

People v Jamison

2017 NY Slip Op 33053(U)

September 21, 2017

County Court, Westchester County

Docket Number: 17-0458-03

Judge: Barbara G. Zambelli

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COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

DECISION & ORDER

- against -

Indictment No.: 17-0458-03

WILLIE JAMES EDWARDS, A/K/A "MAGIC",
BYRON GAYNOR, A/K/A "BUZZY", GEORGE
JAMISON, BERNARD PEASE, A/K/A "BAE",

FILED

SEP 21 2017

Defendants.

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ZAMBELLI, J.

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant has been indicted for criminal sale of a controlled substance in the third degree and criminal possession of a controlled substance in the third degree allegedly committed on or about April 27, 2017 in the County of Westchester; defendant is also charged as acting in concert with his co-defendants to commit the crimes of conspiracy in the fourth degree to commit the crime of criminal sale of a controlled substance in the third degree, and conspiracy in the fourth degree to commit the crime of criminal possession of a controlled substance in the third degree allegedly committed on or about and between May 4, 2016 and May 3, 2017 in the County of Westchester. He now moves by notice of motion with supporting affirmation for omnibus relief¹. The People's response consists of

¹In his motion, defendant requested permission to extend his time to file a reply to the People's opposition to August 28, 2017. Before the Court ruled on that request, by letter from the People dated August 11, 2017, the People requested further time to respond to the defendant's motion and in turn requested that this defendant's time to reply be extended to August 28, 2017. The Court granted the request, as memorialized in the People's August 14, 2017 letter to the Court, thus rendering the request in defendant's motion moot. However, despite receiving an extension of time to file his reply, defendant never submitted any reply papers.

an affirmation in opposition, a memorandum of law and exhibits 1-5 (exhibit 5 is a compact disc) as well as the May 2, 2017 search warrant and supporting affidavit, which is an unnumbered exhibit. Upon consideration of these papers, as well as review of the grand jury minutes and exhibits and the consent discovery order entered in this case, the motion is disposed of as follows:

1. MOTION TO INSPECT/DISMISS/REDUCE

This application is granted to the extent that the Court has conducted an in camera inspection of the minutes of the grand jury proceedings. Upon review of the evidence presented, this Court finds that all counts were supported by sufficient evidence and that the instructions given were appropriate. There was no other infirmity which would warrant a dismissal of the indictment. Accordingly, that branch of the motion which seeks dismissal of the indictment is denied. While the defendant argues that the People failed to submit exculpatory information to the grand jury, he entirely fails to set forth what allegedly exculpatory information should have been presented. In any event, the People have wide discretion in presenting their case to a grand jury and do not have to present all evidence in their possession that is favorable to the accused (People v. Lancaster, 69 N.Y.2d 20, 25-26 (1986)). The People must present such exculpatory evidence only where it may entirely eliminate the need for the prosecution (Id.). Given the legally sufficient evidence which was presented to the grand jury, coupled with defendant's failure to allege any specific exculpatory information which was not presented, it cannot be said that the need for defendant's prosecution would have been entirely eliminated. The Court further finds no facts which would warrant releasing any portion of the minutes of the grand jury proceedings to the defense (CPL §210.30[3]).

2. MOTION TO STRIKE THE REFERENCE TO DEFENDANT'S ALLEGED ALIAS

Defendant moves to strike any reference to his alleged alias "Ty Born" from the indictment, arguing that the alias is not sufficiently related to the commission of the crimes herein to permit the People to refer to it. Defendant further argues that the inclusion of his alias prejudices him in that it would suggest to a jury that he is known to law enforcement officials by such alias and thus, that he has a criminal background. Defendant also requests an order barring the People from referring to defendant's alias. The People oppose the motion.

Defendant's motion is denied. The use of a defendant's nickname is highly probative of defendant's identity in this matter (see People v. Caver, 302 A.D.2d 604 (2d Dept. 2003); People v. Crowder, 2 A.D.3d 454 (2d Dept. 2003)). Moreover, it cannot be said that simply because defendant has a nickname, a jury would presume he has a criminal history, especially given that defendant's nickname is unrelated to any of the charges he faces hereunder (cf. People v. Carver, supra (upholding use of defendant's nickname "Bloody Bad Ass" in his trial for murder as probative to his identity); People v. Crowder, supra (upholding use of defendant's nickname "Killer" in his trial for murder as probative to his identity)).

