

People v Pease

2017 NY Slip Op 33054(U)

September 21, 2017

County Court, Westchester County

Docket Number: 17-0458-04

Judge: Barbara G. Zambelli

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This opinion is uncorrected and not selected for official publication.

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.: 17-0458-04

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.

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

-----X
ZAMBELLI, J.

The defendant has been indicted for 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 relief. The People's response consists of 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 FOR DISCOVERY AND INSPECTION

This application is granted to the limited extent of ordering that the People are to

provide the defendant with materials and information, the disclosure of which is required pursuant to the provisions of CPL §240.44 and §240.45. The defendant's demand for disclosure of items or information to which he is entitled pursuant to the provisions of CPL §240.20(1) (a) through (l) is granted upon the People's consent. The application is otherwise denied as it seeks items or information which are beyond the scope of discovery and the defendant has failed to show that such items are material to the preparation of his defense (CPL §240.40 [1][a]).

2. DEMAND FOR EXCULPATORY INFORMATION / GIGLIO / ROSARIO

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 N.Y.2d 208, 213). The People are directed to disclose any such information to the defense. Where a question exists as to whether a particular item should be disclosed, they are directed to submit the material or information to the Court, which will conduct an in camera examination to resolve the issue. 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). With regard to witness names and statements the defendant's application for same at this stage of the proceedings is denied. The People recognize their duty to comply with People v. Rosario, 9 N.Y.2d 286; CPL §240.44, §240.45.

3. 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. Contrary to defendant's argument, the quorum requirements were met and a sufficient number of grand jurors heard all of the evidence and voted the indictment. 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. 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]).

4. 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).

5. MOTION TO SUPPRESS / PRECLUDE STATEMENTS

Defendant moves to suppress and/or preclude his statements, arguing that they were the product of coercion, were taken in violation of his right to counsel, that he was unadvised of his constitutional rights and that he made no waiver of the same. In response, the People state that they are unaware of any statements made by defendant

and did not notice any. Defendant's motion is therefore denied as moot.

To the extent that defendant seeks to preclude the People from introducing any statements at trial which were not noticed to him pursuant to CPL §710.30, his motion is denied as moot with leave to renew in the event that the People seek to serve such notices in the future.

6. MOTION TO SUPPRESS PHYSICAL EVIDENCE

Defendant seeks suppression of the physical evidence¹ recovered in this case on the grounds that he was illegally arrested and 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 seized from his co-defendants, arguing that such evidence was seized in violation of their constitutional rights and without probable cause. The People oppose the motion and argue that it should be summarily denied for failure to allege facts in support thereof. They argue that, in any event, probable cause existed for defendant's arrest based upon police surveillance since March 2016 which confirmed that defendant's car was routinely used by he and his co-defendant's to transport heroin from the Bronx to White Plains and because intercepted calls over co-defendant Edwards phone revealed that in April 2016, defendant purchased several bundles of heroin from the supplier in the Bronx for co-defendant Edwards and himself and that defendant personally contacted the supplier on several occasions.

To the extent that defendant seeks to suppress evidence recovered from his co-defendants, his motion is denied, as he lacks standing to challenge the recovery of this

¹Defendant does not move to challenge the issuance of the eavesdropping warrants, GPS, trap and traces and pen register orders issued in this matter.


evidence. As to defendant's motion to suppress evidence recovered from his person at the time of his arrest, defendant's motion is denied as no sworn allegations of fact whatsoever are set forth in support of his conclusory statement that the police lacked probable cause for his arrest. Despite having sufficient information regarding the "factual predicate" for the arrest, defendant failed to specifically dispute the factual allegations against him and merely alleges that his constitutional rights were violated. Accordingly, his motion on this ground is summarily denied (People v. France, 12 N.Y.3d 790 (2009); People v. Jones, 95 N.Y.2d 721; People v. Mendoza, *supra*; People v. Kemp, 262 A.D.2d 333; People v. Anderson, 253 A.D.2d 636; CPL §710.60[3][b]; see also People v. Scully, 14 N.Y.3d 861 (2010)).

As to the evidence recovered pursuant to the March 2, 2017 search warrant issued for defendant's person and vehicle (which warrant and supporting affidavit have been produced to the defense), as well as for, *inter alia*, co-defendant Edwards' person, residence and a safe therein², defendant's motion is denied. This Court has reviewed the warrant and the supporting affidavit therefor and upon the review of the four corners of the affidavit the Court finds that the warrant was 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)).

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.

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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