

**People v Harris**

2017 NY Slip Op 33024(U)

December 13, 2017

County Court, Westchester County

Docket Number: 16-1301

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-

DECISION and ORDER

Indictment No.: 16-1301

GREGORY HARRIS,

**FILED** 

DEC 13 2017

Defendants

ROBERTA L. BROWN  
COUNTY CLERK  
COUNTY OF WESTCHESTER

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Defendant, GREGORY HARRIS, has been indicted for the crimes of robbery in the first degree (PL §160.15[3]) (two counts), robbery in the first degree (PL §160.15[4]) (two counts), criminal possession of a weapon in the second degree (PL §265.03[3]), robbery in the third degree (PL §160.05), attempted robbery in the third degree (PL §110/160.05). The defendant has filed a notice of motion, 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 Statements

The defendant moves to suppress the statements that the People have noticed pursuant to CPL §710.30. Specifically, he alleges that the statements were made in violation of his

constitutional rights, as the first was made while he was in custody but prior to having waived his Miranda rights, and the second was made involuntarily.

The People consent to a Huntley hearing and contend that the first statement was not made in the context of a custodial interrogation. Rather, the statement was made in response to preliminary, investigative questions. They argue that the second statement is admissible because it was made after the defendant knowingly, voluntarily, and intelligently waived his Miranda rights.

The defendant's motion is granted to the extent that a Huntley hearing shall be held prior to trial to determine whether the statements allegedly made by him, 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, 406 N.E.2d 1335 [1980])).

## II. 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 an unduly suggestive show-up identification.

The People argue that the noticed show up identification was not unduly suggestive and conducted under permissible circumstances. Specifically, they contend that after a hearing, the court will find that it was conducted less than thirty minutes after the alleged crime took place and within one city block of the location of the alleged robbery.

The defendant's motion is granted to the extent that a hearing shall be held prior to trial to determine whether or not the noticed identification procedure was conducted in an unduly

suggestive manner so as to render any in-court identification tainted (see, United States v. Wade, 388 U.S.218, 87 S.Ct 1926 [1967]). Should the hearing court determine that the identification procedures were so suggestive, then the court shall hold a hearing to determine whether or not there was an independent source for the witness' in-court identification (see, People v. Perkins, 28 N.Y.3d 432, 68 N.E.2d 679 [2016]).

### III. Motion to Suppress Physical Evidence

The defendant moves to suppress all physical evidence recovered from his person, vehicle, or home. Furthermore, he argues that any evidence recovered as a result of a search warrant must be suppressed since the police did not present reliable information to the court in order to obtain the warrant.

The People argue that the police had probable cause to arrest the defendant and therefore, lawfully searched him incident to that arrest. Furthermore, they argue that all of the search warrants issued in this case were legally issued and properly executed.

The defendant's motion is granted to the extent that a hearing will be held to determine whether the police seized the defendant 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 any property on his person subsequent to that arrest was lawful (see, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 [1961]).

Finally, the court has reviewed the affidavits in support of the each of the search warrants issued in this case and finds that all of the warrants were sufficiently supported by probable cause and issued in accordance with CPL §690.

#### IV. 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).

#### V. 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, 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 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, 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]).

#### VI. Motion to Inspect and Dismiss

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 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]), that a quorum was present, and that there was nothing defective about the proceedings so as to render the integrity of the proceedings impaired (People v. Darby, 75 N.Y.2d 449, 553 N.E.2d 974 [1990]).

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]).

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

Dated: White Plains, New York  
December **13**, 2017



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HON. HELEN M. BLACKWOOD  
Westchester County Court

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