

People v Alonso

2017 NY Slip Op 33037(U)

October 5, 2017

County Court, Westchester County

Docket Number: 17-0496

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.: 17-0496

LAURO ALONSO,

FILED

OCT 05 2017

Defendants.

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

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Defendant, LAURO ALONSO, is charged by indictment with grand larceny in the fourth degree (PL §155.30[4]) (two counts), criminal possession of stolen property in the fourth degree (PL §165.45[2]) (two counts), petit larceny (PL §155.25) (two counts) and criminal possession of stolen property in the fifth degree (PL §165.40). 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:

A. 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 [1963]) and Giglio v. United States (405 U.S. 150 [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 (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 [1996]; Matter of Catterson v. Rohl, 202 A.D.2d 420 [1994]).

B. Motion to Strike Identification Notices

The defendant's motion to strike the identification notices served and filed by the People is denied. The court finds the notices conform with section 710 of the Criminal Procedure Law.

C. Motion to Suppress Identification Testimony

Attached to the indictment are several notices pursuant to CPL §710.30 indicating that during the trial, the People expect to introduce the testimony of a witness regarding an

observation of the defendant and that the witness previously identified the defendant in a police arranged procedure. The defendant argues that the identification evidence should be suppressed because the identification procedures were suggestive in nature. The People argue that the defendant's motion should be denied since the officer's viewing of the defendant in the surveillance footage was not an identification within the meaning of CPL §710.30. Furthermore, they argue that even if the identifications were improperly suggestive, any subsequent in court identification is admissible since there exists an independent course for such identification.

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

D. Motion to Strike Statement Notice

The defendant's motion to strike the statement notices served and filed by the People is denied. The court finds the notices conform with section 710 of the Criminal Procedure Law.

E. 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. Specifically, he argues that the statements were made involuntarily and the result of an illegal detention. The People argue that the motion should be denied because the police had probable cause to arrest the defendant and because the defendant made the initial statement to the police spontaneously and the remaining custodial statement was made after the defendant knowingly, intelligently, and voluntarily waived his Miranda 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 [1980]) and whether they were obtained in violation of the defendant's Fourth Amendment rights (see, Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248 [1979]).

F. Motion to Suppress Physical Evidence

The defendant moves to suppress all physical evidence recovered from his person or "from any area over which he exercised dominion and control and/or in which he had a reasonable expectation or privacy" at the time of the arrest, or in the alternative, for a Mapp hearing to determine its admissibility, arguing that the police lacked probable cause to arrest defendant (Defense Memorandum of Law, p. 10). The People argue that the defendant's motion should be denied because the police possessed the requisite probable cause to stop and arrest the defendant, and because the defendant lacks standing to challenge the searches of the publicly accessible shed, the gas station, the Mexican restaurant, and the TJ Maxx store.

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

As to the items that were recovered by the police in the shed and the gas station, the trial court will determine the admissibility of those items once it has determined the voluntariness of

the defendant's statements that lead the police to those locations and the lawfulness of his arrest (see, Point E, supra).

G. 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).

H. Motion to Dismiss Indictment as Facially Insufficient

The defendant moves to dismiss the indictment, arguing that it does not conform to the requirements of CPL §200.50(7)(a) because it does not sufficiently advise him of the conduct of which he is accused. The People respond by arguing that the indictment is, in fact, facially sufficient and together with the Bill of Particulars, contains all of the information necessary to give the defendant adequate notice of the charges against him.

The defendant's motion is denied. The court finds that the instant indictment contains a plain and concise factual statement in each and every count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the

defendant's commission thereof with sufficient precision as to clearly apprise the defendant of the conduct of which he is accused (see, People v. Iannone, 45 N.Y.2d 589, 384 N.E.2d 656 [1978]).

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 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 to the law, that there was nothing defective about the proceedings, (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's application for the release of said minutes is denied (see, CPL §190.25[4][a]).

J. Motion for a Further Bill of Particulars

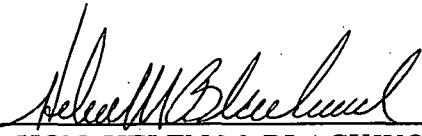
The defendant's motion for a further Bill of Particulars is denied, as the Bill of Particulars that has been provided by the People in the consent discovery order adequately informs the defendant of the substance of all alleged conduct and complies with CPL §200.95 in all respects.

I. Motion to Strike Alibi Notice

The defendant's motion to strike the alibi notice is denied. It is well settled that the requirements of CPL §250.20 are constitutional (see, *People v. Dawson*, 185 A.D.2d 854, 587 N.Y.S.2d 358 [1992]; *People v. Gill*, 164 A.D.2d 867, 559 N.Y.S.2d 376 [1990]; *People v. Peterson*, 96 A.D.2d 871, 465 N.Y.S.2d 743 [1983]).

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

Dated: White Plains, New York
October , 2017


HON. HELEN M. BLACKWOOD
Westchester County Court

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