

People v Brown

2017 NY Slip Op 33023(U)

May 10, 2017

County Court, Westchester County

Docket Number: 16-1365

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-

THOMAS BROWN,

Defendant

-----X

DECISION and ORDER
Indictment No. 16-1365

FILED

MAY 10 2017

TR

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, THOMAS BROWN, is charged by indictment with one count each of criminal sale of a controlled substance in the third degree (PL §220.39[1]), criminal possession of a controlled substance in the third degree (PL §220.16[1]), criminal possession of a controlled substance in the fifth degree (PL §220.06[1]), criminal possession of a controlled substance in the fifth degree (PL §220.06[5]), criminal possession of a controlled substance in the seventh degree (PL §220.03), criminal possession of marijuana in the fourth degree (PL §221.15), criminally using drug paraphernalia in the second degree (PL §220.50[2]), and criminal using drug paraphernalia in the second degree (PL §220.50[3]). 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 Suppress Noticed Statements

The defendant moves to suppress his noticed statements on the grounds that they were obtained in violation of his constitutional rights. Specifically, he argues that the statements were coerced and made without the defendant having properly received his Miranda warnings or voluntarily, knowingly, and intelligently waiving those rights. The motion is granted to the 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, 429 N.Y.S.2d 399 [1980]), or obtained in violation of the defendant's Fourth Amendment rights (see, Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248 [1979]).

II. 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).

III. Motion to Produce and for a Bill of Particulars

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, including the disclosure of any deals and/or agreements between the prosecution and any of its witnesses, the People acknowledge their continuing obligations pursuant to Brady v. Maryland, (373 U.S. 83, 83 S.Ct. 1194 [1963]) and Giglio v. United States (405 U.S. 150, 92 S.Ct. 763 [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 *in camera* inspection and determination.

To the extent that the defendant requests 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, 213 N.Y.S.2d 448 [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, 646 N.Y.S.2d 866 [1996]; Matter of Catterson v. Rohl, 202 A.D.2d, 608 N.Y.S.2d 696 [1994]).

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.

IV. 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 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 application for the release of said minutes is denied (see, CPL §190.25[4][a]).

V. Motion for Information About Informant/Undercover Officer

The defendant's motion for information regarding any confidential informant or undercover utilized in this case is denied at this time. The defendant bears the burden of establishing that the informant's role is of some significance (People v. Goggins, 34 N.Y.2d 163, 313 N.E.2d 41 [1974]). The bare assertions contained within the defendant's motion fail to lay such a foundation. Should there come a time when the defendant is able to lay such a foundation, the determination lies within the sound discretion of the trial judge (*Id.*, at 169.)

VI. Motion to Suppress Physical Evidence

The defendant moves to suppress all physical evidence recovered from his person or inside of the vehicle at the time of the arrest, or in the alternative, for a Mapp hearing to determine its admissibility. The People argue that the defendant's motion should be denied because the police had probable cause to arrest the defendant, that he has no standing to challenge the seizure of evidence within the vehicle, and that the physical evidence recovered in the vehicle was in plain view and pursuant to the automobile exception.

The defendant's motion is granted to the extent that a hearing will be held to determine whether the police seized the defendant and his property in violation of his Fourth Amendment rights (see, Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248 [1979]) and whether the search

and seizure of the defendant's property was lawful (see, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 [1961]).

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

Dated: White Plains, New York
May 10, 2017



HON. HELEN M. BLACKWOOD
Westchester County Court

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