3. MOTION TO SEVER

Defendant argues that he will be unduly prejudiced if he is tried jointly with his co-defendants because he is charged with only four counts in this 19 count indictment and submits that he and his co-defendants have antagonistic defenses and there will be Bruton issues. He argues that his co-defendants will not be bound by the Court's Sandoval ruling, which would prejudice him and would result in his co-defendants' attorneys essentially

serving as second prosecutors in this matter and thus requests that this Court apply its Sandoval ruling to the other defendants' counsels. However, as to the potential questioning of his co-defendants, defendant argues that to restrict his cross-examination would impair his right to confrontation and right to a fair trial. The People oppose the motion and argue that the charges were properly joined as all being part of the same criminal transaction and defendant's motion is premature given no Sandoval rulings have been made in this case. They also argue that defendant's claims are speculative and that a limiting instruction directing the jury to separately consider the proof as to each crime charged would eliminate any prejudice to defendant.

The defendant's claims are conclusory and do not rise to the level of the compelling reasons required to mandate severance at this time (see People v. Mahboubian, 74 NY2d 174). Defendant's motion is denied with leave to renew before the trial judge.

4. MOTION FOR A FURTHER BILL OF PARTICULARS

This motion is denied. The bill of particulars which was served pursuant to the consent order was sufficient to adequately inform the defendant of the substance of his alleged conduct and to enable him to prepare and conduct a defense (People v. Byrnes, 126 A.D.2d 735, 736; see also People v. Watts, 84 N.Y.2d 948; People v. Gargano, 222 A.D.2d 694; People v. Lopez, 175 A.D.2d 267). The information requested by the defendant need not be disclosed (People v. Sanchez, 278 A.D.2d 889).

5. MOTION TO CONTROVERT EAVESDROPPING WARRANTS, PEN REGISTER AND TRAP & TRACE AND TO SUPPRESS EVIDENCE OBTAINED PURSUANT TO SAID WARRANTS

Defendant seeks suppression of all evidence obtained by means of the eavesdropping warrants and their extensions and the GPS, pen registers and trap and

traces warrants/orders issued in this case (which warrants and supporting affidavits have all been provided to the defense with redactions which were approved by the Court pursuant to protective orders issued on June 22 and July 12, 2017). As to the eavesdropping warrants and their extensions, defendant alleges that the evidence should be suppressed because he submits that 1) there was no probable cause for their issuance, 2) that the People failed to demonstrate that they properly minimized the intrusion on defendant's communications, 3) that the People failed to demonstrate that "normal investigative procedures" were not sufficient in this case. As to the GPS warrants, pen registers and trap and trace, defendant argues that the orders authorizing them were not supported by probable cause. To the extent that the warrant applications indicate that a confidential informant was used, defendant argues that the warrant fails to comply with the Aguilar-Spinelli test. The People oppose the motion and argue, as an initial matter that defendant lacks standing to challenge the January 13, 2017 warrant issued for GPS, cell site information and historical call data information on his co-defendant Edwards phone. They argue that in any event, that the warrants were properly issued as demonstrated by the supporting affidavits which, they submit, set forth probable cause for their issuance, and further argue that the eavesdropping was properly conducted in accordance with those warrants.

