

People v Diaz

2017 NY Slip Op 33056(U)

November 8, 2017

County Court, Westchester County

Docket Number: 17-0454

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.: 17-0454

FILED 

RONNIE DIAZ,

NOV 09 2017

TIMOTHY C. IDONI
COUNTY CLERK
County of WESTCHESTER

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Defendant, RONNIE DIAZ, has been indicted with the crimes of driving while intoxicated, as a felony.(VTL §1192[2]), driving while intoxicated, as a felony (VTL §1192[3]), and speeding (VTL §1180[b]). 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

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 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 the law, 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 finds that the release of the grand jury minutes or any portion thereof to the defendant is unwarranted since the defendant has not 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]).

II. Motion for Discovery and a Bill of Particulars and to Produce Brady Material

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]).

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.

III. Motion to Suppress Breath Test Results

The defendant moves to suppress his test results from the Alcotest 9510 "because of the actual test results which reflect that the Alcotest 9510 registered a relatively low sample." (Defendant's Memorandum of Law, p. 5). In the alternative, the defendant asks for a Frye hearing to determine the admissibility of the test results. The People argue that the motion to

suppress should be denied because the test was conducted on an instrument that has already been determined to be reliable, and because the instrument's maintenance records, which have been provided to the defendant, indicate that the instrument was in proper working order at the time of the test. In any event, the People argue, the defendant has failed to raise any grounds for suppression.

The defendant's motion to suppress the breath test results is denied. The defendant's own motion indicates that the "Alcotest 9510 is a qualified evidential breath testing device" and "is assumed to meet the criteria of 10 NYCRR 59.4(a)," (Id, at p. 4). Therefore, the instrument has already been established to be a reliable instrument, thereby obviating the need to test its reliability in the current case (see, People v. Hampe, 181 A.D.2d 238, 585 N.Y.S.2d 861 [1992]). Furthermore, the trial court will be in the best position to determine the admissibility of the test results when and if the People lay the proper foundation to admit those results into evidence at trial.

IV. 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 pursuant to a custodial interrogation without the defendant first being advised of his Miranda rights. The People argue that the motion should be denied because the defendant's statements were made in response to preliminary investigative questioning, and therefore, Miranda warnings were not required.

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]).

V. 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).

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

Dated: White Plains, New York
November 8, 2017



HON. HELEN M. BLACKWOOD
Westchester County Court

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