

<b>People v Oquendo</b>
2017 NY Slip Op 33031(U)
November 29, 2017
County Court, Westchester County
Docket Number: 17-0561-01-02-03-04-05
Judge: Helen M. Blackwood
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

THE PEOPLE OF THE STATE OF NEW YORK

DECISION and ORDER

-against-

Indictment No.: 17-0561-01-02-03-04-05

ERIC LEE A/K/A "BUBBA";  
SINCERE SMITH;  
ALLEN COPELAND A/K/A "HAT";  
LEROY GARCIA;  
JOHN OQUENDO,

**FILED**

NOV 30 2017

CHRISTY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Defendants

-----X

Defendant, JOHN OQUENDO, has been indicted for aiding, abetting, and acting in concert with his co-defendants for the crimes of robbery in the first degree (PL §160.15[4]) (six counts), robbery in the second degree (PL §160.10[1]) (six counts), robbery in the second degree (PL §160.10[2][a]) (two counts), assault in the second degree (PL §120.05[2]), criminal possession of a weapon in the second degree (PL §265.03[1][b]) (seven counts), criminal possession of a weapon in the second degree (PL §265.03[3]) (seven counts), robbery in the first degree (PL §160.15[1]), robbery in the first degree (PL §160.15[2]), criminal possession of stolen property in the fifth degree (PL §165.40), unlawful imprisonment in the first degree (PL §135.10), and conspiracy in the fourth degree (PL §105.10[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

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]) and that a quorum was present.

## II. Motion for Bill of Particulars

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 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]).

#### IV. Motion to Suppress Physical Evidence

The defendant moves to suppress all physical evidence recovered in this case. Specifically, he argues that the warrantless search of the taxi was unconstitutional and therefore, any items recovered from the taxi when the defendant was arrested should be suppressed. Further, he argues that the police lacked probable cause to arrest the defendant. Finally, the defendant argues that any property recovered as a result of the search of 217 South 12<sup>th</sup> Avenue, Mount Vernon, New York, should be suppressed, as the warrant was not supported by probable cause.

The People oppose the motion to suppress, arguing that that the defendant does not have standing to challenge the search of the taxi or the search of 217 South 12<sup>th</sup> Avenue. In any event, the People argue that the evidence recovered from the taxi was lawfully recovered and that the search warrant was supported by sufficient probable cause.

With respect to any property recovered on the defendant's person or immediate vicinity thereof at the time of his arrest, his 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 the defendant's property was lawful (see, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 [1961]).

As to the property recovered as a result of the search warrant, the court finds that the defendant has not met his burden of demonstrating that he had an expectation of privacy in the third-party's residence (People v. Ramirez-Portoreal, 88 N.Y.2d 99, 666 N.E.2d 207 [1996]). Nevertheless, the court has reviewed the affidavit in support of the warrant and finds that the warrant was supported by probable cause and was issued in accordance with section 690 of the Criminal Procedure Law.

#### V. Motion to Suppress Statements

The defendant moves to suppress his noticed statements on the grounds that they were obtained in violation of his constitutional rights.

The People argue that the defendant's motion should be denied after a hearing because the People will be able to establish that the defendant's statements were voluntarily made.

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 [1980]).

#### VI. Motion to Suppress Identification

The defendant moves for a hearing to determine the admissibility of the numerous pre-trial identifications of the defendant that have been noticed by the People.

The People consent to a Wade hearing to determine their admissibility, contending that all of the identifications were either show-up identifications or photographic arrays that were not unduly suggestive.

The defendant's motion is granted to the extent that a hearing shall be held prior to trial to determine whether the noticed identification procedures were conducted in an unduly

suggestive manner so as to taint any subsequent in-court identification (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 basis for the witness' in-court identification (see, People v. Perkins, 28 N.Y.3d 432, 68 N.E.3d 679 [2016]).

#### VII. Motion for Severance

The defendant moves for a severance from his co-defendants. The defendant and his co-defendants, who are alleged to have acted in concert, are properly joined in the same indictment (see, CPL §200.40 [1]). Where the proof against all 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-defendants as well as, if admissible, whether any such statement can be redacted. Further, consideration must be given as to whether the co-defendants intend to testify and whether the co-defendants' defenses are antagonistic to 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.

#### VIII. 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).

#### IX. Motion to Sever Counts of the Indictment

The defendant moves to sever counts 14-23, 49, 27-35, 36-48, and 50, arguing that the prejudicial effect of permitting testimony of all of these incidents would be overwhelming to the defendant.

The People argue that the motion should be denied since the charges are all joined properly pursuant to CPL §200.20(2)(a) and (b) and cannot be severed. Furthermore, they argue that the defendant has not sustained his burden of demonstrating good cause for the severance.

After the court's review of the testimony presented to the grand jury, the court finds that all counts of the indictment were joined properly pursuant to CPL §200.20(2)(a) since they are

based upon the same criminal transaction, charged in count 50 of the indictment as conspiracy in the fourth degree. Furthermore, the charges are joined properly under CPL §200.20(2)(b), as proof of one offense would be admissible and material as evidence in a trial of the other.

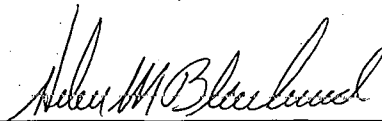
Therefore, the defendant's motion for severance is denied.

X. Motion for Leave to File Additional Motions

The motion is denied. Should the defendant bring further motions for omnibus relief, he must do so by order to show cause setting forth the reasons why his motion was not and could not be brought in accordance with CPL §255.20.

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

Dated: White Plains, New York  
November 29, 2017

  
\_\_\_\_\_  
HON. HELEN M. BLACKWOOD  
Westchester County Court

To: ANTHONY A. SCARPINO, JR.  
District Attorney of Westchester County  
111 Dr. Martin Luther King, Jr. Blvd.  
White Plains, New York 10601  
Attn: ADA John O'Rourke

Philip Mellea, Esq.  
399 Knollwood Road, Suite 111  
White Plains, New York 10603