

<b>People v Copeland</b>
2017 NY Slip Op 33034(U)
November 29, 2017
County Court, Westchester County
Docket Number: 17-0631
Judge: Helen M. Blackwood
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COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

DECISION and ORDER

Indictment No.: 17-0631

-against-

FILED

NOV 30 2017

THOMAS C. IDONI  
CLERK  
COUNTY OF WESTCHESTER

ALLEN COPELAND,

Defendant.

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Defendant, ALLEN COPELAND, has been indicted for the crimes of attempted murder in the second degree (PL §110/125.25[1]), attempted assault in the first degree (PL §110/120.10[1]), criminal possession of a weapon in the second degree (PL §265.03[3][6]) and criminal possession of a weapon in the second degree (PL §265.03[1][b]). The defendant has filed a notice of motion, along with a supporting affirmation 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 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, there was nothing defective about the proceedings, (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]).

## II. 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 because the police had probable cause to arrest the defendant and search him incident to that arrest.

With respect to any property recovered on the defendant's person or immediate vicinity thereof at the time of his arrest, his motion is granted to the extent that a hearing will be held to determine whether the police seized the defendant in violation of his Fourth Amendment rights (see, Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248 [1979]) and whether the search and seizure of the defendant's property was lawful (see, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 [1961]).

## IV. Motion to Suppress Statements

The defendant moves to suppress his noticed statements on the grounds that they were obtained in violation of his constitutional rights and involuntarily made under coercive circumstances.

The People argue that the defendant's motion should be denied after a hearing because the People will be able to establish that the defendant's statements were voluntarily made.

The defendant's motion is granted to the extent that a Huntley hearing shall be held prior to trial to determine whether the statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL §710.30(1)(a), were made involuntarily within the

meaning of CPL §60.45 (see, CPL §710.20[3];CPL §710.60[3][b]; People v. Weaver, 49 N.Y.2d 1012 [1980]).

#### V. Motion to Suppress Identification

The defendant moves to suppress the numerous pre-trial identifications of the defendant that have been noticed by the People, arguing that each of the identification procedures were suggestive in nature and render any subsequent in court identification unreliable.

The People consent to a Wade hearing to determine their admissibility, contending that all of the identifications were either confirmatory in nature given the familiarity between the identifying witness and the defendant, or instances in which a witness viewed video surveillance of the criminal activity.

The defendant's motion is granted insofar as a hearing shall be held immediately before trial as to whether the identifications were, in fact, confirmatory (People v. Rodriguez, 79 N.Y.2d 445, 593 N.E.2d 68 [1992]) or in the alternative, whether any police procedures employed were unduly suggestive, and, if so, whether an independent source exists for an in-court identification by the witness (People v. Pacquette, 17 N.Y.3d 87, 950 N.E.2d 489 [2011]; People v. McLemore, 264 A.D.2d 858, 696 N.Y.S.2d 464 [1999]).

#### VI. 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).

#### VII. Motion for Discovery and Disclosure and for Bill of Particulars

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]).


The defendant's motion for a further Bill of Particulars is denied, as the Bill of Particulars that has been provided by the People in the consent discovery order adequately informs the defendant of the substance of all alleged conduct and complies with CPL §200.95 in all respects.

VIII. Motion for Leave to File Additional Motions

The motion is denied. Should the defendant bring further motions for omnibus relief, he must do so by order to show cause setting forth the reasons why his motion was not and could not be brought in accordance with CPL §255.20.

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

Dated: White Plains, New York  
November 29, 2017

  
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HON. HELEN M. BLACKWOOD  
Westchester County Court

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