

People v Rojas

2018 NY Slip Op 33779(U)

March 16, 2018

County Court, Westchester County

Docket Number: 17-1272

Judge: Susan M. Capeci

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FILED
AND
ENTERED
ON 3-20 2018
WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----x

THE PEOPLE OF THE STATE OF NEW YORK

- against -

DAVID ROJAS,

Defendant.

-----x

CAPECI, J.

DECISION & ORDER

Indictment No:17-1272

FILED
MAR 20 2018
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant, having been charged by indictment with attempted murder in the second degree (P.L. 110/125.25(1)), attempted assault in the first degree (P.L. 110/120.10(1)), assault in the second degree (P.L. 120.05 (2)), grand larceny in the fourth degree (P.L. 155.30 (8)), criminal possession of stolen property in the fourth degree (P.L. 165.45 (5)), criminal possession of a weapon in the fourth degree (P.L. 265.01 (2)), and unauthorized use of a vehicle in the third degree (P.L. 165.05 (1)), now makes this motion seeking omnibus relief.

The defendant has submitted an affirmation from his attorney and a memorandum of law in support of his omnibus motion, in which he seeks the following relief: 1) motion to strike the notice of identification; 2) motion to suppress evidence of his identification, or a Wade hearing; 3) motion to strike the notice of statements alleged to have been made by him; 4) motion to suppress statements, or a Huntley hearing; 5) disclosure of materials not previously provided through consent discovery, and Brady material; 6) inspection of the grand jury minutes by the Court and the defendant, and thereafter, for the dismissal of the indictment and/or reduction of the

charges contained therein; 7) a Sandoval/Ventimiglia hearing; 8) motion to strike the People's alibi demand; 9) a further bill of particulars; and 10) motion to suppress physical evidence, or a Mapp hearing.

The People have submitted an affirmation in opposition in which they consent to provide discovery limited to the parameters of CPL article 240, as well as Brady material. They also consent to a Huntley hearing, to a Sandoval hearing, and to an in camera inspection of the grand jury minutes by the Court to assess legal sufficiency, but otherwise oppose the motion. The Court now finds as follows.

1. MOTION TO STRIKE NOTICE OF IDENTIFICATION

The People have served the defendant with a CPL 710.30 identification notice in this case, which the defendant moves to strike as defective. This motion is denied, as the notice was sufficient to advise the defendant of the People's intention to offer identification evidence at trial (People v Nolasco, 70 AD3d 972 (2d Dept 2010); see also People v Grajales, 8 NY3d 861 (2007)). In any event, the defendant has moved for suppression of any identification testimony (People v Kirkland, 89 NY2d 903 (1996)).

2. MOTION TO SUPPRESS IDENTIFICATION EVIDENCE

The People served the defendant with a CPL 710.30 notice pertaining to his identification, made from a single photograph, on November 13, 2017 at approximately 11 pm at the Westchester County Medical Center. Although the notice does not identify who made the identification, the People now state in their papers in opposition that the identification was made by the victim, who had dated the defendant and knew him for over two years.

“In cases in which the defendant’s identity is not in issue, or those in which the protagonists are known to one another, ‘suggestiveness is not a concern and hence, [CPL 710.30] does not come into play’” (People v Rodriguez, 79 NY2d 445, 449 (1992) citing People v Gissendanner, 48 NY2d 543, 552 (1979)). In this case, since the identifying witness of the single photo had a dating relationship with the defendant and knew him for over two years, and they are well known to each other, the identification was confirmatory. Therefore, no Wade or Rodriguez hearing is required with respect to this identification (People v Tas, 51 NY2d 915 (1978); People v Rodriguez, *supra*).

3. MOTION TO STRIKE NOTICE OF STATEMENTS

The People have served the defendant with three CPL 710.30 notices with respect to statements alleged to have been made by him. He also moves to strike these notices as defective. The defendant’s motion is denied, as each of the notices informed him of the time and place the statements were made, and the sum and substance of those statements (see People v Lopez, 84 NY2d 425 (1994)). Further, the defendant has moved for suppression of the statements.

4. MOTION FOR SUPPRESSION OF STATEMENTS

The defendant’s motion for suppression of statements as set forth in each of the three CPL 710.30 notices is granted to the extent that the Court will conduct a Huntley hearing prior to trial concerning the noticed statements allegedly made by the defendant for the purpose of determining whether Miranda warnings were necessary and, if so, whether he was so advised and made a knowing, intelligent and voluntary waiver thereof, or whether the statements were otherwise involuntarily made within the

meaning of CPL 60.45.

