

People v Sutton

2017 NY Slip Op 33084(U)

November 29, 2017

County Court, Westchester County

Docket Number: 17-0551-01-02

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.: 17-0551-01-02

PHILIP SUTTON and SINCERE SMITH,

Defendants

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FILED ↑

Dec 12 2017

CLERK OF COURT
COUNTY OF WESTCHESTER

Defendant, PHILIP SUTTON, has been indicted for aiding, abetting, and acting in concert with his co-defendant for the crimes attempted robbery in the first degree (PL §110/160.15[4]), attempted robbery in the second degree (PL §110/160.10[1]), attempted robbery in the second degree (PL §110/160.10[2][a]), assault in the second degree (PL §120.05[2]), and assault in the second degree (PL §120.05[6]). The defendant has also been charged individually with the crime of resisting arrest (PL §205.30). 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

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, that 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]).

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. Specifically, he argues that the statements were

made involuntarily and without a knowing, intelligent, and voluntary waiver of his Miranda rights.

The People argue that the motion to suppress should be denied after a hearing because the police had probable cause to arrest the defendant and because the statements were made after the defendant waived his Miranda rights.

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]) 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]).

IV. Motion to Suppress Identification

The defendant moves to suppress the noticed pre-trial identifications of the defendant, arguing that the procedures employed by law enforcement was unduly suggestive.

The People consent to a Wade hearing, which they contend will establish that the photographic arrays used by the police were not suggestive in any way and that an independent basis exists for each of the witnesses to identify the defendant at trial.

The defendant's motion is granted insofar as a hearing shall be held immediately before trial as to whether any police procedures employed during the identification procedures 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]).

V. 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).

VI. Motion to Strike Prejudicial Language

The defendant moves to dismiss certain language from the indictment. Specifically, the defendant argues that the language, “. . . and against the peace and dignity of the People of the State of New York” should be stricken because it is irrelevant and potentially prejudicial.

The defendant's motion is denied, as the language he is seeking to strike “merely identified the defendant's acts as public, rather than private, wrongs,” (People v. Gill, 164 A.D.2d 867, 867, 559 N.Y.S.2d 376 [1990]).

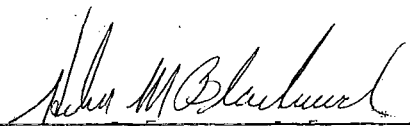
VII. Motion to Strike Alibi Notice

The defendant's motion to strike the alibi notice is denied. It is well settled that the

requirements of CPL §250.20 are constitutional (see, People v. Dawson, 185 A.D.2d 854, 587 N.Y.S.2d 358 [1992]; People v. Gill, 164 A.D.2d 867, 559 N.Y.S.2d 376 [1990]; People v. Peterson, 96 A.D.2d 871, 465 N.Y.S.2d 743 [1983]).

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

Dated: White Plains, New York
November 29, 2017



HON. HELEN M. BLACKWOOD
Westchester County Court

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