

People v Wiltshire

2017 NY Slip Op 32997(U)

June 28, 2017

County Court, Westchester County

Docket Number: 16-1278-02

Judge: Helen M. Blackwood

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

STEPHEN WILTSHIRE and RASHAND WILTSHIRE,

Defendants.

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DECISION and ORDER

Indictment No.: 16-1278-02

FILED



JUN 28 2017

TIMOTHY C. IDOMI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, RASHAND WILTSHIRE, is charged by indictment with one count each of attempted robbery in the first degree (PL §110/160.15[4]) and attempted robbery in the second degree (PL §110/160.10[1]). The defendant has filed a notice of motion, along with a supporting affirmation and memorandum of law seeking omnibus relief. The People have responded by filing an affirmation in opposition and a memorandum of law. Upon consideration of the aforementioned submissions, along with a review of the grand jury minutes and exhibits and the consent discovery order entered in this case, the motion is disposed of as follows:

I. Motion to Inspect and Dismiss or Reduce

The People have provided the grand jury minutes to the court and the court has reviewed those minutes *in camera*. After doing so, the court finds that there is no basis to dismiss or reduce any charges of the indictment. Accordingly, the defendant's motion to do so is denied in all respects.

The court finds that the evidence offered to the grand jury was legally sufficient in accordance with section 70.10 of the Criminal Procedure Law. “Legally sufficient evidence means competent evidence, which, if accepted as true, would establish every element of an offense charged and the defendant’s commission thereof,” (CPL §70.10[1]). Moreover, “[c]ourts assessing the sufficiency of the evidence before a grand jury must evaluate ‘whether the evidence, viewed most favorably to the People, if unexplained and uncontradicted-and deferring all questions as to the weight or quality of the evidence-would warrant conviction,’ ” (People v. Mills, 1 N.Y.3d 269, 274–275, 804 N.E.2d 392 [2003], quoting People v. Carroll, 93 N.Y.2d 564, 568, 715 N.E.2d 500 [1999]; see also, People v. Wisey, 133 A.D.3d 799, 21 N.Y.S.3d 111 [2015]). The court finds that the evidence presented to the grand jury, in its entirety, met this burden.

Additionally, the court finds that the grand jury was properly instructed as to the law (see, People v. Calbud, 49 N.Y.2d 398, 402 N.E.2d 1140 [1980]) and that a quorum was present.

Finally, the court does not find that the release of the grand jury minutes or any portion thereof to the defendant is necessary, nor has the defendant set forth any compelling or particularized need for the production of the grand jury minutes. Therefore, the defendant’s application for the release of said minutes is denied (see, CPL §190.25[4][a]).

II. Motion for Discovery and Inspection

The consent discovery order entered in this case indicates that the parties have agreed to enumerated discovery, disclosure, and inspection in accordance with Article 240 of the Criminal Procedure Law. The defendant’s motion for discovery is granted to the extent that the People

are ordered to provide him with any material specified in CPL §240.20 that has not already been provided.

With respect to the defendant's demand for exculpatory information, the People acknowledge their continuing obligations pursuant to Brady v. Maryland, (373 U.S. 83 [1963]) and Giglio v. United States (405 U.S. 150 [1972]). If a question exists as to the potentially exculpatory nature of a particular item, or if the People are not willing to consent to an item's disclosure, the People are ordered to provide such item to the court forthwith for an *in camera* inspection and determination.

As to the defendant's request for material enumerated in CPL §§240.44 and 240.45, such motion is denied at this time. The People recognize their duty to comply with People v. Rosario, 9 N.Y.2d 286 (1961), and are hereby ordered to do so in accordance with the time-frame set forth in the statute.

Any requests made by the defendant with respect to the discovery of items beyond the scope of Article 240 of the Criminal Procedure Law are denied (see, Pirro v. LaCava, 230 A.D.2d 909 [1996]; Matter of Catterson v. Rohl, 202 A.D.2d 420 [1994]).

Finally, the defendant's motion for a further Bill of Particulars is denied, as the Bill of Particulars that has been provided by the People in the consent discovery order adequately informs the defendant of the substance of all alleged conduct and complies with CPL §200.95 in all respects.

III. Motion to Suppress Identification

The defendant moves to suppress any testimony regarding an in-court observation of the defendant on the grounds that the noticed identification procedure was conducted in a manner that was in violation of the defendant's constitutional rights. The People argue that the photographic array utilized in the procedure was not unduly suggestive, nor was the manner in which it was displayed. Furthermore, they argue that the victim knew the defendant, rendering the procedure "merely confirmatory". Finally, they argue that an in court identification of the defendant is based upon an independent observation of the defendant by the witness.

