

**People v Rene**

2007 NY Slip Op 34573(U)

August 21, 2007

Supreme Court, Westchester County

Docket Number: 07-00507-01

Judge: Robert A. Neary

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 COUNTY OF WESTCHESTER

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 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. 07-00507-01

Defendants.

-----X

NEARY, J.

The defendant, Perry Rene, has been indicted for the crimes of Conspiracy in the Fourth Degree, Scheme to Defraud in the First Degree, Criminal Possession of Stolen Property in the Third Degree, Identify Theft in the First Degree and Criminal Possession of Stolen Property in the Second 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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1. and 2.     MOTION TO INSPECT THE GRAND JURY MINUTES AND TO DISMISS  
AND/OR REDUCE THE INDICTMENT

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.

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

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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. and 5. D. MOTION TO SUPPRESS PHYSICAL EVIDENCE

That aspect of the defendant's motion which deals with any property obtained from the defendant's person is denied. The defendant fails to set forth sufficient factual allegations in his omnibus motion to warrant suppression or a hearing on the matter. [People v. Mendoza, 82 NY2d 415].

The sufficiency of factual allegations contained in a motion to suppress "should be evaluated by (1) the face of the pleadings, (2) assessed in conjunction with the context of the motion, and (3) the defendant's access to information." [People v. Mendoza, 82 NY2d 415 at 426; People v. Jones, 95 NY2d 721, 723 NYS2d 761, 746 NE2d 1053]. In the present case, the defendant was provided with detailed information about the basis for his arrest through the indictment, the consent discovery and the People's response to the omnibus motion. In light of the information that was made available to the defendant and his failure to "controvert the specific factual averments as to the circumstances of the crime and his arrest," that branch of the defendant's motion is summarily denied.

In addition, 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

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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.

6. MOTION TO SUPPRESS IDENTIFICATION

The defendant's motion is denied as moot as no CPL §710.30 identification notices have been filed as to this defendant.

7. 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].

8. MOTION FOR EXCULPATORY 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

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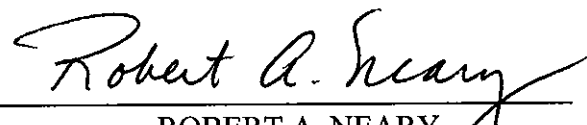
Giglio v. United States, 405 US 150, 92 S Ct. 763, 31 LE2d 104]. If the People are or become aware of any material which is arguable exculpatory but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

9. 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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