

People v Vale

2012 NY Slip Op 33852(U)

September 6, 2012

Supreme Court, Westchester County

Docket Number: 12-0645

Judge: James W. Hubert

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FILED AND
ENTERED ON

September 12, 2012

WESTCHESTER
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

- against -

RICHARD VALE

Defendant.

-----x

Hubert, J.

DECISION & ORDER

Indictment No.:12-0645

FILED
SEP 12 2012
TIMOTHY C. DODD
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant is charged under Westchester County Indictment 12-0645 with one count of Burglary in the First Degree in violation of Penal Law § 140.30, one count of Robbery in the first Degree in violation of Penal Law § 160.15, two counts of Burglary in the Second Degree in the Second Degree in violation of Penal Law § 140.25, one count of Attempted Robbery in the First Degree in Violation of Penal Law § 110/160.15, one count of Attempted Robbery in the Second Degree in violation of Penal Law § 110/160.10, one count of Criminal Use of a Firearm in the First Degree in violation of Penal Law 265.09, one count of Grand Larceny Third Degree: Property Value Exceeds \$3000 in violation of Penal Law § 155.35, one count of Criminal Possession of Stolen Property in the Third Degree in violation of Penal Law 165.50 and one count of Criminal Impersonation in the First Degree in violation of Penal Law § 190.26, for holding up a man and his family at their home in Hastings-on-Hudson on or about January 10, 2012. The complainants were tied up at gunpoint and forced to hand over \$5,000 in cash to the defendants, who also tried, albeit unsuccessfully, to steal a safe from the home. By notice of motion, accompanying affirmation and memorandum of law, all dated July 16, 2012, the

defendant now moves for omnibus relief. The People have submitted an affidavit and memorandum of law in opposition. Upon consideration of these papers, as well as the review of the Grand Jury minutes, the defendant's motion is decided as follows:

I. Motion to Inspect the Grand Jury Minutes and to Dismiss or Reduce the Indictment

The application is granted only to the extent that the Court has conducted an *in camera* inspection of the minutes of the Grand Jury proceedings. Upon review of the evidence presented, this Court finds that all counts of the indictment were supported by sufficient evidence and that the Grand Jury was properly instructed. *People v. Calbud*, 49 N.Y.2d 389, 426 N.Y.S.2d 389, (1980); *People v. Valles*, 62 N.Y.2d 36, 476 N.Y.S.2d 50 (1984). There was no other infirmity which would warrant a dismissal of the instant indictment. Nor does the Court find any facts warranting the release of any portion of the minutes of the Grand Jury proceedings to the defense. CPL § 210.30 (3). Accordingly, this branch of defendant's motion seeking dismissal of the indictment is denied.

II. Motion to Suppress Statements

This branch of defendant's motion is granted to the extent that a hearing shall be held pursuant to *People v. Huntley*, 15 N.Y.2d 72, 255 N.Y.S.2d 838 (1965) and *Dunaway v. New York*, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979) to determine whether any statements allegedly made by the defendant that were noticed by the People pursuant to CPL § 710.30 (1) (a) were involuntarily made within the meaning of CPL § 60.45, or whether they must be suppressed as the fruit of any unlawful police conduct or violation of the defendant's rights.

III. Motion to Preclude Statements

The branch of Defendant's motion seeking to preclude the use at trial of any statements that may have been made by the Defendant on the grounds that the People never served notice of any statements pursuant to CPL § 710.30(1) is denied without leave to re-new should the People subsequently seek to introduce any such statements at trial.

CPL § 710.30 provides that the People must serve notice of their intention to offer at trial evidence of a statement by a defendant to a public servant within fifteen days after arraignment and before trial. Absent such notice, statement evidence may not be received against the defendant at trial unless the People demonstrate good cause for late notice or the defendant has moved to suppress the statement and such motion has been denied. If the facts do not satisfy either exception, the People will be precluded from introducing such evidence at trial. See *People v. Boyer*, 6 NY3d 427, 813 N.Y.S.2d 31 (2006).

IV. Motion to Suppress Identification Testimony

The People contend that the identification procedure was merely confirmatory because the complainant and the defendant were known to each other. Specifically, the People state that the defendant was a tenant of the complainant, that he assisted the complainant with his business by making deliveries, and that approximately two weeks prior to the instant crime, the defendant arranged for the complainant to meet the owner of a laundromat as part of a potential business deal, and in fact accompanied the complainant to that meeting.

As the Court of Appeals noted in *People v. Rodriguez*, a court may summarily deny a *Wade* hearing (and hence no CPL § 710.30 notice would be required) where the court concludes that, as a matter of law, the identifying, civilian witness knew the “defendant so well that no

amount of police suggestiveness could possibly taint the identification.” *People v. Rodriguez*, 79 N.Y.2d 445, 453, 583 N.Y.S.2d 814 (1992). Accordingly, based on the facts set forth by the People, the Court finds that no hearing is warranted.