In addition, said hearing should not address the issue of the legality of defendant's arrest. While a defendant may be entitled to a hearing on his unsupported claim of "involuntariness" (CPL 60.45, 710.60(3)(b)), no sworn allegations of fact whatsoever are set forth in support of this conclusory statement of illegal arrest. In the absence thereof, no hearing is warranted on this ground (see People v Mendoza, 82 NY2d 415 (1993); CPL 710.60(3)(b)).

5. MOTION FOR DISCOVERY AND INSPECTION/ BRADY

The defendant has been provided with consent discovery in this case, as well as a bill of particulars. Therefore, the defendant's demand for disclosure of items or information to which he is entitled pursuant to the provisions of CPL 240.20(1) (a) through (k) is granted upon the People's consent. The application is otherwise denied as it seeks items or information which are beyond the scope of discovery and the defendant has failed to show that such items are material to the preparation of his defense (CPL 240.40 (1) (a); People v Bianco, 169 Misc2d 127 (Crim. Ct, Kings Co. 1996)).

The defendant's demand for the production of Rosario material at this time is premature (see CPL 240.45(1); Catterson v Rohl, 202 AD2d 420 (2d Dept 1994)). Further, there is no statutory right to disclosure of all police reports concerning an ongoing investigation (Brown v Grosso, 285 AD2d 642 (2d Dept 2001); see also Pirro v LaCava, 230 AD2d 909 (2d Dept 1996)).

The People have acknowledged their continuing obligation to provide exculpatory information to the defendant (Brady v Maryland, 373 US 83), and are directed to

disclose any such information to the defense.

6. MOTION TO INSPECT/DISMISS/REDUCE

This application is granted to the extent that the Court has conducted an in camera inspection of the minutes of the Grand Jury proceedings. Upon review of the evidence presented, this Court finds that all counts of the indictment were supported by sufficient evidence and that the instructions given were appropriate. There was no infirmity which would warrant a dismissal of the instant indictment. Accordingly, that branch of the motion which seeks dismissal of the indictment is denied. The Court further finds no facts which would warrant releasing any portion of the minutes of the grand jury proceedings to the defense (CPL 210.30 (3)).

To the extent the defendant contends the indictment is insufficient to charge him with the crimes charged, his motion is denied. The indictment at issue uses the statutory language to charge the defendant with the elements of each of the charged offenses. This is sufficient to comply with CPL 200.50 and to provide the defendant with fair notice of the accusations against him (People v Iannone, 45 NY2d 589 (1978); People ex rel Best v Senkowski, 200 AD2d 808 (3d Dept 1994)).

7. MOTION FOR A SANDOVAL/VENTIMIGLIA HEARING

The defendant's motion for a Ventimiglia hearing is denied at this time since the People do not represent that they are seeking to introduce any of defendant's prior bad acts on their direct case. The defendant's motion may be renewed in the event the People later seek to offer such evidence at trial. The motion for a Sandoval hearing is granted and shall be renewed before the trial Judge.

8. MOTION TO STRIKE THE PEOPLE'S REQUEST FOR AN ALIBI NOTICE

The defendant contends that the People's demand for a Notice of Alibi should be stricken since the statute it is based on, CPL 250.20, is unconstitutional pursuant to Wardius v Oregon (412 US 470 (1973)). He claims the statute improperly requires the defense to supply names of alibi witnesses in advance of the People's requirement to provide names of rebuttal witnesses to the defense.

The defendant's motion is denied. New York State courts have specifically found this statute to be constitutional following the United States Supreme Court decision in Wardius v Oregon, *supra* (People v Dawson, 185 AD2d 854 (2d Dept 1992); People v Gill, 164 AD2d 867 (2d Dept 1990)).

9. MOTION FOR A FURTHER BILL OF PARTICULARS

The People have already supplied the defendant with a bill of particulars in this case, as part of consent discovery. The Court finds that the bill of particulars provided was sufficient to adequately inform the defendant of the substance of his alleged conduct and to enable him to prepare and conduct a defense (see People v Sanchez, 84 NY2d 440 (1994); People v Byrnes, 126 AD2d 735, 736 (2d Dept 1987)). The motion for a further bill of particulars is denied.

10. MOTION TO SUPPRESS PHYSICAL EVIDENCE

The defendant contends that all evidence recovered in this case should be suppressed because it was obtained as a result of his arrest without probable cause.

The defendant's motion for suppression of physical evidence or for a Mapp hearing is denied as he has not asserted any specific factual allegations, sworn or otherwise, in support of his claim of illegal arrest (People v Mendoza, 82 NY2d 415

(1993)). In light of the fact that he has been provided with consent discovery and a bill of particulars, his unspecified allegations of illegal arrest do not warrant a Dunaway/Mapp hearing. The defendant's motion to suppress physical evidence is therefore denied.

This decision constitutes the Order of the Court.

Dated: White Plains, New York
March 16, 2018



HON. SUSAN M. CAPECI
A.J.S.C.

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