

People v Anuskiewicz
2007 NY Slip Op 34094(U)
October 31, 2007
Suffolk County Ct
Docket Number: 0001659/2007
Judge: James C. Hudson
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County Court of the County of Suffolk
Part 7 - State of New York

PRESENT:

Hon. JAMES HUDSON

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

MICHAEL ANUSKIEWICZ,

Defendant.

ORIG. RETURN DATE: 10/15/07

FINAL SUBMIT DATE: 10/23/07

PLTF'S/PET'S ATTY:

HON. THOMAS J. SPOTA
Suffolk County District Attorney
By: MARTIN LORENZOTTI, ESQ.
200 Center Drive
Riverhead, New York 11901

DEFT'S/RESP'S ATTY:

REYNOLDS, CARONIA, GIANELLI, HAGNEY
& LA PINTA, LLP
By: PAUL GIANELLI, ESQ.
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Hauppauge, New York 11788

Upon the following papers numbered 1 to 10 read on this motion for omnibus relief
Notice of Motion and supporting papers 1-8; Affirmation/affidavit in opposition and supporting papers 9-10;
Affirmation/affidavit in reply and supporting papers _____; Other _____; (~~and after hearing counsel in support of and
opposed to the motion~~) it is,

Before the Court is an omnibus motion by the defendant requesting several forms of relief.
The People consented in part and opposed in part. After careful consideration it is hereby:

ORDERED, that defendant's application to dismiss the indictment due to a defective Grand
Jury presentation is denied; and it is further

ORDERED, that defendant's application for the disclosure of the Grand Jury minutes for
their review is denied; and it is further

ORDERED, that the defendant's application for severance of his case from the co-
defendant's case based on an irreconcilable conflict is denied with leave to reargue upon a showing of the
requisite basis; and it is further

ORDERED, that the defendant's application to suppress his oral and/or written statement to
the police is granted to the extent that the Court shall conduct a hearing prior to trial to determine its
admissibility; and it is further

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ORDERED, that the defendant's application for a hearing to determine whether the People may introduce the defendant's prior uncharged criminal, vicious or immoral conduct if the defendant testifies at trial is granted. A hearing on the matter will be held prior to trial; and it is further

ORDERED, the defendant's request for *Rosario* materials (*People v. Rosario*, 9 N.Y.2d 286, 213 N.Y.S.2d 448 [1961]) is granted to the extent that the People shall provide such materials in accordance to CPL 240.45.

ORDERED, that the defendant's application for disclosure of exculpatory materials is granted to the extent that the People have responded that they have no present knowledge of the existence of such materials and have acknowledged their continuing obligation to provide such materials; and it is further

ORDERED, the defendant's application for Bill of Particulars is denied as moot.

The defendant moved to dismiss the indictment on the grounds that the evidence before the Grand Jury was insufficient to establish the offenses charged (CPL § 210.20[1][b]), and that the Grand Jury proceedings were legally defective (CPL § 210.20[1][c] and 210.35[5]). The People did not oppose an *in camera* inspection of the Grand Jury minutes.

The Court reviewed the Grand Jury minutes and finds that the evidence presented to the Grand Jury was legally sufficient to sustain the indictment and that the Grand Jury was properly instructed on the law (*People v. Mayo*, 36 N.Y.2d 1002, 374 N.Y.S.2d 609 [1975]).

The defendant also moved to have the Grand Jury minutes released to them so that they may more effectively represent their client. This application is denied. Under Criminal Procedural Law Section 190.25(4) Grand Jury proceedings are secret. In order to overcome this secrecy the moving party must demonstrate, by factual presentation, why and to what extent he requires the minutes of the Grand Jury (*In the Matter of the District Attorney of Suffolk County*, 86 A.D.2d 294, 449 N.Y.S.2d 1004 [2 Dept., 1982]; *Ruggiero v. Fahey*, 103 A.D.2d 65, 478 N.Y.S.2d 337 [2 Dept., 1984]), and the reason for the disclosure must be to such an extent that the public interest in disclosure must outweigh the interest of secrecy (*People v. Di Napoli*, 27 N.Y.2d 229, 316 N.Y.S.2d 622 [1970]). The defendant has failed to demonstrate a need sufficient to overcome the presumption of confidentiality.

The defendant also made an application to have his case severed from co-defendant, Jonathan Dilone, on the ground of a possible antagonistic defense. The People opposed the application.

