People v Lane
2017 NY Slip Op 33074(U)
November 29, 2017
County Court, Westchester County
Docket Number: 17-0769-01-02
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

DECISION and ORDER

-against-

Indictment No.: 17-0769-01-02

SIDNEY LANE and GARY JENNINGS,

Defendant

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Defendant, SIDNEY LANE, has been indicted by the Westchester County Grand Jury and is charged with acting in concert with his co-defendant GARY JENNINGS, with the crimes of burglary in the first degree (PL §140.30[02]) (two counts), burglary in the first degree (PL §140.30[03]) (two counts), burglary in the first degree (PL §140.30[04]) (two counts), attempted robbery in the first degree (PL §110/160.15[3]), attempted robbery in the first degree (PL §110/160.15[4]), and assault in the second degree (PL §1120.05[6]) (two counts). Co-defendant GARY JENNINGS is charged with an additional count of tampering with physical evidence (PL §215.40[2]). The defendant has filed a notice of motion, along with a 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 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 (see, People v. Calbud, 49 N.Y.2d 398, 402 N.E.2d 1140 [1980]) and that a quorum was present.

However, after reviewing the grand jury minutes, as well as the indictment and the bill of particulars, the court finds that counts one and two of the indictment are multiplicitous, as they charge the same crime, that is, that the defendant unlawfully entered a dwelling with intent to commit a crime therein, and while in the dwelling, caused physical injury to a non-participant in the crime (PL §14030[2]). "Where . . . there is but one unlawful entry and the indictment charges two counts of burglary in the first degree under the same subdivision of the statute, defendant may be convicted on only one count of burglary," (People v. Griswold, 174 A.D.2d

1038, 1038, 572 N.Y.S.2d 202 [4th Dept. 1991]; see also, People v. Perrin, 56 A.D.2d 957, 392 N.Y.S.2d 723 [3d Dept. 1977]). As such, count two of the indictment is dismissed.

Similarly, counts three and four of the indictment both charge the defendant with entering unlawfully in a dwelling with intent to commit a crime therein, and while in the dwelling, using or threatening the immediate use of a dangerous instrument (PL §14030[3]). Once again, these two counts are multiplicitous as they charge the defendant with the same crime (see, People v. Aarons, 296 A.D.2d 508, 745 N.Y.S.2d 487 [2d Dept. 2002]). Accordingly, count four of the indictment is dismissed.

Finally, counts five and six of the indictment charge the defendant with entering unlawfully in a dwelling with intent to commit a crime therein, and while in the dwelling, being armed with a deadly weapon (PL §140.30[1]). Since both counts charge the defendant with the same unlawful entry, the defendant can be charged with only one count under this particular subdivision of section 140.30 of the Penal Law (Id.). Therefore, count six of the indictment is dismissed.

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 for Discovery, Brady Material, and Bill of Particulars

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, 83 S.Ct 1194 (1963) and Giglio v. United States, 405 U.S. 150, 92 S.Ct 763 (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, 173 N.E.2d 881 [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, 646 N.Y.S.2d 866 [1996]; Matter of Catterson v. Rohl, 202 A.D.2d 420, 673 N.Y.S.2d 1005 [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 Strike Scandalous Matter

The defendant moves to dismiss certain language from the indictment. Specifically, the defendant argues that the language, " . . . and against the peace and dignity of the People of the State of New York" should be stricken because it is irrelevant and potentially prejudicial.

The defendant's motion is denied, as the language he is seeking to strike "merely identified the defendant's acts as public, rather than private, wrongs," (People v. Gill, 164 A.D.2d 867, 867, 559 N.Y.S.2d 376 [1990]).

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, 506 N.Y.S.2d 149 [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).

V. Motion to Conduct Hearings Twenty Days Prior to Trial

The defendant's motion to conduct pre-trial hearings at least two weeks prior to trial is denied. The hearings will be scheduled at a time that is convenient to the court based upon all of its other cases and obligations.

VI. Motion for Tape Audibility Hearing

The defendant moves for "[a]n order directing that there be an audibility or transcript hearing with respect to any tape recording the district attorney intends to use at trial," (Attorney Affirmation, ¶18).

The People respond by indicating that they have not noticed any of the defendant's recorded statements, nor do they intend to use any in their direct case. As such, the defendant's motion is denied as moot.

VII. 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. The defendant's motion is denied as being moot, since the People have not given notice of their intention to use as evidence any of the defendant's statements pursuant to CPL §710.30.

However, if the People seek to use the defendant's statements to impeach his testimony should he elect to testify at trial, they must first demonstrate that the statements were voluntarily made (Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408 [1978]; People v. Maerling, 64 N.Y.2d 134; 474 N.E.2d 231 [1984]).

VIII. Motion to Suppress Evidence of Identification

The defendant moves for a Wade hearing to determine whether any identification procedures employed by the police were coercive or improperly suggestive.

The People consent to a Wade hearing, and contend that after the hearing, the court will find that the photographic arrays utilized by the police were not unduly suggestive, and that the all of the witnesses that engaged in identification procedures have an independent basis on which to identify the defendant in court.

The defendant's motion is granted to the extent that a hearing is ordered prior to trial to determine whether or not the noticed identification procedures were conducted in an unduly suggestive manner so as to render any in-court identification tainted (see, U.S. v. Wade, 388 U.S. 218, 87 S.Ct 1926 [1967]). Should the hearing court determine that any of the identification procedures were so suggestive, then the court shall hold a hearing to determine whether or not there was an independent source for the witness' in-court identification (People v. Pacquette, 17 N.Y.3d 87, 950 N.E.2d 489 [2011]; People v. McLemore, 264 A.D.2d 858, 696 N.Y.S.2d 464 [1999]).

IX. Motion to Suppress Evidence

The defendant moves to suppress all physical evidence obtained by the police in this case, arguing that the police lacked probable cause to arrest the defendant and seize his property incident to that arrest, and contending that the police seized personal property from the defendant's "home and/or place of business . . . without a warrant," (Attorney Affirmation, ¶22).

The People argue that the defendant's motion should be denied because the police possessed the requisite probable cause to arrest the defendant. Furthermore, the People argue

that the evidence recovered from the defendant's home was done so pursuant to a lawfully issued search warrant. Finally, they argue, that the defendant lacks standing to challenge the admissibility of any physical evidence recovered from his co-defendant's person, vehicle and place of employment.

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]).

The court has reviewed the affidavit in support of the search warrant issued for the defendant's home and finds that it is supported by probable cause and was issued in accordance with the provisions of article 690 of the Criminal Procedure Law.

X. 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
November 29, 2017

HON. HELEN M. BLACKWOOD
Westchester County Court

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