Honorable Anne E. Minihan, JCC

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