People v Garcia

2020 NY Slip Op 34776(U)

July 28, 2020

County Court, Westchester County

Docket Number: Indictment No. 19-488

Judge: Anne E. Minihan

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FILED
AND ENTERED
ON 7-28-2020
WESTCHESTER

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

JASON GARCIA A/K/A "G SHINE" A/K/A "MECCA-J" and DAMIEN RICKARD A/K/A DAMIEN RICHARDSON A/K/A SOLDIER,

Defendants.

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DECISION & ORDER
Indictment No. 19-488

FILED
JUL 28 2020
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

MINIHAN, J.

By the instant indictment, Westchester County Indictment No. 19-488, defendants Jason Garcia and Damien Rickard, along with codefendants, are charged with attempted murder in the first degree (Penal Law §§ 110/125.27[1][a][v]), conspiracy in the second degree (Penal Law § 105.15), and criminal possession of a weapon in the second degree (Penal Law § 265.03[3]), relating to their alleged attempt and agreement to kill Sheila Holley, a witness to a shooting, to prevent Holley from testifying against them in a criminal proceeding. Defendant Garcia is also charged under the instant indictment with promoting prison contraband in the first degree (Penal Law § 205.25[2]), relating to his alleged possession of a contraband cell phone in jail.

This order addresses the People's motion pursuant to *People v Molineux* (164 NY 264) and *People v Ventimiglia* (52 NY2d 350), and the defendant's cross motions.

People's Motion

By the present application, the People move pursuant to *People v Molineux* (164 NY 264) and *People v Ventimiglia* (52 NY2d 350) to introduce in their case-in-chief evidence of uncharged crimes and prior bad acts of the defendants, Garcia and Rickard, to establish motive, complete the narrative, and assist the jury in understanding the crimes charged herein. Specifically, the People seek to introduce the following: (1) testimony from Sheila Holley and others as to the December 10, 2016 shooting, Holley's testimony as to witnessing the shooting and cooperating with law enforcement despite Garcia's intimidation efforts, and testimony that Holley's cooperation led to the prosecution of Garcia and Brown for the shooting (Ind. No. 18-810); (2) testimony from Holley and Kristepher Daniels as to defendants' gang membership in the G-Shine Bloods, and defendant Garcia's high-ranking position in that gang; (3) testimony from Daniels that Garcia solicited him to kill Holley in August 2018 and that Daniels refused to follow through with it; (5) testimony from Holley and Daniels about their understanding of the consequences for G-Shine members who cooperate with law enforcement; and (6) testimony as to the status of the December 10, 2016 shooting case (Ind. No. 18-810) throughout the course of the conspiracy charged herein.

Defendants Garcia and Rickard oppose the motion arguing that permitting such evidence would be more prejudicial than probative, in that the jury, once faced with such evidence, would not be able to

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separately consider the present charges. Defendant Garcia also argues that since he will be tried with codefendant Rickard the evidence as to Rickard's "prior uncharged crimes and bad acts" will prejudice his ability to receive a fair trial, by creating a "guilt by association" presumption or inference. Defendant Rickard argues that the proffered *Molineux* evidence relates predominately to codefendant Garcia and that its introduction would cause him extreme prejudice and make it impossible to receive a fair trial.

The court grants the People's application to offer in their case-in-chief evidence that Holley witnessed the December 10, 2016 shooting and that her cooperation with law enforcement, despite Garcia's intimidation efforts, led to the prosecution of Garcia and Matthew Brown for that shooting (Ind. No. 18-810) and testimony as to the status of the December 10, 2016 shooting case (Ind. No. 18-810) throughout the course of the conspiracy charged herein, finding such evidence to be admissible under *Molineux*. Pursuant to the well-established *Molineux* rule, "evidence of a defendant's uncharged crimes or prior misconduct is not admissible if it cannot logically be connected to some specific material issue in the case, and tends only to demonstrate the defendant's propensity to commit the crime charged" (*People v Cass*, 18 NY3d 553, 559 [2012]; *see People v Alvino*, 71 NY2d 233, 241 [1987]; *People v Allweiss*, 48 NY2d 40 [1979]; *People v Molineux*, 168 NY 264, 291 [1901]). This "rule reflects the importance of an accused being judged only on relevant, probative evidence, rather than on the basis of propensity to commit crime" (*People v Gillyard*, 13 NY3d 351, 355-356 [2009];), and exists to avoid the danger that the jury will "misfocus . . . on defendant's prior crimes" (*People v Rojas*, 97 NY2d 32, 36-37 [2001]) and will, despite the lack of convincing evidence, "find against [the defendant] because his conduct generally merits punishment" (*People v Allweiss*, 48 NY2d at 46).