In the case at bar the co-defendant, Mr. Jonathan Dilone, gave a statement to the police that the defendant, Mr. Michael Anuskiewicz, wanted him to go to the complainant's house to buy drugs. That it was Mr. Anuskiewicz who gave him the loaded hand gun. Once inside the house an altercation with the

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complainant and her boyfriend occurred and he was shot by the complainant with the boyfriend's shotgun. Mr. Anuskiewicz also gave a statement to the police. He indicated that he had a problem with methadone and heroin. That he was going to pay Mr. Dilone to buy methadone. Mr. Anuskiewicz did not want to go to the complainant's house to make the buy himself because he did not get along with the complainant's boyfriend. Mr. Anuskiewicz drove Mr. Dilone to the complainant's house and saw Mr. Dilone walk to the basement steps. He heard scuffling in the doorway and that about thirty seconds later he heard a pop. He then saw Mr. Dilone come out of the house bleeding from his chest. Mr. Dilone got in the car and they drove away. Mr. Anuskiewicz admitted to giving Mr. Dilone the handgun but that he told Mr. Dilone not to use it if anything went wrong and that the gun was unloaded with the safety activated.

Severance is only compelled where the core of each defense is in irreconcilable conflict with the other and where there is a significant danger, as both defenses are portrayed at trial, that the conflict alone would lead the jury to infer defendant's guilt (*People v. Mahboubian*, 74 N.Y.2d 174, 544 N.Y.S.2d 769 [1989]). Severance is not required solely because of hostilities among the defendants, differences in their trial strategies, or inconsistencies in their defenses (*Mahboubian, id.*). An application for severance must be fact specific (*People v. Cardwell*, 78 N.Y.2d 996, 575 N.Y.S.2d 26 [1991]). A trial court must decide a severance motion based on its assessment of the evidence as forecast by the parties, the existence of irreconcilable conflict and its possible effect on the verdict (*People v. Cardwell*, 78 N.Y.2d 996, 575 N.Y.S.2d 26 [1991] citing *People v. Mahboubian*, 74 N.Y.2d 174, 183 [1989]). In the instant case the defense argues that there is a possibility that Mr. Dilone's defense could be antagonistic to Mr. Anuskiewicz in that Mr. Dilone could claim that he was threatened or coerced by Mr. Anuskiewicz to commit this crime. This argument however is speculative and premature in that Mr. Dilone has not raised this defense and the two co-defendants' statements do not in themselves create an irreconcilable conflict with each other. Therefore defendant's application for severance is denied at this time without prejudice to reargue upon showing the requisite basis.

Defendant also made an application to suppress any statements he made to law enforcement officials. The People consented to a hearing to determine if such statements are admissible at trial. Therefore, a *Huntley* hearing shall be conducted immediately prior to trial to determine the admissibility of defendant's oral and/or written statements pursuant to *People v. Huntley* (15 N.Y.2d 72, 255 N.Y.S.2d 838, 843 [1965] citing *Jackson v. Denno*, 84 S.Ct. 1774, 378 U.S. 368 [1964]).

The People also consented to the defendant's request for a *Sandoval* hearing (*People v. Sandoval*, 34 N.Y.2d 371 [1974]) to determine whether the defendant has any prior uncharged criminal, vicious or immoral conduct that may be admissible if the defendant testifies at trial. Therefore a *Sandoval* hearing shall be held prior to trial.

The defendant's request for all *Rosario* materials (*People v. Rosario*, 9 N.Y.2d 286, 213 N.Y.S.2d 448 [1961]) is granted to the extent that the People shall provide such materials in accordance to CPL 240.45.

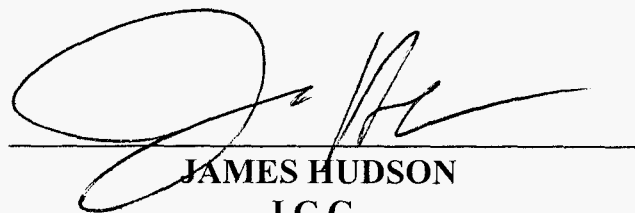
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The defendant's request for the disclosure of any exculpatory materials pursuant to *Brady v. Maryland* (373 U.S. 83, 83 S.Ct. 1194 [1963]) is granted to the extent that the People have stated in their answer that they do not possess any *Brady* material and have acknowledged their continuing obligation to provide the defendant with such materials.

The defendant also motioned for a Court order directing the People to furnish them with a Bill of Particulars. The People responded to the defendant's demand by supplying a Bill of Particulars in their answer. The defendant did not submit a reply contesting the sufficiency of the People's answer. Therefore it seems that the People have fully complied with the defendant's request. Accordingly defendant's application is denied as moot.

This constitutes the decision and order of the Court.

**Dated: Riverhead, New York
October 31, 2007**



**JAMES HUDSON
J.C.C.**