

People v Brown

2017 NY Slip Op 33060(U)

December 6, 2017

County Court, Westchester County

Docket Number: 17-0658-01-02-03

Judge: Helen M. Blackwood

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This opinion is uncorrected and not selected for official publication.

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.: 17-0658-01-02-03

HEBA SELEMAN, CORRIE BROWN, and
OMAR HAMAD,

Defendants

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FILED
DEC 11 2017
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, CORRIE BROWN, has been indicted with aiding, abetting, and acting in concert with his co-defendants, HEBA SELEMAN and OMAR HAMAD, for the crimes of criminal possession of a forgery device (PL §170.40), criminal possession of a forged instrument in the second degree (PL §170.25) (six counts), identity theft in the first degree (PL §190.80[1]) (two counts), identity theft in the first degree (PL §190.80[3]), grand larceny in the third degree (PL §155.35[3]), criminal possession of a forged instrument in the third degree (PL §165.50) (three counts), scheme to defraud in the first degree (PL §190.65[1][b]), unlawful possession of personal identification information in the third degree (PL §190.81) (five counts), identity theft in the first degree (PL §190.80[2]), identity theft in the second degree (PL §190.79[3]), and grand larceny in the fourth degree (PL §155.30[1]). The defendant has filed a notice of motion and 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 [2003], quoting People v. Carroll, 93 N.Y.2d 564 [1999]; see also, People v. Wisey, 133 A.D.3d 799 [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 (see, People v. Calbud, 49 N.Y.2d 398, 402 N.E.2d 1140 [1980]), that a quorum was present, and that there was nothing defective about the proceedings so as to render the integrity of the proceedings impaired (People v. Darby, 75 N.Y.2d 449, 553 N.E.2d 974 [1990]).

Finally, the court does not find that the release of the grand jury minutes or any portion thereof to the defendant is necessary, nor has the defendant 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 to Suppress Identification

The defendant moves to suppress all identification evidence, arguing that he was identified after being arrested without probable cause.

The People argue that the defendant's motion should be denied as moot since the People have not given notice of any identification evidence pursuant to CPL §710.30.

As no such notices have been filed with respect to this defendant, his motion is denied as moot.

III. Motion to Suppress Physical Evidence

The defendant moves to suppress the his cellular telephone recovered in this case, arguing that he was arrested without probable cause. Furthermore, he argues that any evidence recovered as a result of the search warrant issued for the phone must be suppressed since the police did not present reliable information to the court in order to obtain the warrant.

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 any property on his person subsequent to that arrest was lawful (see, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 [1961]).

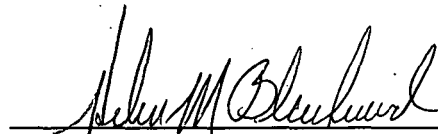
Finally, the court has reviewed the affidavit in support of the search warrant issued for the defendant's phone and finds that the warrant is sufficiently supported by probable cause and was issued in accordance with CPL §690.

IV. 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 [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 (1981).

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

Dated: White Plains, New York
December 6, 2017



HON. HELEN M. BLACKWOOD
Westchester County Court