Where, however, relevant evidence of uncharged crimes has a bearing upon a material aspect of the People's case, other than the defendant's general propensity toward criminality, the probative value may justify its admission if the evidence is not unduly prejudicial (*People v Molineux*, 168 NY at 293). To that end, evidence of other crimes may be competent to prove specific crimes when that evidence tends to establish, inter alia, "(1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others; (5) the identity of the person charged with the commission of the crime on trial" (*People v Molineux*, 168 NY at 293). The list of exceptions recognized in *People v Molineux* is "merely illustrative and not exhaustive" (*People v Rojas*, 97 NY2d at 37; *see People v Resek*, 3 NY3d 385 [2004]).

The People met their burden of showing a non-propensity purpose for offering the aforementioned *Molineux* evidence. The proponent of the evidence must identify some issue other than mere criminal propensity, to which the evidence is relevant (*People v Cass*, 18 NY3d at 560). The instant indictment charges defendants Garcia and Rickard, in pertinent part, with attempted murder in the first degree (Penal Law §§ 110/125.27[1][a][v]), in that "the intended victim was witness to a crime on a prior occasion and the death was caused for the purpose of preventing the intended victim's testimony," and conspiracy in the second degree, in that they conspired to commit murder in the first degree. As the People correctly argue, prosecuting attempted witness elimination murder requires proof of substantial motive (*see People v Cahill*, 2 NY3d 14, 23 [2003]). The People have shown that evidence that Holley witnessed the subject shooting, and that her cooperation with law enforcement despite Garcia's intimidation efforts led to the prosecution of Garcia and Brown for that shooting, is directly relevant to proving the attempted murder in the first degree and conspiracy charges in the instant indictment. Similarly, the People have shown that testimony concerning the status of the shooting case

(Ind. No. 18-810) throughout the course of the alleged conspiracy to kill Holley is relevant to the charges herein.

Moving to the second aspect of the *Molineux* inquiry, the court finds that the probative value of the subject evidence outweighs its potential for prejudice (*see People v Alvino*, 71 NY2d at 242; *see People v Gillyard*, 13 NY3d, 355-356 [2009]; *People v Sayers*, 64 AD3d 728 [2d Dept 2009]). Thus, the People will be permitted to introduce in their case-in-chief evidence that Holley witnessed the December 10, 2016 shooting and that her cooperation with law enforcement despite Garcia's intimidation efforts led to the prosecution of Garcia and Brown for that shooting. The People will also be permitted to introduce evidence of how the prosecution for the shooting case (Ind. No. 18-810) progressed as the conspiracy to kill Holley was allegedly coming together.

Additionally, the court will permit the People to introduce testimony by Holley and Daniels as to defendants' gang membership, and Garcia's high rank in the gang. Evidence of gang activity, and prior uncharged crimes, may be admitted to provide necessary background, or when it is "inextricably interwoven" with the charged crimes, or to explain the relationships of the individuals involved (*see People v Bailey*, 32 NY3d 70, 83 [evidence of gang membership probative of defendant's motive and intent to join the assault on the victim, and provided necessary background information on the nature of the relationship between codefendants, placing charged conduct in context]; *People v Dorm*, 12 NY3d 16, 19 [2009] [evidence of defendant's prior bad acts toward victim probative of his motive and intent, provided necessary background information on the relationship between defendant and victim, placed charged conduct in context]; *People v Sarkodie*, 172 AD3d 909, 911 [2d Dept 2019] [evidence of defendant's gang affiliation probative of defendant's motive, explained relationship of the individuals involved]; *People v Bruno*, 127 AD3d 986, 986 [2d Dept 2015] [evidence of defendant's gang membership and an incident that occurred one week before the subject stabbing relevant to motive and to claim of justification and explained relationship of the parties], *lv denied* 27 NY3d 993 [2016]; *People v Faccio*, 33 AD3d 1041, 1042 [3d Dept 2006] [evidence of gang membership, structure, and some of its activities was inextricably interwoven with the charged crimes, provided necessary background, explained relationships, and explained motives and intent], *lv denied* 8 NY3d 845 [2007]; *compare People v Kims*, 24 NY3d 422, 438 [2014] [evidence of gang activity not relevant to material issue, did not provide relevant background information, not needed to explain relationships, not interwoven with the charges; but error in admitting evidence of gang affiliation harmless]).

The People met their burden of showing a non-propensity purpose for offering the subject *Molineux* evidence. The proponent of the evidence must identify some issue other than mere criminal propensity, to which the evidence is relevant (*People v Cass*, 18 NY3d at 560). Here, testimony by Holley and Daniels as to defendants' gang membership and hierarchy is relevant to explain the relationships of the individuals, provides necessary background information, and is "inextricably interwoven" with the charged crimes (*see People v Bruno*, 127 AD3d at 986; *People v Faccio*, 33 AD3d at 1042). In particular, it explains how defendant Garcia was allegedly able to direct the effort to kill Holley and allegedly later recruited defendant Rickard to commit the murder. It is also highly relevant to defendant Rickard's motive.

