

**People v Lee**

2017 NY Slip Op 33027(U)

November 29, 2017

County Court, Westchester County

Docket Number: 17-0561-01-02-03-04-05

Judge: Helen M. Blackwood

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This opinion is uncorrected and not selected for official publication.

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.: 17-0561-01-02-03-04-05

FILED

NOV 30 2017

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

ERIC LEE A/K/A "BUBBA";

SINCERE SMITH;

ALLEN COPELAND A/K/A "HAT";

LEROY GARCIA;

JOHN OQUENDO,

Defendants

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Defendant, LEROY GARCIA, has been indicted for aiding, abetting, and acting in concert with his co-defendants for the crimes of murder in the second degree (PL §125.25[3]), attempted robbery in the first degree (PL §110/160.15[2]), criminal possession of a weapon in the second degree (PL §265.03[1][b]) (two counts), criminal possession of a weapon in the second degree (PL §265.03[3]) (two counts), attempted robbery in the first degree (PL §110/160.15[4]), attempted robbery in the second degree (PL §110/160.10[1]), robbery in the first degree (PL §160.15[4]), robbery in the second degree (PL §160.10[1]), and conspiracy in the fourth degree (PL §105.10[1]). The defendant has filed a notice of motion, along with a supporting affirmation and memorandum of law 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 for Discovery and Inspection and for Brady Material

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, 213 N.Y.S.2d 448 [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, 608 N.Y.S.2d 696 [1994]).

## II. 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 there is no basis to dismiss any charges of the indictment. Accordingly, the defendant's motion to do so is denied in all respects.

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.

Finally, 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]).

### III. 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, 497 N.E.2d 287 [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).

### IV. Motion to Suppress Statements

The defendant moves to suppress any statements made by him to members of law enforcement. Since the People have not served notice of any such statements pursuant to section 710.30 of the Criminal Procedure Law, the defendant's motion is denied as moot.

### V. Motion to Suppress Physical Evidence

The defendant moves to suppress all physical evidence recovered from his person at the time of the arrest, arguing that such property was seized in violation of his constitutional rights and that the police had no probable cause to arrest him.


The People argue that the defendant's motion should be denied as moot because there was no property recovered as a result of his arrest. In any event, the People argue that the defendant was arrested lawfully pursuant to several outstanding warrants in the State of Connecticut and the State of New York.

Given the fact that the People are not seeking to introduce any evidence recovered from the defendant's person as a result of his arrest, his motion to suppress any such physical evidence is denied as moot.

With respect to any evidence recovered as a result of the warrants that were issued authorizing the electronic tracking, a pen register and trap and trace device, historical GPS data over the past thirty days, and historical cell site location information for the two cellular telephones related to this defendant, the court has reviewed the affidavits in support of those orders *in camera* and finds that the orders were supported by ample probable cause.

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

Dated: White Plains, New York  
November 27, 2017

  
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HON. HELEN M. BLACKWOOD  
Westchester County Court

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