

People v Arvelo

2017 NY Slip Op 33014(U)

June 2, 2017

County Court, Westchester County

Docket Number: 16-1355-01

Judge: Barbara G. Zambelli

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK **FILED**

DECISION & ORDER

- against -

JUN 07 2017

Indictment No.: 16-1355-01

CRISTIAN DIAZ ARVELO and
WLADIMIR MORDAN-VERAS,

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendants.

-----X
ZAMBELLI, J.

The defendant is charged as aiding and abetting and acting in concert with his co-defendant for allegedly committing the crimes of scheme to defraud in the first degree, criminal possession of a forged instrument in the second degree (14 counts), and criminal possession of stolen property in the fourth degree allegedly committed on or about July 16, 2016 in the county of Westchester. Defendant is further individually indicted for identity theft in the second degree, grand larceny in the fourth degree, criminal possession of a forged instrument in the second degree (4 counts) and a violation of VTL §512 allegedly committed on or about July 16, 2016 in the County of Westchester. He now moves by notice of motion with supporting affirmation and memorandum of law for omnibus relief. The People's response consists of an affidavit in opposition and a memorandum of law. Upon consideration of these papers, as well as review of the grand jury minutes and exhibits and the consent discovery order entered in this case, the motion is disposed of as follows:

1. MOTION TO DISMISS FOR FACIAL INSUFFICIENCY

This motion is denied. The form and content of the indictment satisfies the requirements of CPL §200.50, and is sufficient to inform the defendant of the charges against him so as to enable him to prepare a defense (see People v. Iannone, 45 NY2d 589).

2. INSPECT / DISMISS / REDUCE

The application is granted 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 instructions given were appropriate. There was no other infirmity which would warrant a dismissal of the instant indictment. Accordingly, that branch of the motion which seeks dismissal of the indictment is denied. The Court further finds no facts which would warrant releasing any portion of the minutes of the grand jury proceedings to the defense (CPL §210.30[3]).

3. MOTION TO SUPPRESS STATEMENT

The People have served the defendant with one CPL §710.30 notice regarding an oral statement. The defendant moves to suppress the noticed statement on the ground that it was made in custody without Miranda warnings, was involuntary, and was taken in violation of his right to counsel; defendant further submits that he did not knowingly, intelligently and voluntarily waive his rights. He also submits that his statement was the product of his illegal arrest, as defendant submits that he was properly driving his vehicle when stopped by the police and was committing no crime when he was arrested.

The People oppose the defendant's motion and argue that his motion on 4th Amendment grounds should be summarily denied for failure to allege facts in support thereof. In any event, the People submit that probable cause existed for defendant's arrest because the police received a complaint from an identified citizen, the loss prevention officer of Best Buy that defendant was involved in a fraudulent transaction. They submit that when the police arrived on the scene and conducted surveillance, they observed defendant getting in and out of his vehicle and taking pictures of merchandise with his cell phone. The People argue that, at the same time, they received another call from the loss prevention officer regarding co-defendant, who had been in the store allegedly attempting to make another purchase that store staff suspected was fraudulent while speaking on his cell phone during the entire transaction, and when co-defendant was told that a voice check was necessary, he rapidly left the store, where he was observed by the police running from the store (while still on his cell phone) and diving into the backseat of defendant's vehicle and that they attempted to flee. The People submit that a license plate check revealed that the vehicle's registration was suspended and that upon following the vehicle, the police observed the defendant fail to signal while making a turn, which provided probable cause to stop the vehicle. Upon stopping the vehicle and approaching it, the People submit that the police observed co-defendant lunging toward the front seat and handing defendant something, who appeared to be hiding it and observed defendant touching the steering column and dashboard. The People submit that the police asked defendant and co-defendant preliminary investigative questions designed to clarify the nature of the situation confronted (the noticed statements), and contend that defendant's statements were inconsistent in that he initially denied entering Best Buy but then admitted

that he had bought a laptop there. The People submit that after the two men had been separated, the police observed what appeared to be a plastic card wedged into the steering column, which upon inspection, was revealed to be a fraudulent Bank of America card, and upon further manipulation of the steering column, another fraudulent Bank of America card fell out, as well as a New Jersey state ID card in the name of Sam Datzman, but bearing defendant's photo. They argue that in a hollow space under the dash behind the steering column, the police discovered photocopies of banking information and social security cards, forged social security cards, forged driver's licenses and fraudulent credit cards. They therefore submit that probable cause existed for defendant's arrest.

As to the statement, the People argue that defendant's statement was voluntarily made by him when he was not in custody in response to preliminary investigative questions designed to clarify the nature of the situation confronted for which Miranda warnings were not required.

Defendant's motion is granted to the extent that the Court will conduct a hearing prior to trial to determine whether the statement was the product of an illegal stop of defendant's vehicle, an illegal seizure of his person, whether Miranda warnings were necessary and, if so, whether the defendant was so advised and made a knowing, intelligent and voluntary waiver thereof, or whether the statements were otherwise involuntarily made within the meaning of CPL §60.45.