Moving to the second aspect of the *Molineux* inquiry, the court finds that the probative value of the subject evidence outweighs its potential for prejudice (*see People v Alvino*, 71 NY2d at 242; *see People v Gillyard*, 13 NY3d, 355-356 [2009]; *People v Sayers*, 64 AD3d 728 [2d Dept 2009]). Thus,

the court will permit the People to elicit limited testimony as to defendants' gang membership and Garcia's high-ranking position within the gang.

Similarly, the court grants the People's application to introduce testimony by Daniels that defendant Garcia recruited him to shoot Holley, but that Daniels did not go forward with it. The People have shown that such evidence is relevant to explain the relationship of the parties, and the narrative of how defendant ended up recruiting defendant Rickard. The People have also shown that such testimony is relevant to deciphering some of the code-like language allegedly used by Garcia in prison telephone calls to orchestrate the attempted murder of Holley. Moreover, the People have shown that such evidence is more probative than prejudicial.

However, the court denies the People's application to introduce testimony by Holley and Daniels as to their understanding of the consequences for G-Shine members who cooperate with law enforcement. While the People have shown that such evidence is relevant to the instant charges, they have failed to show that such evidence would be more probative than prejudicial. Thus, the People's application is denied in that respect.

The People are strongly cautioned that the testimony as to gang membership and hierarchy must be strictly limited to the purposes of showing the relationship of the parties and providing necessary background information which is "inextricably interwoven" with the instant crimes. Witnesses will not be permitted a wide latitude to testify on gang membership issues, and the People will not be permitted to introduce duplicative testimony by multiple witnesses. Testimony intended merely to show defendants' connection to a culture of violence, or their propensity to commit the charged crimes, is strictly prohibited, and any attempt to elicit testimony for those purposes is expressly prohibited.

Once this matter is scheduled for trial, the court will require counsel for all parties to submit, in writing, a proposed limiting instruction for the jury as to the use of the *Molineux* evidence deemed admissible herein by the court.

Defendant Garcia's Motion

A. Motion to Suppress Noticed Statements

Defendant moves pursuant to CPL 710, CPL 60.45(2), the 4th, 5th, 6th, and 14th Amendments to the U.S. Constitution, and Article 1 § § 6 and 12 of the NY Constitution, to suppress any out of court statements or writings attributed to him, particularly "the statements and or writings" attributed to him from social media sites including but not limited to Facebook, Instagram and Google[1]. Alternatively, defendant moves for a *Huntley* hearing. Defendant argues that suppression is warranted because the statements: constitute the fruits of an unlawful search warrant or court order, violate his right to privacy, were made without a valid waiver of his right to remain silent, were involuntarily made, and were obtained in violation of his right to counsel.

[1]Defendant Garcia made the same motion to suppress pertaining to Ind. No. 18-810; the court's ruling on this branch of Garcia's motion mirrors its prior ruling on this motion dated January 8, 2020, under Ind. No. 18-810.

The People oppose defendant's motion arguing, in pertinent part, that any statements of defendant obtained pursuant to this court's orders dated December 9, 2019 and December 11, 2019, directing Facebook, Instagram and Google to turn over information and records related to defendant's accounts for a particular time period, were not made to a public servant and are, thus, not subject to suppression pursuant to CPL 60.45 and CPL 710.20. The People note that while, under CPL 60.45(2)(a), statements can be suppressed if involuntarily made to "any person," that statute is inapplicable herein because the statements were not "obtained," nor were they made to any person; rather, they were posted to defendant's account and seized pursuant to a search warrant. The People also argue that to the extent that defendant is seeking to suppress statements he made during a jailhouse telephone call to his mother, which were used in support of the search warrants pertaining to the social media accounts, he is not entitled to a hearing on their admissibility because those statements were passively received by the People, they were incontestably voluntary, and defendant made the call aware that it was being recorded. Moreover, the People argue that suppression of the jailhouse telephone call statement is not warranted on Sixth Amendment grounds because the Department of State does not act as an agent of the State when it records the calls and nothing in the record suggests that the Department solicited, encouraged or provoked the statements.

To the extent that defendant seeks suppression of the "statements and or writings" attributed to him on his Facebook and Instagram accounts the motion to suppress is summarily denied. Any such statements and/or writings were obtained pursuant to this court's December 9, 2019 and December 11, 2019, search warrant orders, and defendant's motion fails to controvert the sufficiency of those warrants. 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]). Upon review of the four corners of the search warrant affidavits, the warrants were 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]). Similarly, the defendant's motion to suppress is summarily denied as to any records obtained from Google pursuant to the search warrant order issued by this court on November 19, 2019, as the motion fails to controvert the sufficiency of that warrant.

