

**People v Hamad**

2017 NY Slip Op 33061(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

-----X

**FILED**

**DEC 11 2017**

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Defendant, OMAR HAMAD, has been indicted with aiding, abetting, and acting in concert with his co-defendants, CORRIE BROWN and HEBA SELEMAN, 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 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]) and that a quorum was present.

II. Motion for Discovery and Inspection and 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 her 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 *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]).

### III. Motion to Suppress Statements

The defendant moves for a Huntley hearing to determine the admissibility of the statements that the People have noticed pursuant to CPL §710.30. Specifically, he alleges that the statements were made involuntarily, without the benefit of counsel, without the defendant

first having waived his Miranda rights, and after the defendant was arrested without probable cause.

The People consent to a Huntley hearing and contend that the police had probable cause to arrest the defendant and that the statements were voluntarily made.

The court finds that the defendant has failed to raise sufficient allegations of fact with respect to his claim that his Sixth Amendment rights were violated (see, People v. Rosa, 65 N.Y.2d 380482 N.E.2d 21, [1985]). However, the defendant's motion is granted to the extent that a Huntley hearing shall be held prior to trial to determine whether the statements allegedly made by him, 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]).

#### IV: Motion to Suppress Physical Evidence

In his original omnibus motion, the defendant moves to suppress "any property allegedly recovered from, on or about defendant as the product of an illegal search and seizure," (Defendant's Affirmation, ¶21). Specifically, defendant refers to that property as being his iPhone, keys, laptop computer, and knapsack. The defendant argues that these items should be suppressed because the police did not have the requisite probable cause to arrest the defendant and subsequently search him and seize his property. After the People submitted their answer to the defendant's omnibus motion, the defendant submitted another notice of motion and affirmation seeking the suppression of any evidence seized as a result of his arrest, as well as any

evidence obtained as a result of the search of his cellular telephone. The court has treated that motion as a reply, rather than a newly filed motion.

The People consent to a Mapp hearing and argue that the hearing should be limited to determining whether or not the stop of the bus that the defendant was riding on was lawful. The People argue that the defendant lacks standing to challenge the seizure of the property found on the bus. Finally, they argue that the search of the defendant's cellular telephone was pursuant to a lawfully issued search 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]), whether the defendant has standing to challenge the recovery of the property on the bus (see, People v. Burton, 6 N.Y.3d 454, 848 N.E.2d 454 [2006]), and if so, whether the search and seizure of that property was lawful (see, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 [1961]).

Finally, the court has had the opportunity to review the search warrant issued for the search of the defendant's cellular telephone and its supporting affidavit. After such review, the court finds that the warrant was supported by probable cause and issued in accordance with article 690 of the Criminal Procedure Law.

#### 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

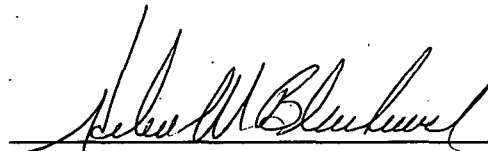
the defendant all specific instances of his prior uncharged crimes and bad acts they expect to introduce at trial for impeachment purposes in accordance with CPL §240.43. In response, the defendant must sustain his burden of showing the prior convictions and bad acts which will unduly prejudice him as a witness on his own behalf (People v. Matthews, 68 N.Y.2d 118 [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).

VI. Motion for Leave to File Additional Motions

The motion is denied. Should the defendant bring further motions for omnibus relief, he must do so by order to show cause setting forth the reasons why his motion was not and could not be brought in accordance with CPL §255.20.

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

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