4. MOTION FOR A WADE HEARING

In his notice of motion, defendant moves for a "Wade" hearing; however, no identifications were noticed by the People. Defendant's motion is therefore denied as moot.

5. MOTION TO PRECLUDE UNNOTICED STATEMENTS

The defendant moves in advance to preclude the People from introducing any statements at trial which were not noticed to him pursuant to CPL §710.30. Defendant does not allege that the People have actually served any such notices outside of the statutory time frame. The defendant's motion is therefore denied as moot with leave to renew in the event that the People seek to serve such notices in the future.

6. MOTION TO SUPPRESS PHYSICAL EVIDENCE /
CONTROVERT SEARCH WARRANT

Defendant seeks suppression of physical evidence recovered in this case on the grounds that his vehicle was illegally stopped and he was illegally seized and searched by the police officers who were acting without a warrant, consent or reasonable suspicion or probable cause that he had committed a crime, as set forth above. Defendant further alleges that he has standing to contest the recovery of evidence from the vehicle, as the defendant submits that the vehicle is his. He also argues that the stop of his vehicle was pretextual and that there was no contraband in plain view therein.

The People oppose the motion and argue that the defendant's vehicle was properly stopped because a license plate check revealed that the registration was suspended and because defendant failed to signal while turning. They also argue that probable cause existed for defendant's arrest, as set forth above. As to the evidence recovered, the People dispute that defendant has standing to challenge the recovery of evidence from the vehicle, as they submit that the vehicle is not defendant's and is registered to another individual. They argue that the vehicle was properly searched pursuant to the automobile exception, and that the credit card in the steering column was in plain view. They further

argue that in any event, because defendant and co-defendant were arrested and because the vehicle had a suspended registration, it needed to be impounded and an inventory search would have been proper under the circumstances. They also argue that any recovered from defendant's person, including his cell phone, was properly acquired pursuant to a search incident to defendant's arrest. As to the search warrant issued (which warrant and affidavit were provided to the defense in consent discovery), the People contend that the warrant affidavit contains probable cause on its face and argue that defendant lacks standing to challenge the recovery of any evidence from the co-defendant's phone.

The defendant's motion is granted to the extent that a pre-trial hearing will be held to determine whether there was a proper stop of the vehicle and whether property seized subsequent to the stop and seizure of defendant's person should be excluded as the product of an unlawful seizure or other violation of the defendant's rights, including whether defendant has standing to contest the seizure of the evidence recovered from the vehicle (People v. Ingle, 36 N.Y.2d 413; Mapp v. United States, 367 US 642; People v. Holmes, 81 NY2d 1056; People v. Selby, 220 AD2d 544). To the extent that defendant challenges the search warrant issued for his cell phone, upon the review of the four corners of the search warrant affidavit, which has been provided to the defendant, the Court finds that the warrant was supported by probable cause (see People v. Keyes, 291 AD2d 571 (2d Dept. 2002)). To the extent defendant challenges the recovery of evidence from his co-defendant's phone, he lacks standing to do so.

7. MOTION TO SUPPRESS PRIOR BAD ACTS (SANDOVAL / VENTIMIGLIA)

Granted on consent of the People to the extent that this Court directs that a hearing

be held immediately prior to trial. Prior to the commencement of jury selection, the People will disclose to defendant all specific instances of his prior uncharged crimes and bad acts they expect to introduce at trial for impeachment purposes (CPL §240.43). Defendant must then sustain his burden of informing the Court of the prior convictions and misconduct which might unfairly affect him as a witness in his own behalf (People v. Matthews, 68 NY2d 118, 121-122). In the event the People seek to introduce defendant's prior bad acts on their direct case, the burden is on the People to seek a Ventimiglia hearing to determine the admissibility of such evidence (People v. Ventimiglia, 52 NY2d 350).

8. MOTION FOR EXCULPATORY INFORMATION

The People are reminded of the continuing obligation to provide exculpatory information to the defendant (Brady v. Maryland, 373 U.S. 83). Exculpatory information includes any information that would be "favorable to the defense, material either to guilt or punishment, or affecting the credibility of prosecution witnesses," (People v. Baxley, 84 NY2d 208, 213). The People are directed to disclose any such information to the defense. Where a question exists as to whether a particular item should be disclosed, they are directed to submit the material or information to the Court, which will conduct an in camera examination to resolve the issue. To the extent that defendant seeks disclosure of agreements between the People and witnesses, the application is granted upon the People's acknowledgment of their duty to disclose same (Giglio v United States, 405 US 150).

9. REQUEST FOR FURTHER MOTIONS

The defendant's request for permission to make additional pretrial motions is denied. Additional motions will only be considered upon good cause shown pursuant to CPL §255.20(3).

This Decision constitutes the Order of the Court.

Dated: White Plains, New York
June 2, 2017



BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

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