

People v White

2018 NY Slip Op 33925(U)

September 12, 2018

County Court, Westchester County

Docket Number: 18-00373-03

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 9-13 2018
WESTCHESTER

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER
Indictment No.: 18-00373-03

TASJAWN WHITE, PIERRE MENSAH,
and PHILLIP SPEARMAN,

FILED 

Defendants.

-----X SEP 18 2018

MINIHAN, J.

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, PHILLIP SPEARMAN, is charged by Westchester County Indictment No. 18-00373-03 with Criminal Possession of a Weapon in the Third Degree (Penal Law § 265.02[01]), Criminal Possession of a Firearm (Penal Law § 265.01[b]), Hindering Prosecution in the Second Degree (Penal Law § 205.60) (two counts), Tampering with Physical Evidence (Penal Law § 215.40[02]) (two counts), and Criminal Possession of Stolen Property in the Fourth Degree (Penal Law § 165.45[02]).

The same indictment charges codefendant Tasjawn White, individually, with Murder in the First Degree (Penal Law § 125.27[i][a][vii]) and charges codefendants Tasjawn White and Pierre Mensah, acting in concert, with Murder in the Second Degree (Penal Law § 125.25[01]), Murder in the Second Degree (Penal Law § 125.25[03]), Attempted Murder in the Second Degree (Penal Law § § 110, 125.25[01]) (two counts), Attempted Murder in the Second Degree (Penal Law § § 110, 125.25[03]) (two counts), Assault in the First Degree (Penal Law § 120.10[01]), Attempted Assault in the First Degree (Penal Law § § 110, 120.10[01]), Attempted Robbery in the First Degree (Penal Law § § 110, 160.15[02]), Attempted Robbery in the First Degree (Penal Law § § 110, 160.15[01]), Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03[1][b]) (two counts), Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03[03]) (two counts), Robbery in the First Degree (Penal Law § 160.15[02]), Robbery in the First Degree (Penal Law § 160.15[04]), Grand Larceny in the Fourth Degree (Penal Law § 155.30[05]), Grand Larceny in the Fourth Degree (Penal Law § 155.30[04]), and Criminal Possession of Stolen Property in the Fourth Degree (Penal Law § 165.45[02]).

Defendant Spearman has filed an omnibus motion consisting of a Notice of Motion and an Affirmation in Support, with exhibits. In response thereto, the People have filed an Affirmation in Opposition together with a Memorandum of Law, with exhibits. Upon consideration of these papers, and the Consent Discovery Order entered in this case, this Court disposes of this motion as follows:

A.

MOTION to DISMISS the ACCUSATORY INSTRUMENT

Defendant's motion to dismiss the charges for "facial insufficiency", citing CPL 170.30, 100.40, and 100.15, is misplaced as those CPL provisions apply only to accusatory instruments filed in a local criminal court. Here, defendant is charged by an indictment filed in County Court.

To the extent that defendant is trying to challenge the "facial sufficiency" of the indictment, the claim fails. The indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's commission thereof with sufficient precision as to clearly apprise the defendant of the conduct which is the subject of the indictment (CPL 200.50). The indictment charges each and every element of the crimes, and alleges that the defendant committed the acts which constitute the crimes at a specified place during a specified time period and, therefore, is sufficient on its face (*see People v Cohen*, 52 NY2d 584 [1981]; *People v Iannone*, 45 NY2d 589 [1978]).

B.

MOTION for DISCOVERY, DISCLOSURE and INSPECTION
CPL ARTICLE 240

The parties have entered into a stipulation by way of a Consent Discovery Order consenting to the enumerated discovery in this case. Defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 240. If there any further items discoverable pursuant to Criminal Procedure Law Article 240 which have not been provided to defendant pursuant to the Consent Discovery Order, they are to be provided forthwith.

As to defendant's demand for exculpatory material, the People have acknowledged their continuing duty to disclose exculpatory material at the earliest possible date upon its discovery (*see Brady v Maryland*, 373 US 83 [1963]; *Giglio v United States*, 405 US 150 [1972]). If the People are or become aware of any material which is arguably exculpatory and they are not willing to consent to its disclosure to defendant, they are directed to immediately disclose such material to the Court to permit an *in camera* inspection and determination as to whether such must be disclosed to defendant.

As to the defendant's demand for scientific related discovery, the People have acknowledged their continuing duty to disclose any written report or document concerning a physical or mental examination or test that the People intend to introduce, or the person who created them, at trial pursuant to CPL 240.20 (1)(c).

Except to the extent that the defendant's application has been specifically granted herein, it is otherwise denied as seeking material or information beyond the scope of discovery (*see People v Colavito*, 87 NY2d 423 [1996]; *Matter of Brown v Grosso*, 285 AD2d 642 [2d Dept

2001]; *Matter of Brown v Appelman*, 241 AD2d 279 [2d Dept 1998]; *Matter of Catterson v Jones*, 229 AD2d 435 [2d Dept 1996]; *Matter of Catterson v Rohl*, 202 AD2d 420 [2d Dept 1994]).

C.

