

People v Jackson
2017 NY Slip Op 33049(U)
November 1, 2017
County Court, Westchester County
Docket Number: 17-0623
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-

DONALD JACKSON,

FILED

NOV 01 2017

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

DECISION and ORDER

Indictment No.: 17-0623

Defendants.
-----X

Defendant, DONALD JACKSON, is charged by indictment with the crimes of criminal possession of a forged instrument in the first degree (PL §170.30) (26 counts) and petit larceny (PL §155.25). 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 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 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.

II. 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]).

III. 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).

IV. Motion to Strike Identification Notice

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

V. 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 witnesses regarding observations of the defendant and that those witnesses previously identified the defendant in person shortly after the commission of the crime and from video surveillance. The defendant argues that the identification evidence should be suppressed because identification procedures were suggestive in nature. The People argue that the defendant's motion should be denied since the in-person identification was a show-up identification close in time and proximity to the commission of the crime. Furthermore, they argue, the remaining identification procedures were simply witnesses identifying the defendant from a surveillance recording, and therefore, are outside of the purview of CPL §710.30 .

The defendant's motion is granted insofar as a hearing shall be held immediately before trial as to whether the show-up identification which occurred shortly after the commission of the crime was unnecessarily suggestive (People v. Duuvon, 77 N.Y.2d 541, 571 N.E.2d 654 [1991]), whether the identifications from video surveillance were unduly suggestive, and, if so, whether an independent source exists for an in-court identification by any of the witness (People v. Pacquette, 17 N.Y.3d 87, 950 N.E.2d 489 [2011]; People v. McLemore, 264 A.D.2d 858, 696 N.Y.S.2d 464 [1999]).

VI. Motion to Suppress Statements

The defendant moves to suppress his noticed statement on the grounds that it was obtained in violation of his constitutional rights. Specifically, he argues that the statement was made involuntarily, without being given adequate Miranda warnings 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 statement was voluntarily made pursuant to preliminary, investigative questions and not the result of a custodial interrogation.

The motion is granted to the extent that a Huntley hearing shall be held prior to trial to determine whether the statement allegedly made by the defendant, which has been noticed by the People pursuant to CPL §710.30(1)(a), was 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 it was obtained in violation of the defendant's Fourth Amendment rights (see, Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248 [1979]).

VII. Motion to Suppress Tangible Evidence

The defendant moves to suppress all physical evidence recovered as a result of his arrest, arguing that the police lacked probable cause to arrest the defendant and therefore, any evidence which flowed from the improper police conduct should be suppressed. The People argue that the defendant's motion should be denied because the police possessed the requisite probable cause to arrest and subsequently search the defendant. Furthermore, they argue that any property recovered as a result of the search of the vehicle that the defendant was in at the time of his arrest is admissible because the vehicle could be searched 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 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 as a result of the arrest was lawful (see, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 [1961]).

VIII. Motion to Strike Prejudicial Language

The defendant moves to dismiss certain language from the indictment. Specifically, the defendant argues that the language, "... and against the peace and dignity of the People of the State of New York" should be stricken because it is irrelevant and potentially prejudicial.

The defendant's motion is denied, as the language he is seeking to strike "merely identified the defendant's acts as public, rather than private, wrongs," (People v. Gill, 164 A.D.2d 867, 867, 559 N.Y.S.2d 376 [1990]).

Dated: White Plains, New York

~~October~~, 2017
November 1,



HON. HELEN M. BLACKWOOD
Westchester County Court