

People v Seleman

2017 NY Slip Op 33059(U)

December 6, 2017

County Court, Westchester County

Docket Number: 17-0658-01-02-03

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

-against-

DECISION and ORDER

Indictment No.: 17-0658-01-02-03

HEBA SELEMAN, CORRIE BROWN, and
OMAR HAMAD,

Defendants.

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FILED
DEC 11 2017
TIMOTHY C. IDONI
COUNTY CLERK
CLERK OF WESTCHESTER

Defendant, HEBA SELEMAN, has been indicted with aiding, abetting, and acting in concert with her co-defendants, CORRIE BROWN and OMAR HAMAD, for the crimes of criminal possession of a forgery device (PL §170.40), criminal possession of a forged instrument in the second degree (PL §170.25) (six counts), identity theft in the first degree (PL §190.80[1]) (two counts), identity theft in the first degree (PL §190.80[3]), grand larceny in the third degree (PL §155.35[3]), criminal possession of a forged instrument in the third degree (PL §165.50) (three counts), scheme to defraud in the first degree (PL §190.65[1][b]), unlawful possession of personal identification information in the third degree (PL §190.81) (five counts), identity theft in the first degree (PL §190.80[2]), identity theft in the second degree (PL §190.79[3]), and grand larceny in the fourth degree (PL §155.30[1]). The defendant has filed a notice of motion and 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 Suppress Statements

The defendant moves for a Huntley hearing to determine the admissibility of the statements that the People have noticed pursuant to CPL §710.30. Specifically, she alleges that her first statement was made in response to police questioning without having first been advised of her Miranda rights. Furthermore, she argues that the second noticed statement was made involuntarily, as well.

The People consent to a Huntley hearing and contend that the first statement was not made in the context of a custodial interrogation. Rather, the statement was made in response to preliminary, investigative questions. They argue that the second statement is admissible because it was made after the defendant knowingly, voluntarily, and intelligently waived her Miranda rights.

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 her, 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])).

II. Motion to Suppress Identification

The defendant moves for a Wade hearing so that the "court can learn all these circumstances necessary to allow the court to determine the issues" (Defendant's Affirmation in Support, p. 5), without identifying what those "issues" are.

The People argue that the defendant has not laid the proper foundation to warrant a hearing in that she has not alleged “that the pretrial identification procedure was unduly suggestive and likely to cause a substantial risk of irreparable misidentification,” (People’s Memorandum of Law, p. 10). Furthermore, they argue that the identification was not police arranged or police sponsored and as such, does not require a Wade hearing.

Despite the lack of specificity within the defendant’s motion, the court orders a Wade hearing to determine whether or not the noticed identification procedure was conducted in an unduly suggestive manner so as to render any in-court identification tainted (see, United States v. Wade, 388 U.S.218 [1926]). Should the hearing court determine that the identification procedure was so suggestive, then the court shall hold a hearing to determine whether or not there was an independent source for the witness’ in-court identification (see, People v. Perkins, 28 N.Y.3d 432 [2016]).

III. Motion to Suppress Physical Evidence

The defendant moves to suppress all physical evidence recovered in this case, arguing that the warrantless search of her vehicle was unlawful because no exigent circumstances existed, nor had she given her consent. Furthermore, she argues that all subsequent evidence should be suppressed “since the evidence coming from defendant’s car and the statements taken from defendant were all unlawful” (Defendant’s Affirmation in Support, p. 7).

The People argue that the motion should be denied since the police had probable cause to arrest the defendant and lawfully seized the evidence from her vehicle pursuant to the plain view doctrine, the automobile exception, and the inventory search of the vehicle.

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

IV. Motion for Discovery and Inspection

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 her 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 [1963]) and Giglio v. United States (405 U.S. 150 [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 *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 (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 [1996]; Matter of Catterson v. Rohl, 202 A.D.2d 420 [1994]).

V. 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 [2003], quoting People v. Carroll, 93 N.Y.2d 564 [1999]; see also, People v. Wisey, 133 A.D.3d 799 [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.

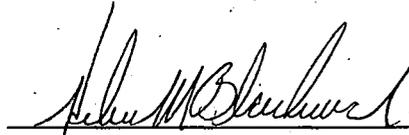
VI. Motion to Suppress Prior Bad Acts

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 her 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 her burden of showing the prior convictions and bad acts which will unduly prejudice her as a witness on her own behalf (People v. Matthews, 68 N.Y.2d 118 [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 (1981).

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

Dated: White Plains, New York
December 6, 2017



HON. HELEN M. BLACKWOOD
Westchester County Court

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