

**People v Edwards**

2017 NY Slip Op 33055(U)

September 21, 2017

County Court, Westchester County

Docket Number: 17-0458-01

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.: 17-0458-01

**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

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ZAMBELLI, J.

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 May 4, 2016 in the County of Westchester; 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 February 17, 2017 in the County of Westchester; 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 1, 2017 in the County of Westchester; criminal sale of a controlled substance in the third degree (2 counts) and criminal possession of a controlled substance in the third degree (2 counts) allegedly committed on or about April 2, 2017 in the County of Westchester; 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 10, 2017 in the County of Westchester; 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-defendant Gaynor to commit criminal possession of a controlled substance in the third degree allegedly committed on or about March 17, 2017 in the County of Westchester and is further 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 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 / BRADY MATERIAL

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]).

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. 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).

## 2. 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. 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]).

## 3. MOTION TO SUPPRESS PHYSICAL EVIDENCE / FOR DARDEN HEARING

Defendant seeks suppression of all of the physical evidence in this case, including that obtained from the eavesdropping warrants, the GPS, pen register and trap and trace

warrants/orders and the search warrant issued for defendant's person, residence and safe, that on the grounds that the warrants are not supported by sufficient probable cause. (Defendant is admittedly in possession of all of the warrants and supporting affidavits). Defendant also argues that at no time did he validly consent to a search of his person or property or to the removal of any property. He also moves for the production of the informants in this matter, or for a Darden hearing.

The People oppose the motion. They argue that it should be summarily denied for failure to allege facts in support thereof. They argue that, in any event, probable cause for the issuance of all the warrants is set forth within the warrant affidavits themselves. As to the production of informants, the People argue that a Darden hearing is unnecessary, as there is sufficient evidence to establish probable cause apart from the information provided by any informant. The People further argue that the point of a Darden hearing is to prove the existence of the informant and that in this case, on five occasions when CI-1 called defendant's phone, the call was recorded and the officer recognized defendant's voice, which calls, the People submit, constitute extrinsic proof of the informant's existence.

Defendant's motion to suppress physical evidence is denied. As to the May 2, 2017 search warrant issued for, inter alia, defendant's person, residence and a safe therein and the person and vehicle of co-defendant Pease<sup>1</sup>, 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,

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<sup>1</sup>Based 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.

75 N.Y.2d 920 (1990)).

As to the warrants issued for GPS, cell site information and historical call data information on defendant's phone and the eavesdropping warrants and their extensions, the Court has reviewed all of the warrants 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, supra; People v. Iannello, supra). Moreover, to the extent confidential informants (CIs) were used, 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 warrants 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 and the applications made the kind of particularized showing that is necessary pursuant to the statute (see People v. Giraldo, 270 A.D.2d 97, 98 (1<sup>st</sup> Dept. 2000), lv. denied, 95 N.Y.2d 934 (2000)). Accordingly, defendant's motion to suppress the physical evidence recovered in this matter is denied.

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

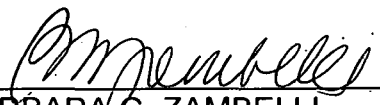
they expect to introduce at trial for impeachment purposes (CPL §240.43). Defendant must then sustain his burden of informing the Court of the prior convictions and misconduct which might unfairly affect him as a witness in his own behalf (People v. Matthews, 68 NY2d 118, 121-122). In the event the People 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. 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).

This Decision constitutes the Order of the Court.

Dated: White Plains, New York  
September 21, 2017

  
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BARBARA G. ZAMBELLI  
COUNTY COURT JUDGE

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