

People v Lee
2017 NY Slip Op 33058(U)
November 29, 2017
County Court, Westchester County
Docket Number: 17-0630
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

-against- FILED *TR*

DECISION and ORDER

Indictment No.: 17-0630

NOV 08 2017

TIMOTHY C. DONI
COUNTY CLERK
COUNTY OF WESTCHESTER

ERIC LEE,

Defendant.

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Defendant, ERIC LEE 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 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 Disclosure

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.

III. 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. The defendant also moves to suppress any tangible property, identification evidence, or any other evidence obtained as a result of his statements to the police, arguing that they are “fruits of the poisonous tree.”

The People argue that the defendant’s motion should be denied because the defendant’s statements were voluntarily made, and he has offered no factual allegations within his motion to support the allegation that his right to counsel was violated.

The court finds that the defendant has failed to raise sufficient allegations of fact with respect to his claim that his Sixth Amendment rights were violated (see, People v. Rosa, 65

N.Y.2d 380482 N.E.2d 21, [1985]. However, the 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]) or obtained in violation of the defendant's Fourth Amendment rights (see, Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248 [1979]).

IV. Motion to Suppress Identification

The defendant moves for a hearing to determine the admissibility of the numerous pre-trial identifications of the defendant that have been noticed by the People. The People consent to the hearing, contending that none of the identification procedures were unduly suggestive.

The defendant's motion is granted to the extent that a hearing shall be held prior to trial to determine whether the noticed identification procedures were conducted in an unduly suggestive manner so as to taint any subsequent in-court identification (see, United States v. Wade, 388 U.S.218, 87 S.Ct. 1926 [1967]). Should the hearing court determine that the identification procedures were so suggestive, then the court shall hold a hearing to determine whether or not there was an independent basis for the witness' in-court identification (see, People v. Perkins, 28 N.Y.3d 432, 68 N.E.3d 679 [2016]).

V. Motion to Suppress Physical Evidence

The defendant moves to suppress all physical evidence recovered as a result of the search warrant issued for 217 South 12th Avenue, Mount Vernon, New York, and any evidence derived therefrom, because the search warrant lacked sufficient probable cause. He also moves to suppress any evidence recovered from the search of his person at the time of his arrest, arguing that the police had no cause to arrest him.

The People argue that the defendant's motion should be denied because the defendant lacks standing to challenge the search warrant issued in this matter and that in any event, the warrant was supported by probable cause. Additionally, they argue that the evidence recovered from his person was lawfully recovered incident to his arrest.

With respect to the 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]).

As to the items recovered pursuant to the search warrant, the court has reviewed the affidavit *in camera* and finds that the warrant was supported by probable cause and was issued in accordance with section 690 of the Criminal Procedure Law.

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

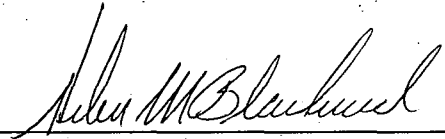
case against the defendant, they are ordered to request a hearing to determine the admissibility of such evidence pursuant to People v. Ventimiglia, 52 N.Y.2d 350, 420 N.E.2d 59 (1981).

VII. Motion for 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 1, 2017



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Westchester County Court

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