V. Motion for a *Mapp/Payton* Hearing

This branch of defendant’s motion is granted solely to the extent that a hearing shall be held pursuant to *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961) and *Dunaway v. New York*, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), to determine whether there was probable cause for the defendant’s arrest and whether evidence obtained from his person as a result of the arrest should be suppressed as the product of an unlawful seizure or other violation of the defendant’s rights. The defendant’s motion is also granted to the extent that a hearing shall be held prior to trial to determine whether or not the police arrested defendant in his home without a warrant in violation of the Supreme Court’s ruling in *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980) and, if so, whether or not the taint resulting from the violation has been attenuated. *People v. Harris*, 77 N.Y.2d 434, 568 N.Y.S.2d 702 (1991).

VI. Motion for a *Sandoval/Ventimiglia* Hearing

Defendant’s request for a *Sandoval* hearing is granted and shall be conducted immediately prior to trial. At that time, (a) the People must notify the defendant of all specific instances any of the defendant’s prior uncharged criminal, vicious or immoral conduct of which the People have knowledge and intend to use at trial for purposes of impeaching the credibility of the defendant pursuant to CPL § 240.43; and (b) defendant must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his

own behalf. *People v. Matthews*, 68 N.Y.2d 118, 506 N.Y.S.2d 149 (1986); *People v. Malphurs*, 111 A.D.2d 266, 489 N.Y.S.2d 102 (2d Dep't 1985).

Defendant's request for a *Ventimiglia* hearing is denied at this time. If the People subsequently determine that they will seek to introduce, at trial, evidence of any prior bad acts that the defendant may have committed, they must notify the Court and defense counsel, and a *Ventimiglia* hearing shall be conducted immediately prior to trial to determine whether or not any evidence of uncharged crimes may be used by the People to prove their case in chief. The People are urged to make an appropriate decision in this regard sufficiently in advance of trial to allow any *Ventimiglia* hearing to be consolidated and held with the other hearings ordered herein.

VII. Motion for Discovery and Inspection Pursuant to CPL § 240.20

Defendant's demand for disclosure of items or information pursuant to the provisions of CPL § 240.20(1) (a) through (i) is granted to the limited extent that the People are ordered to provide defendant with those materials and information which is required to be disclosed to him pursuant to CPL §§ 240.44 and 240.45. To the extent that portions of defendant's motion seek items or information beyond the scope of discovery, without showing that such items are material to the preparation of his defense, those requests are denied. CPL § 240.40(1)(a).

Defendant's request for the production of exculpatory material or impeachment material within the meaning of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.E.2d 215 (1963) and *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.E.2d 104 (1972) within the People's possession is granted. The People have acknowledged and are reminded of their continuing obligation to disclose to the defense any exculpatory evidence and impeachment material at the earliest possible date. To the extent that any doubt exists as to whether certain materials must be

disclosed to the defense, the People are directed to submit such materials to the Court for *in camera* inspection to determine whether they contain exculpatory or impeachment information subject to disclosure.

VIII. Motion for a Bill of Particulars

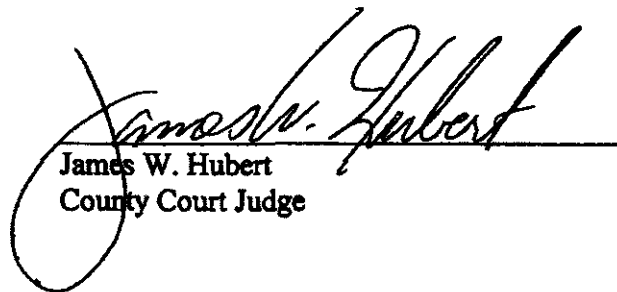
This branch of defendant's motion is denied, as the People have already served a bill of particulars pursuant to, and simultaneously with, the consent order in this case. The bill of particulars provided to the defendant was sufficient to adequately inform him of the substance of his alleged conduct and to enable him to prepare and conduct a defense. *See* CPL § 200.95; *People v. Watt*, 84 N.Y.2d 948, 620 N.Y.S.2d 817 (1994); *People v. Byrnes*, 126 A.D.2d 735, 511 N.Y.S.2d 322 (2d Dep't 1987).

IX. Motion to Reserve Rights to Make Additional Motions

Defendant's request for permission to make additional pretrial motions is denied without prejudice. Additional motions are considered upon good cause shown. CPL § 255.20 (3).

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York
September 6, 2012


James W. Hubert
County Court Judge

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