Defendant's motion is denied. As to the January 13 warrant issued for GPS, cell site information and historical call data information on Edwards phone, defendant lacks standing to challenge the issuance of the same in that he lacks any expectation of privacy in his co-defendant's phone. In any event, the Court has reviewed all of the warrants for eavesdropping, GPS, pen registers and trap and traces and the supporting affidavits

therefor and upon the review of the four corners of the affidavits the Court finds that the warrants were supported by probable cause (see People v. Keyes, 291 AD2d 571 (2d Dept. 2002); People v. Iannello, 156 A.D.2d 469 (2d Dept. 1989), lv. denied, 75 N.Y.2d 920 (1990)). Moreover, to the extent confidential informants (CIs) were used, contrary to defendant's contention, the Aguilar - Spinelli test was met (see Aguilar v. Texas, 378 U.S. 108 (1964); Spinelli v. United States, 393 U.S. 410 (1969)) as the application for the warrants demonstrated both the reliability of the informant(s), and the basis of the informant(s)' knowledge. Additionally, probable cause supported the issuance of the warrant even without the CI(s)' statements, and in any event, the existence of CI-1 was confirmed by the fact that on five occasions, that person's calls to defendant were recorded; thus defendant's related request for a Darden hearing is also denied (People v. Crooks, 27 N.Y.3d 609, 613 (2016)). The Court further finds that the warrants were also issued, executed, and reported in accordance with all statutory requirements. A review of the eavesdropping, pen register and trap and trace warrant affidavits submitted by the Detective, assigned assistant(s) and the District Attorney himself, reveals that the issuing courts were apprised in detail of the purpose of the investigation, as well as how communications intercepted pursuant to the initial warrants led to the widening of the investigation to include defendant. The affidavits address in detail the inadequacy of traditional police tactics in obtaining information and how the sole reliance upon these traditional techniques could jeopardize the investigation. As to defendant's argument that the applications were insufficient because they state that no informant was "currently in position" to introduce an undercover officer to co-defendant Edwards, the affidavits specify why this is so. The affidavits set forth that, as an initial matter, proceeding with only the

CIs would also require their testimony against defendant at trial, and that the CIs have all expressed a fear for their physical well being if forced to do so. The affidavits further state while individual CIs may have had the ability to occasionally access some of the inner workings of co-defendant Edwards alleged drug trafficking conspiracy, no current CI had any knowledge of how many suppliers Edwards had or who they were, which was information that was able to be obtained through eavesdropping only. They also indicate that even if the police were to develop a new CI, either one who would willing give information or through cooperation stemming from an arrest, that it was reasonably unlikely that such a CI would be able to do more than purchase small amounts of drugs from Edwards, and, like the other CIs, would not have information regarding suppliers, stash houses or the precise details of the operation. Moreover, the affidavits detail that, even though the police and FBI were able to obtain some limited information regarding Edwards' operation through the CIs information and the pen register for defendant's phone, they were still unable to determine which phone numbers belonging to Edwards' suppliers, which was information that they could obtain only through eavesdropping. The affidavits also set forth that using an undercover would not be feasible, as an undercover would also likely not be able to obtain the needed details regarding the conspiracy, and further note that when an undercover was used for a drug purchase, Edwards attempted to have him sniff the drugs in his presence, although he ultimately relented upon the undercover's protest. Thus, the warrant applications made the kind of particularized showing that is necessary pursuant to the statute (see People v. Giraldo, 270 A.D.2d 97, 98 (1st Dept. 2000), lv. denied, 95 N.Y.2d 934 (2000)).

As to minimization, despite the fact that the defendant has been provided with every

call intercepted by the wire taps, he fails to offer any specifics as to his allegation that the calls were improperly recorded or that the eavesdropping was insufficiently minimized. His motion is summarily denied on that basis alone (People v. Griffin, 9 A.D.3d 841, 844 (4th Dept. 2004)). In any event, the warrant affidavits set forth that the warrant was to be executed in a manner designed to minimize the interception of non-relevant and privileged information and specifically provided that the Assistant District Attorneys assigned to the case would personally supervise the personnel involved, would maintain a daily log of information intercepted, would provide oral and written instruction in regard to proper minimization of calls, and make daily reports to insure minimization instructions were followed (see People v. Floyd, 41 N.Y.2d 245 (1976); People v. Adeola, 12 A.D.3d 452, 453 (2d Dept. 2004)). Accordingly, defendant's motion to suppress the evidence recovered pursuant to the eavesdropping warrants is denied.

To the extent that defendant seeks protection of the application for the protective orders which were issued, his motion is denied, as that would defeat the entire purpose of the protective order, which is, by its very nature, an ex parte application made for the purpose of limiting discovery to protect certain types of information (CPL §240.50).

