

People v Hinds

2007 NY Slip Op 34567(U)

August 21, 2007

Supreme Court, Westchester County

Docket Number: 07-00507-02

Judge: Robert A. Neary

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 AUG 22 2007
 TIMOTHY G. BOON
 COUNTY CLERK
 COUNTY OF WESTCHESTER

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 ENTERED**
 ON 8-22- 2007
**WESTCHESTER
 COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF WESTCHESTER

-----X
 THE PEOPLE OF THE STATE OF NEW YORK

- against -

DECISION AND ORDER

PIERRE RENE, ANDRE HINDS, BRANDON BROWN,
 JERRY DIAMOND, TARA MC QUEEN, TYRONE LEE,
 CARMEN VAZ, DEBRA FLEARY AND ALICIA BERRY,

Ind. No. 07-00507-02

Defendants.

-----X
 NEARY, J.

The defendant, Andre Hinds, has been indicted for the crimes of Grand Larceny in the Second Degree, Criminal Possession of a Forged Instrument in the Second Degree, Identity Theft in the First Degree (2 Counts), Criminal Possession of Stolen Property in the Second Degree (two counts), Conspiracy in the Fourth Degree, Scheme to Defraud in the First Degree and Criminal Possession of Stolen Property in the Third Degree. The defendant has filed an omnibus motion which consists of a Notice of Motion and an Affirmation in support thereof. In response, the People have submitted an Affirmation in Opposition together with a

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Memorandum of Law. Having read all of the submitted papers and reviewed the court's file, this Court makes the following determination.

1. MOTION TO INSPECT THE GRAND JURY MINUTES AND TO DISMISS AND/OR REDUCE THE INDICTMENT PURSUANT TO CPL ARTICLE 210

The defendant's motion to inspect the Grand Jury minutes is granted. Upon an *in camera* inspection of the Grand Jury minutes by Court, the motion to dismiss the indictment or reduce a charged offense in the indictment is denied.

The Court has reviewed the minutes of the proceeding before the Grand Jury. The Grand Jury was properly instructed (see People v. Calbud, 49 NY2d 389, 426 NYS2d 389, 402 NE2d 1140 and People v. Valles, 62 NY2d 36, 476 NYS2d 50, 464 NE2d 418) and the evidence presented, if accepted as true, would be legally sufficient to establish every element of the offenses charged. [See CPL §210.30(2)]. In addition, the minutes reveal that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, and that it was instructed that only those grand jurors who had heard all of the evidence could participate in voting on the matter.

The Court does not find that the release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court in making this determination.

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2. MOTION FOR DISCOVERY AND INSPECTION PURSUANT TO CPL ARTICLE 240

The defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 240. If any items set forth in CPL Article 240 have not been provided to the defendant pursuant to the Consent Discovery Order in the instant matter, said items are to be provided forthwith.

The People recognize their continuing duty to disclose exculpatory material at the earliest possible date. [See Brady v. Maryland, 373 US 83, 83 S Ct. 1194, 10 LE2d 215 and Giglio v. United States, 405 US 150, 92 S Ct. 763, 31 LE2d 104]. If the People are or become aware of any material which is arguable exculpatory but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

To any further extent, the application is denied as seeking material or information beyond the scope of discovery. [See People v. Colavito, 87 NY2d 423, 639 NYS2d 996, 663 NE2d 308; Matter of Brown v. Grosso, 285 AD2d 642, 729 NYS2d 492, lv. denied 97 NY2d 605, 737 NYS2d 52, 762 NE2d 930; Matter of Brown v. Appelman, 241 AD2d 279, 672 NYS2d 373; Matter of Catterson v. Jones, 229 AD2d 435, 644 NYS2d 573; Matter of Catterson v. Rohl, 202 AD2d 420, 608 NYS2d 696, lv. denied 83 NY2d 755, 613 NYS2d 127, 241 NE2d 279].

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3. MOTION TO SUPPRESS NOTICED STATEMENTS

This branch of the defendant's motion is granted to the extent that a Huntley hearing shall be held prior to trial to determine the admissibility and voluntariness of any statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL §710.30 (1)(a), CPL §710.20(3), CPL §710.60[3][b]; People v. Weaver, 49 NY2d 1012, 429 NYS2d 399, 406 NE2d 1335.

4. MOTION TO SUPPRESS PHYSICAL EVIDENCE PURSUANT TO CPL ARTICLE 710

This branch of the defendant's motion is granted solely to the extent of conducting a Mapp hearing prior to trial to determine the propriety of any search of the defendant's person or vehicle in which he was a passenger which resulted in the seizure of property. [Mapp v. Ohio, 367 US 643, 81 S Ct. 1684, 6 LE2d 1081].

This motion is denied as to any property obtained as a result of two search warrant executions. The Court has reviewed the two search warrants and accompanying affidavits utilized in this case and annexed to the People's answer. The Court finds that the affidavits provided the issuing magistrate with probable cause to believe that evidence of a crime could be located at the locations specified in the application. Accordingly, the defendant's motion to suppress evidence obtained as a result of the search warrant executions is denied.

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5. MOTION FOR A SANDOVAL HEARING

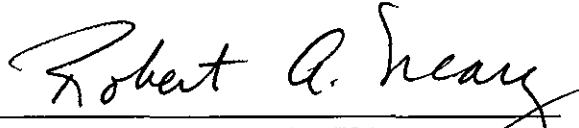
This branch of the defendant's motion is granted to the limited extent of conducting a Sandoval hearing immediately prior to trial at which time: (1) the People must notify the defendant of all specific instances of the defendant's prior uncharged criminal, vicious or immoral conduct of which the People have knowledge and which the People intend to use at trial for the purposes of impeaching the credibility of the defendant (see CPL §240.43); and (2) the defendant must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf. [See People v. Malphurs, 111 AD2d 266, 269].

6. MOTION FOR TIME TO FILE FUTURE MOTIONS

This motion is denied. Any future motion must be brought by way of order to show cause setting forth reasons as to why said motion was not brought in conformity with CPL §255.20.

This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
August 21, 2007


ROBERT A. NEARY
ACTING SUPREME COURT JUSTICE

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