

**People v Parker**

2017 NY Slip Op 33067(U)

December 13, 2017

County Court, Westchester County

Docket Number: 17-0748

Judge: Helen M. Blackwood

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

THE PEOPLE OF THE STATE OF NEW YORK

-against-

PARIS JONES and ALEXANDER PARKER,

Defendants

-----X

DECISION and ORDER

Indictment No.: 17-0748

FILED 

DEC 13 2017

TIMOTHY J. BOWEN  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Defendant, ALEXANDER PARKER, has been indicted for acting in concert with his co-defendant, PARIS JONES, with the crimes of burglary in the third degree (PL §140.20), grand larceny in the fourth degree (PL §155.30[1]), and unauthorized use of a vehicle in the third degree (PL §165.05[1]). This defendant is also charged individually with the crimes of grand larceny in the third degree (PL §155.35[1]) and criminal possession of stolen property in the third degree (PL §165.50). 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 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]), that a quorum was present, and that there was nothing defective about the proceedings so as to render the integrity of the proceedings impaired (People v. Darby, 75 N.Y.2d 449, 553 N.E.2d 974 [1990]).

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 for Discovery and Inspection and 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]).

### III. Motion to Suppress Evidence

The defendant moves to suppress any physical evidence recovered in this case. Specifically, he argues that any property recovered from his person must be suppressed as he

was arrested and subsequently searched without probable cause. Furthermore, he argues that any other evidence in this case was recovered without the proper consent or a warrant to search.

The People argue that the motion to suppress should be denied since the police had the requisite probable cause to arrest the defendant and search him incident to that arrest. Furthermore, they argue, the defendant lacks standing to challenge the recovery of evidence from locations in which he had no reasonable expectation of privacy.

The defendant's motion is granted to the extent that a hearing will be held prior to trial 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 of the defendant's person and the seizure of any property on him was lawful (see, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 [1961]). This hearing is expressly limited to the admissibility of any property found on the defendant's person or in his immediate control.

#### IV. Motion to Suppress Statements

The defendant moves to suppress the statements that the People have noticed pursuant to CPL §710.30. Specifically, he alleges that the statements were made after he was arrested without probable cause, without being advised of or waiving his Miranda rights, and without the assistance of counsel.

The People consent to a Huntley hearing and contend that all statements were made after the defendant knowingly, voluntarily, and intelligently waived his Miranda rights.

As the defendant fails to support his Sixth Amendment claims with sworn allegations of fact, (see, People v. Rosa, 65 N.Y.2d 380, 482 N.E.2d 21 [1985]), the motion is granted to the limited extent that a Huntley hearing shall be held prior to trial to determine whether the

statements allegedly made by him, 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, 406 N.E.2d 1335 [1980]) and whether they were obtained in violation of the defendant's Fourth Amendment rights (see, Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248 [1979]).

#### V. Motion to Suppress Identification

The defendant moves to suppress any testimony regarding an in-court observation of the defendant on the grounds that the noticed identification procedure was unduly suggestive.

The People argue that no such hearing is warranted since they have not noticed any pretrial identifications.

As such, the motion to suppress is denied as moot.

#### 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 [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).

VI. Motion for Darden Hearing

This motion is denied as moot as the People represent that no confidential informants were utilized in this case.

VII. Motion for Severance


This motion is denied as moot since the defendant's co-defendant has already pled guilty.

IX. 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  
December 13, 2017



---

HON. HELEN M. BLACKWOOD  
Westchester County Court

TO: ANTHONY A SCARPINO, JR.  
District Attorney  
Westchester County District Attorney's Office  
111 Dr. Martin Luther King, Jr. Blvd.  
White Plains, New York  
Attn: ADA Joseph Servino

John F. DeChiaro, Esq.  
2001 Palmer Avenue, Suite 204  
Larchmont, New York 10538