

**People v Lee**

2007 NY Slip Op 34570(U)

August 21, 2007

Supreme Court, Westchester County

Docket Number: 07-00507-06

Judge: Robert A. Neary

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

**FILED**  
 AUG 22 2007  
 TIMOTHY C. IRONI  
 COUNTY CLERK  
 COUNTY OF WESTCHESTER

**FILED  
 AND  
 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. 07-00507-06

Defendants.

-----X

NEARY, J.

The defendant, Tyrone Lee, has been indicted for the crimes of Conspiracy in the Fourth Degree, Scheme to Defraud in the First Degree and Identify Theft in the First 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 Memorandum of Law. Having read all of the submitted papers and reviewed the court's file, this Court makes the following determination.

People v. Tyrone Lee  
Indictment No. 07-00507-06

I. 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.

II. MOTION FOR BRADY MATERIAL

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

People v. Tyrone Lee  
Indictment No. 07-00507-06

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.

III. MOTION TO SUPPRESS EVIDENCE

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 resulting in the seizure of property. [Mapp v. Ohio, 367 US 643, 81 S Ct. 1684, 6 LE2d 1081].

IV. MOTION TO SUPPRESS ANY 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.

V. MOTION FOR A SANDOVAL/VENTIMIGLIA 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

People v. Tyrone Lee  
Indictment No. 07-00507-06

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].


In addition, with respect to the defendant's application pursuant to People v. Ventimiglia, 52 NY2d 350, this Court grants this aspect of the motion to the limited extent of conduct a Ventimiglia hearing immediately prior to trial to determine whether or not any evidence of uncharged crimes may be used by the People to prove their case in chief.

VI. MOTION FOR EXTENSION OF TIME FOR SUPPLEMENTAL 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

People v. Tyrone Lee  
Indictment No. 07-00507-06

Steven A. Bender  
Assistant District Attorney  
Westchester County  
Office of the District Attorney  
Richard J. Daronco Courthouse  
111 Dr. Martin Luther King Jr. Blvd.  
White Plains, New York 10601

Mark J. Fitzmaurice, Esq.  
Attorney for Defendant Lee  
15 Chester Avenue  
White Plains, New York 10601