

People v Raysor

2017 NY Slip Op 32999(U)

April 28, 2017

County Court, Westchester County

Docket Number: 16-1348-01

Judge: Barbara G. Zambelli

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COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

- against -

ANDRE RAYSOR and ISHMAEL BEN-REUBEN,

Defendants.

-----X

ZAMBELLI, J.

DECISION & ORDER

Indictment No.: 16-1348-01

FILED *TR*

MAY 01 2017

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant has been indicted for robbery in the first degree, attempted robbery in the first degree, robbery in the second degree, attempted robbery in the second degree and grand larceny in the fourth degree (2 counts) allegedly committed on or about October 19, 2016 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 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 FOR DISCOVERY AND INSPECTION / BRADY/ ROSARIO /GIGLIO

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 NY2d 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). With regard to witness names and statements the defendant’s application for same at this stage of the proceedings is denied. The People recognize their duty to comply with People v. Rosario, 9 N.Y.2d 286; CPL §240.44, §240.45.

2. MOTION TO SUPPRESS PRIOR BAD ACTS (SANDOVAL / 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).

3. MOTION TO STRIKE LANGUAGE FROM THE INDICTMENT

The defendant's motion to strike allegedly prejudicial language from the indictment is denied. The phrase "against the peace and dignity of the People of the State of New York" merely identifies the defendant's alleged acts as public, rather than private, wrongs (see People v. Winters, 194 AD2d 703; People v. Gill 164 AD.2d 867).

4. MOTION TO DISMISS FOR FACIAL INSUFFICIENCY

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).

5. INSPECT / DISMISS / REDUCE

The 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 of the indictment were supported by sufficient evidence and that the instructions given were appropriate. There was no other infirmity which would warrant a dismissal of the instant 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]).

6. MOTION TO SUPPRESS STATEMENTS

The People have served the defendant with one CPL §710.30 notice regarding an

electronically recorded oral statement. The defendant moves to suppress the noticed statements on the grounds that they were made in custody without Miranda warnings, were involuntary, and were the product of police coercion; defendant further submits that he did not knowingly, intelligently and voluntarily waive his rights.

The People oppose the defendant's motion and argue that defendant's statement was voluntarily made by defendant after being orally given his Miranda rights and signing a waiver thereof and agreeing to speak with the police; the People deny that any police coercion was involved.

Defendant's motion is granted to the extent that the Court will conduct a hearing prior to trial to determine 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.

7. MOTION TO SUPPRESS IDENTIFICATION

The People noticed one identification of the defendant from a photo array. Defendant argues that the identification procedure was unduly suggestive. He also argues that the identification was the product of his illegal arrest.

The People oppose the motion and argue as an initial matter, that defendant's motion on the ground of illegal arrest should be denied for failure to allege any facts in support thereof. They submit that in any event, probable cause existed for defendant's arrest because he was accused of committing robbery by the identified civilian witness who identified defendant as the perpetrator from a photo array. They also argue that the identification cannot be the fruit of any allegedly illegal arrest as the defendant had not

been arrested when the photo array was taken. The People also submit that the defendant is known to the witness as they live in the same building and further deny that the identification was unduly suggestive. The People also argue that the witness has an independent basis from which to identify the defendant.

Defendant's motion is granted insofar as a hearing shall be held immediately before trial as to whether any police procedures employed were unduly suggestive, and, if so, whether an independent source exists for an in-court identification by the witnesses (People v. Pacquette, 17 N.Y.3d 87; People v. McLemore, 264 A.D.2d 858).

However, such hearing should not address defendant's allegations of illegal arrest, as no sworn allegations of fact are set forth in support of his conclusory statement that the police lacked probable cause for his arrest. As noted above, despite having sufficient information regarding the "factual predicate" for the arrest, defendant failed to dispute the factual allegations herein and merely alleges that police lacked probable cause for his arrest. Accordingly, his motion on this ground is summarily denied (People v. France, 12 N.Y.3d 790 (2009); People v. Jones, 95 N.Y.2d 721; People v. Mendoza, *supra*; People v. Kemp, 262 A.D.2d 333; People v. Anderson, 253 A.D.2d 636; CPL §710.60[3][b]; *see also* People v. Scully, 14 N.Y.3d 861 (2010)).

8. MOTION TO PRECLUDE UNNOTICED STATEMENTS

The defendant moves in advance to preclude the People from introducing any statements at trial which were not noticed to him pursuant to CPL §710.30. 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.

9. MOTION TO CONDUCT PRETRIAL HEARINGS 20 DAYS BEFORE TRIAL

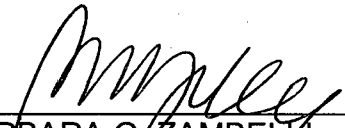
This motion is denied. In accordance with the long standing practice of the Westchester County Court, pre-trial hearings granted on a post-indictment motion to suppress are held immediately prior to trial unless otherwise ordered by the Supervising Judge of the Trial Assignment Part.

10. REQUEST FOR FURTHER 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
April 28, 2017.



BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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