MOTION to SUPPRESS PHYSICAL EVIDENCE

Defendant's motion to suppress the physical evidence seized from inside 28 Grove Street, specifically the gun and the contents of a bookbag, is denied. The search at 28 Grove Street was conducted pursuant to a search warrant order issued by this Court on March 27, 2018. The results of a search conducted pursuant to a facially sufficient search warrant are not subject to a suppression hearing (*People v Arnau*, 58 NY2d 27 [1982]). Here, the search warrant was adequately supported by probable cause.

While defendant also argues for the suppression of physical evidence seized from his person at the time of his allegedly unlawful arrest, the People point out that no physical evidence was taken from defendant pursuant to his arrest; thus, defendant's claim is without merit.

D.

MOTION to SUPPRESS IDENTIFICATION TESTIMONY CPL 710

Defendant moves to dismiss a noticed identification of him made during the viewing of a videotape at the grand jury presentation. The People argue that the videotape was of the actual crime in progress, that it was not an identification procedure and there was no risk of misidentification, and that even if it was an identification procedure it was not unduly suggestive. This motion is granted to the limited extent of conducting a hearing prior to trial to determine whether the identifying witness had a sufficient prior familiarity with defendant as to render the witness impervious to police suggestion (*see People v Rodriguez*, 79 NY 2d 445 [1992]). If the Court finds that there was not a sufficient prior familiarity with defendant on the part of the witness, the Court will then consider whether or not the noticed identification was unduly suggestive (*United States v Wade*, 388 US 218 [1967]). Specifically, the Court shall determine whether the identification was so improperly suggestive as to taint any in-court identification. If the identification is found to be unduly suggestive, the Court shall then go on to consider whether the People have proven by clear and convincing evidence that an independent source exists for such witness' proposed in-court identification.

E.

MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

Defendant has moved for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into the defendant's prior criminal convictions, prior uncharged criminal, vicious or immoral conduct. The People have consented to a *Sandoval* hearing. Accordingly, it is ordered that immediately prior to trial a hearing shall be conducted pursuant to *People v Sandoval* (34 NY2d 371[1974]).

At said hearing, the People shall be required to notify the defendant of all specific instances of his criminal, prior uncharged criminal, vicious or immoral conduct of which they have knowledge and which they intend to use in an attempt to impeach the defendant's credibility if he elects to testify at trial (CPL 240.43). Also at the hearing, the defendant shall bear the burden of identifying any instances of his prior misconduct that he submits the People should not be permitted to use to impeach his credibility. The defendant shall be required to identify the basis of his belief that each event or incident may be unduly prejudicial to his ability to testify as a witness on his own behalf (*see People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

Defendant's application for a hearing pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]), is denied as premature since the People have not indicated an intention to use evidence of any prior bad act or uncharged crimes of the defendant during its case in chief (*see People v Molineaux*, 168 NY 264 [1901]). If the People move to introduce such evidence, the defendant may renew this aspect of his motion.

F.

MOTION to SUPPRESS NOTICED STATEMENTS

Defendant moves to suppress two noticed statements on the grounds that they were taken in violation of his Fourth Amendment rights, and were made involuntarily and without any *Miranda* warnings. The People argue that defendant's statements were made before his arrest, when he was not in custody, and that a hearing will show that the statements were voluntarily made. This branch of the defendant's motion seeking to suppress noticed statements on the grounds that they were unconstitutionally obtained is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL 710.30 (1)(a), were involuntarily made by the defendant within the meaning of CPL 60.45 (*see* CPL 710.20(3); CPL 710.60[3][b]; *People v Weaver*, 49 NY2d 1012 [1980]), obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

G.

MOTION to CONTROVERT the SEARCH WARRANT

Defendant's motion to controvert the search warrant pertaining, in relevant part, to 28 Grove Street is denied. Upon review of the four corners of the search warrant affidavit, the search warrant order was adequately supported by probable cause (*see People v Keves*, 291 AD2d 571 [2d Dept 2002]; *see generally People v Badilla*, 130 AD3d 744 [2d Dept 2015]; *People v Elysee*, 49 AD3d 33 [2d Dept 2007]). Defendant's request to compel the People to turn over the entire search warrant affidavit is denied. Pursuant to this Court's protective order dated August 9, 2018 (*see* CPL 240.50), the People were directed to turn over the affidavit in redacted form. On August 20, 2018, as part of the consent discovery order, the People turned over that redacted affidavit.

H.

MOTION to CONDUCT PRE-TRIAL HEARINGS
TWENTY DAYS in ADVANCE of TRIAL

The defendant's motion to schedule pre-trial hearings twenty days prior to trial is denied. The hearings will be scheduled at a time that is convenient to the Court, upon due consideration of all of its other cases and obligations.

I.

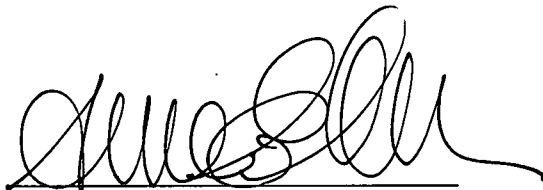
MOTION for LEAVE to FILE FUTURE MOTIONS

This motion is denied. Should defendant intend to bring further motions for omnibus relief, he must do so by order to show cause setting forth reasons as to why his motion was not and could not have been brought in conformity with CPL 255.20.

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

Dated: White Plains, New York
September 4, 2018

2



Honorable Anne E. Minihan
Acting Supreme Court Justice

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