

People v Berry

2007 NY Slip Op 34572(U)

August 21, 2007

Supreme Court, Westchester County

Docket Number: 07-00507-09

Judge: Robert A. Neary

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 AUG 22 2007
 TIMOTHY G. BOHLEN
 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. 07-00507-09

Defendants.

-----X

NEARY, J.

The defendant, Alicia Berry, has been indicted for the crimes of Conspiracy in the Fourth Degree, Scheme to Defraud in the First Degree and Grand Larceny in the Fourth 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.

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A. 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.

B. MOTION TO DISMISS INDICTMENT FOR FACIAL INSUFFICIENCY PURSUANT TO CPL ARTICLE 210

This motion is denied. The indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's commission thereof with

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sufficient precision as to clearly apprise the defendant of the conduct which is the subject of the indictment [CPL §200.50]. The indictment charges each and every element of the crimes, and alleges that the defendant committed the acts which constitute the crimes at a specified place during a specified time period and, therefore, is sufficient on its face. [People v. Iannone, 45 NY2d 589, 412 NYS2d 110, 384 NE2d 656; People v. Cohen, 52 NY2d 584, 439 NYS2d 321, 421 NE2d 813].

C. MOTION FOR DISCOVERY AND INSPECTION PURSUANT TO CPL ARTICLE 210

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

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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].

D. MOTION FOR EXCULPATORY EVIDENCE

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.

E. 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

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might unfairly affect him as a witness in his own behalf. [See People v. Malphurs, 111 AD2d 266, 269].

F. MOTION TO STRIKE ALIBI DEMAND

This motion is denied. Contrary to the defendant's contentions, it is well-settled that CPL §250.00 is indeed in compliance with the constitutional requirements (see People v. Dawson, 185 AD2d 854, 587 NYS2d 358, appeal denied 80 NY2d 974, 591 NYS2d 143, 605 NE2d 879; People v. Cruz, 176 AD2d 751, 574 NYS2d 1006, appeal denied 79 NY2d 855, 580 NYS2d 727, 588 NE2d 762; People v. Gill, 164 AD2d 867, 599 NYS2d 376, appeal denied 76 NY2d 893, 561 NYS2d 555, 562 NE2d 880; People v. Peterson, 96 AD2d 871, 578 NYS2d 358) and provides equality in the required disclosure (see People v. Peterson, 90 AD2d 871, 578 NYS2d 358; see generally Wardius v. Oregon, 412 US 470, 93 S Ct. 2208, 37 LE2d 82).

G. MOTION FOR A FURTHER BILL OF PARTICULARS PURSUANT TO CPL ARTICLE 710

This motion is denied. The Bill of Particulars set forth in the Consent Discovery Order provided to the defendant has adequately informed the defendant of the substance of his alleged conduct and in all respects complies with CPL §200.95.

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H. MOTION TO SUPPRESS STATEMENT PURSUANT TO CPL ARTICLE 710

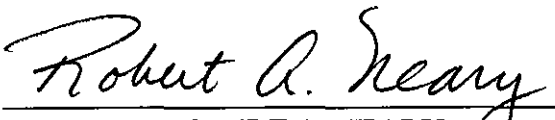
This branch of the defendant's motion is granted to the extent that a Huntley hearing shall be held prior to trial to determine the admissibility and voluntariness of any statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL §710.30 (1)(a), CPL §710.20(3),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

I. 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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