The defendant's motion is granted insofar as a hearing shall be held immediately before trial to determine whether the identification was, in fact, confirmatory (People v. Rodriguez, 79 N.Y.2d 445, 593 N.E.2d 68 [1992]) 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, 950 N.E.2d 489 [2011]; People v. McLemore, 264 A.D.2d 858, 696 N.Y.S.2d 464 [1999]).

IV. Motion to Suppress Statements

The defendant moves to suppress his noticed statements on the grounds that they were obtained in violation of his Fourth, Fifth, and Sixth Amendment rights. Specifically, he argues that the defendant was arrested without probable cause and that the statements were made involuntarily and through the use of improper police conduct. The People argue that the motion should be denied because the police had probable cause to arrest the defendant and the noticed statement was made voluntarily and not in response to any custodial interrogation.

As the defendant fails to support his Fourth and Sixth Amendment claims with sworn allegations of fact, (see, People v. Mendoza, 82 N.Y.2d 415; 624 N.E.2d 1017 [1993]; People v. Rosa, 65 N.Y.2d 380, 482 N.E.2d 21 [1985]), the motion is granted to the limited extent that a Huntley hearing shall be held prior to trial to determine whether the statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL §710.30(1)(a), were made involuntarily within the meaning of CPL §60.45 (see, CPL §710.20[3];CPL §710.60[3][b]; People v. Weaver, 49 N.Y.2d 1012 [1980]).

V. Motion for Severance of Defendants

The defendant moves for a severance from his co-defendant. The defendant and his co-defendant, who are alleged to have acted in concert, are properly joined in the same indictment (see, CPL §200.40 [1]). Where the proof against both defendants is supplied by the same evidence, "only the most cogent reasons warrant a severance," (see, People v. Bornholdt, 33 NY2d 75, 87, 305 N.E.2d 461, cert. denied 416 US 95; see also, People v. Watts, 159 AD2d 740, 553 N.Y.S.2d 213 [1990]). Further, public policy strongly "favors joinder, because it expedites the judicial process, reduces court congestion, and avoids the necessity of recalling witnesses," (People v. Mahboubian, 74 NY2d 174, 183, 544 N.Y.S.769 [1989]).

Nevertheless, for good cause shown, such as the fact that a defendant will be "unduly prejudiced by a joint trial", a defendant may be entitled to a severance from his co-defendant (see, CPL §200.40 [1]). In order to fairly evaluate whether the defendant will or will not be unduly prejudiced before a joint trial occurs, decisions must be rendered regarding the admissibility of any statement by the defendant's co-defendant and, if admissible, whether any such statement can be redacted. Further, consideration must be given as to whether the co-

defendant intends to testify and whether the co-defendant's defense is antagonistic to the that of the within defendant.

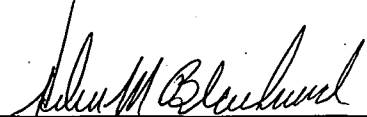
Accordingly, as the court has yet to reach and resolve the above addressed matters, the defendant's motion for a severance is denied as premature with leave to renew and for the defendant to demonstrate, after the above matters have been resolved, that a joint trial will result in unfair prejudice to him and substantially impair his defense.

VI. Motion to Suppress Prior Bad Acts

The defendant requests a hearing to determine whether the prosecution should be permitted to use any criminal convictions, or bad acts of the defendant at trial. The defendant's motion is granted to the extent that prior to jury selection, the People are ordered to disclose to the defendant all specific instances of his prior uncharged crimes and bad acts they expect to introduce at trial for impeachment purposes in accordance with CPL §240.43. In response, the defendant must sustain his burden of showing the prior convictions and bad acts which will unduly prejudice him as a witness on his own behalf (People v. Matthews, 68 N.Y.2d 118, 497 N.E.2d 287 [1986]). In the event that the People seek to use any such conduct in their direct case against the defendant, they are ordered to request a hearing to determine the admissibility of such evidence pursuant to People v. Ventimiglia, 52 N.Y.2d 350, 420 N.E.2d 59 (1981).

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

Dated: White Plains, New York
June 28, 2017



HON. HELEN M. BLACKWOOD
Westchester County Court