

People v Deleon

2017 NY Slip Op 33009(U)

June 16, 2017

County Court, Westchester County

Docket Number: 16-01069

Judge: Barbara G. Zambelli

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FILED
AND
ENTERED
ON _____ 20____
WESTCHESTER
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK

DECISION & ORDER

- against -

Indictment No.: 16-01069

JOSE DELEON,

FILED
JUN 16 2017

Defendant.

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

ZAMBELLI, J.

The defendant has been indicted for driving while intoxicated in violation of Vehicle and Traffic Law §1192(3), aggravated unlicensed operation of a vehicle in the first degree, leaving the scene of an incident without reporting in violation of Vehicle and Traffic Law §600 and criminal mischief in the fourth degree allegedly committed on or about July 10, 2016 in the County of Westchester. He now moves by notice of motion, supporting affirmation and memorandum of law for omnibus relief. The People's response consists of an affirmation in opposition and 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 / DISCLOSURE OF MATERIAL INFORMATION

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. As to the defendant's demand

for exculpatory material, the People have indicated their awareness of their continuing obligation to disclose any such material immediately upon its discovery. 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.

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]).

2. MOTION FOR EXCULPATORY INFORMATION

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. 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 STRIKE STATEMENT NOTICE

The defendant's motion is denied. The language in the notice served by the People in accordance with CPL §710.30 informed the defendant of the time, place and manner in which the statement was made (CPL §710.30[1]; see People v. Lopez, 84 NY2d 425;

People v. Hartley, 244 AD2d 712. As to the People's admission that the statement notice contains a typographical error as to the date of the statement (listing date as July 11, 2016 instead of the correct date of July 10, 2016), the People are directed to immediately move no later than June 20, 2017 to amend the statement notice to reflect the correct date.

In the affirmation in opposition, the People contend that the defendant waived his right to challenge the sufficiency of the CPL §710.30 notice by moving in the alternative to suppress the noticed statement. However, a defendant may move in the alternative to suppress without waiving a preclusion claim, so long as the suppression claim is not litigated to a final determination (see People v. Kirkland, 89 NY2d 903; People v. Smith, 283 AD2d 189; People v. Figueroa, 278 AD2d 139; People v. Heller, 180 Misc2d 160; Cf. People v. Smith, 8 Misc3d 441).

4. MOTION TO SUPPRESS STATEMENTS

The People have served the defendant with one CPL §710.30 notices regarding oral statements. The defendant moves to suppress the noticed statements on the grounds that they were made without Miranda warnings and were involuntary, were taken in violation of his right to counsel and that the noticed statement was the product of an illegal arrest.

The People oppose the motion and argue that as to defendant's claim of illegal arrest, his motion should be summarily denied for failure to allege facts in support thereof. In any event, the People argue that the police responded to 911 calls by civilians which reported that a certain vehicle had struck a parked vehicle and left the scene, but that the vehicle returned to the scene when a witness located the defendant's vehicle (which had apparently lost a bumper as a result of allegedly striking the parked vehicle) and convinced defendant to return to the scene. The People argue that when the police arrived,

defendant's vehicle was already stopped, thus they contend that there was no seizure herein. The argue that a witness advised the police that he heard a crash, looked out the window and saw that his neighbor's car had been struck and pushed up against a telephone poll, that a bumper (not belonging to the struck vehicle) was lying in the street and that this witness got in his car to drive around and attempt to locate the vehicle responsible for the accident. The People submit that this witness located the defendant's car without a bumper a short distance from the scene, and that the witness convinced defendant to return to the scene. They submit that once the police arrived, they asked defendant preliminary investigative questions designed to clarify the nature of the situation confronted and that defendant admitted, in sum and substance, that he had been drinking and had struck the parked vehicle. The People also argue that the police observed defendant to have the odor of an alcoholic beverage on his breath, that he had glossy bloodshot eyes and was unsteady on his feet and that defendant did fail three field sobriety tests. The People allege that the police also interviewed the identified civilian witnesses, whose account of events were corroborated by their observations and defendant's statements. They therefore submit that probable cause existed for defendant's arrest. As to the statements, the People allege that defendant was asked preliminary investigative questions for which Miranda warnings were not required, that defendant was not in custody when he made his statements and that his responses were voluntarily given. They also deny that defendant ever unequivocally made any request for counsel.

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. 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. Despite having sufficient information regarding the "factual predicate" for the arrest, as defendant has been provided consent discovery and a bill of particulars, 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, 82 N.Y.2d 415 (1993); 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)).

5. MOTION TO SUPPRESS PHYSICAL EVIDENCE

The defendant seeks suppression of physical evidence on the grounds that no probable cause existed for his arrest. The People oppose the motion and argue that defendant's motion should be summarily denied for failure to allege facts in support thereof. They argue that in any event, probable cause existed for defendant's arrest, as set forth above.

Defendant's motion is summarily denied. As noted above, no sworn allegations of fact are set forth in support of defendant's conclusory statement that he was arrested without probable cause. Despite having sufficient information regarding the "factual predicate" for the arrest, defendant failed to dispute the factual allegations herein. Accordingly, his motion on this ground is summarily denied (People v. France, supra; People v. Jones, supra; People v. Mendoza, supra; People v. Kemp, supra; People v.

Anderson, supra; CPL §710.60[3][b]; see also People v. Scully, supra).

6. MOTION TO INSPECT/DISMISS/REDUCE¹

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. The Court further finds no facts which would warrant releasing any portion of the minutes of the grand jury proceedings to the defense (see CPL 210.30[3]).


7. 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).

¹As to the People's admission that the indictment itself contains a typographical error in regard to the date of the crime (listing date as July 11, 2016 instead of the correct date of July 10, 2016), the People are directed to immediately move to amend the indictment by no later than June 20, 2017 to reflect the correct date. The Court notes that the evidence presented to the grand jury comports with the correct date of July 10, 2016, as does the Bill of Particulars served upon the defense.

This Decision constitutes the Order of the Court.

Dated: White Plains, New York
June 16 2017


BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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