6. MOTION TO CONTROVERT THE SEARCH WARRANT AND SUPPRESS PHYSICAL EVIDENCE

Defendant seeks suppression of the physical evidence recovered in this case on the grounds that he was illegally searched by the police officers who were acting without a warrant, consent or reasonable suspicion or probable cause that he had committed a crime. He also seeks suppression of the evidence recovered pursuant to the May 2, 2017 search warrant issued as to, inter alia, co-defendant Edwards' person, residence and a

safe therein, as well as the person of co-defendant Pease and his vehicle². Defendant submits that he was not engaged in any criminal activity at the time of or immediately prior to his arrest. The People oppose the motion and, as to the search warrant, argue that defendant lacks standing to challenge the same. They argue that in any event, probable cause is set forth for the warrant's issuance in the warrant affidavit. The People further argue that ample probable cause existed for the defendant's arrest and submit that any evidence recovered from defendant's person was properly recovered incident to his valid arrest.

As an initial matter, as to defendant's allegation that he was not provided a copy of the search warrant and supporting affidavit, such was provided to him by the People on July 12, 2017. In any event, defendant's motion to controvert the search warrant is denied as he has failed to assert any expectation of privacy in the persons, residences and vehicles of his co-defendants. However, as to any evidence recovered from defendant at the time of his arrest, defendant's motion is granted solely to the extent that a hearing will be held to determine whether any property seized from him on that date should be excluded as the product of an unlawful seizure or other violation of the defendant's rights (Dunaway v. New York, 442 U.S. 200 (1979); Mapp v. United States, 367 US 642; People v. Holmes, 81 NY2d 1056; People v. Selby, 220 AD2d 544).

7. MOTION TO PRECLUDE STATEMENTS AND IDENTIFICATION

The defendant moves in advance to preclude the People from introducing any statements at trial which were not noticed to him pursuant to CPL §710.30. Defendant

²Based upon the same affidavit, search warrants were also issued as to the persons, residences and/or vehicles of five additional individuals who are not involved in this case.

does not allege that the People have actually served any such notices outside of the statutory time frame. The defendant's motion is therefore denied as moot with leave to renew in the event that the People seek to serve such notices in the future.

8. MOTION TO SUPPRESS PRIOR BAD ACTS (SANDOVAL AND VENTIMIGLIA)

Granted on consent of the People to the extent that this Court directs that a hearing be held immediately prior to trial. Prior to the commencement of jury selection, the People will disclose to defendant all specific instances of his prior uncharged crimes and bad acts they expect to introduce at trial for impeachment purposes (CPL §240.43). Defendant must then sustain his burden of informing the Court of the prior convictions and misconduct which might unfairly affect him as a witness in his own behalf (People v. Matthews, 68 NY2d 118, 121-122). In the event the People seek to introduce defendant's prior bad acts on their direct case, the burden is on the People to seek a Ventimiglia hearing to determine the admissibility of such evidence (People v. Ventimiglia, 52 NY2d 350).

9. MOTION FOR EXCULPATORY INFORMATION

The People are reminded of the continuing obligation to provide exculpatory information to the defendant (Brady v. Maryland, 373 U.S. 83). Exculpatory information includes any information that would be "favorable to the defense, material either to guilt or punishment, or affecting the credibility of prosecution witnesses" (People v. Baxley, 84 NY2d 208, 213). The People are directed to disclose any such information to the defense. To the extent that defendant seeks disclosure of agreements between the People and witnesses, the application is granted upon the People's acknowledgment of their duty to disclose same (Giglio v United States, 405 US 150).

10. REQUEST FOR ADDITIONAL MOTIONS

The defendant's request for permission to make additional pretrial motions is denied. Additional motions will only be considered upon good cause shown pursuant to CPL §255.20(3).

11. REQUEST TO JOIN OTHER DEFENDANTS MOTIONS

Defendant's request to join the motions of his co-defendants is denied (see CPL §255.20).

This Decision constitutes the Order of the Court.

Dated: White Plains, New York
September 21, 2017



BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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