To the extent that defendant seeks to suppress his alleged statement on December 5, 2019, during a recorded jailhouse telephone call to his mother, asking his mother to post a particular message on his Facebook page, defendant's motion is summarily denied. Defendant's papers present no valid grounds for suppression of this alleged statement. Even assuming, *arguendo*, that defendant was not warned that such calls were monitored, the absence of such a warning does not render the call inadmissible (*see People v Diaz*, 149 AD3d 974, 976 [2d Dept 2017]). Moreover, such statement was not obtained by a public servant (*see* CPL 60.45[2][b]) and any claim that the statement was involuntary within the meaning of CPL 60.45(2)(a) is rejected.

B. Motion to Suppress Physical Evidence

Defendant moves to suppress all physical evidence obtained from social media platform/s and telephone (cell sites), including observations made by law enforcement with respect to those items, and any information or writings obtained from social media platform/s attributed to defendant or contained

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in the postings of a codefendant[2]. Alternatively, defendant moves for a *Mapp/Dunaway* hearing. The People oppose the motion arguing that any such physical evidence was obtained pursuant to this court's search warrant orders, that defendant does not challenge the validity of those search warrant orders, and that, in any event, the supporting affidavits presented sufficient probable cause for the orders.

The court agrees with the People and summarily denies defendant's motion to suppress any physical evidence obtained pursuant to this court's search warrant orders to Facebook, Google and AT&T, as defendant's papers fail to controvert those orders. 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]). Upon review of the four corners of the search warrant affidavits, the warrants were 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]).

C. Motion for Sandoval Hearing

With respect to defendant Garcia's request for a *Sandoval* hearing, the People consent and note, correctly, that a *Sandoval* hearing was already ordered in this court's decision and order dated August 27, 2019 on Garcia's omnibus motion.

To the extent that defendant moves to preclude the People from introducing uncharged crime evidence relating to the December 10, 2016 shooting case under Ind. No. 18-810, the motion is denied to the extent ordered herein with respect to the People's *Molineux* motion.

D. Motion for Brady Material

As for that branch of defendant Garcia's motion which seeks an order directing the People to provide all *Brady* material, the People recognize their continuing obligation under *Brady* and its progeny. Moreover, the court already ordered the People to comply with *Brady* by decision and order dated August 27, 2019 on Garcia's omnibus motion.

E. Motion for Leave to Make Additional Motions

The court denies that branch of defendant Garcia's motion which requests leave to file additional motions. Defendant must demonstrate good cause for any further pre-trial motion for omnibus relief, in accordance with CPL 255.20(3).

<u>*Defendant Rickard's Renewed Motion*</u>

The court denies defendant Rickard's renewed motion for a severance. The court may for good cause shown order that a defendant be tried separately. Good cause includes a showing that defendant

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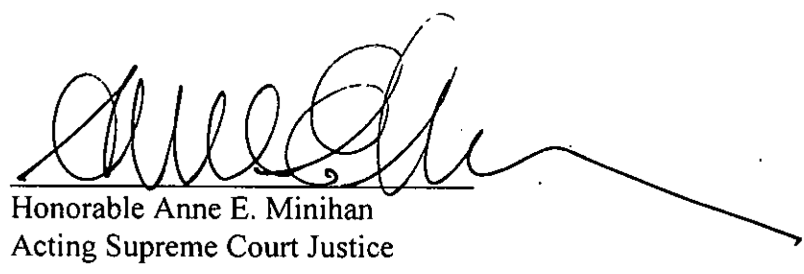
[2]Defendant Garcia made the same motion to suppress pertaining to Ind. No. 18-810; the court's ruling on this branch of Garcia's motion mirrors its prior ruling on this motion dated January 8, 2020, under Ind. No. 18-810

would be "unduly prejudiced by a joint trial" (CPL 200.40[1]). However, where the proof against all defendants is supplied by the same evidence, "only the most cogent reasons warrant a severance"(*People v Bornholdt*, 33 NY2d 75, 87 [1973]; *People v Kevin Watts*, 159 AD2d 740 [2d Dept 1990]). "[A] strong public policy favors joinder, because it expedites the judicial process, reduces court congestion, and avoids the necessity of recalling witnesses. . ." (*People v Mahboubian*, 74 NY2d 174, 183 [1989]). Here, the court finds that defendant Rickard has failed to show good cause for a severance.

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

Dated: White Plains, NY
July 28, 2020



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