

People v Crewe
2007 NY Slip Op 34574(U)
December 12, 2007
Supreme Court, Westchester County
Docket Number: 07-1077
Judge: Lester B. Adler
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SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

CARLOS JEAN-BAPTISTE, a/k/a "C.J.,"
LLOYD BRAHAM,
WARREN DAVIS a/k/a 'STONE,"
ANDREW CREWE a/k/a 'KILLER,"

Defendants.
-----X

ADLER, J.

Defendant stands accused under Indictment No.: 07-1077 of two counts of murder in the second degree (Penal Law §125.25[3]), six counts of robbery in the first degree (Penal Law §166.15[1], [2] & [4]), three counts of burglary in the first degree (PL §140.30[1], [2] & [4]), and one count of criminal possession of a weapon in the second degree (Penal Law §265.03[3]). By notice of motion dated November 9, 2007, with accompanying affirmation, defendant moves for omnibus relief. In response, the People have submitted an affirmation in opposition dated December 5, 2007, with accompanying memorandum of law.

It is alleged that on or about June 29, 2007, the defendant, Andrew Crewe, a/k/a "Killer," while in the vicinity of 138 West 4th Street in the City of Mount Vernon, New York, and while aiding, abetting and acting in concert with the co-defendants and at least two other unapprehended individuals, did unlawfully enter the premises of the basement apartment located at the above address with the intent to steal property from the occupants thereof. It is further alleged that during the course of the commission of

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DECISION & ORDER

Indictment No.: 07-1077

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COUNTY OF WESTCHESTER

the robbery, the co-defendant Carlos Jean-Baptistse intentionally shot Neville Brett in the back as he lay face down on the floor thereby causing his death.

The motion is disposed of as follows:

A. MOTION FOR DISCOVERY AND INSPECTION

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 (see *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.E.2d 215 and *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.E.2d 104) at the earliest possible date. 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.

The People also recognize their continuing duty to disclose any written or recorded statement of a witness whom they intend to call at trial or a pre-trial hearing regarding the subject matter of the testimony which is in their possession or control. Defendant's motion for early discovery is denied (see CPL §§240.44 & 240.45).

To any further extent, the application is denied as seeking material or information beyond the scope of discovery (see *People v. Colavito*, 87 N.Y.2d 423, 639 N.Y.S.2d 996, 663 N.E.2d 308; *Matter of Brown v. Grosso*, 285 A.D.2d 642, 729 N.Y.S.2d 492,

lv. denied 97 N.Y.2d 605, 737 N.Y.S.2d 52, 762 N.E.2d 930; *Matter of Brown v. Appelman*, 241 A.D.2d 279, 672 N.Y.S.2d 373; *Matter of Catterson v. Jones*, 229 A.D.2d 435, 644 N.Y.S.2d 573; *Matter of Catterson v. Rohl*, 202 A.D.2d 420, 608 N.Y.S.2d 696; *lv. denied* 83 N.Y.2d 755, 613 N.Y.S.2d 127, 241 N.E.2d 279).

B. MOTION FOR A BILL OF PARTICULARS

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.

C&D. MOTION TO INSPECT THE GRAND JURY MINUTES
AND TO DISMISS AND/OR REDUCE THE INDICTMENT

Defendant's motion to inspect the Grand Jury minutes is granted. Upon inspection, the motion to dismiss the indictment or reduce a charged offense in the indictment is denied.

On consent of the People, the Court has reviewed the minutes of the proceedings before the Grand Jury. The Grand Jury was properly instructed (see *People v. Calbud*, 49 N.Y.2d 389, 426 N.Y.S.2d 389, 402 N.E.2d 1140 and *People v. Valles*, 62 N.Y.2d 36, 476 N.Y.S.2d 50, 464 N.E.2d 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 were present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law.

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

E. MOTION TO SUPPRESS TANGIBLE EVIDENCE

In the consent discovery, the People consented to the inspection of “[a]ny property taken from the person or possession of the defendant . . .” The People reiterate this consent in their opposition to defendant’s request in his omnibus motions for discovery. In contrast to these two representations, in opposition to defendant’s motion to suppress tangible evidence the People aver that the only item seized was a green Lincoln Navigator that co-defendant Crewe was operating at the time of his arrest. The People further state that the only location searched was the basement apartment located at 258 East 4th Street in the City of Mount Vernon, New York.

It is unclear from the People’s opposition papers what evidence, if any, was taken from the defendant. Given this confusion, in the event tangible evidence was in fact taken from defendant, the motion is granted solely to the extent that a hearing shall be held prior to trial to determine the propriety of any search resulting in the seizure of such evidence (*Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.E.2d 1081).

To the extent defendant moves to suppress tangible evidence seized from the basement apartment located at 258 East 4th Street in the City of Mount Vernon, New York, the motion is denied on the ground that he has failed to demonstrate he

possesses a legitimate expectation of privacy in the premises (see *People v. Ramirez-Portoreal*, 88 N.Y.2d 99, 108, 643 N.Y.S.2d 502, 666 N.E.2d 207).¹

F. MOTION TO SUPPRESS NOTICED STATEMENTS

This branch of defendant's motion is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by him, which have been noticed by the People pursuant to CPL §710.30(1)(a), were involuntarily made within the meaning of CPL §60.45 (see CPL §710.20(3); CPL §710.60[3][b]; *People v. Weaver*, 49 N.Y.2d 1012, 429 N.Y.S.2d 399, 406 N.E.2d 1335), and/or were obtained in violation of his Fourth Amendment rights (*Dunaway v. New York*, 442 U.S. 200, 99 S.Ct. 2248, 60 L.E.2d 824).

G. MOTION TO SUPPRESS IDENTIFICATION

The People have noticed an identification procedure of the defendant pursuant to CPL §710.30. The People claim that the identifying witness previously knew the defendant. Therefore, defendant's application is granted to the extent that a hearing shall be held prior to trial to determine whether the identification procedure was confirmatory (*People v. Rodriguez*, 79 N.Y.2d 445, 583 N.Y.S.2d 814, 593 N.E.2d 268)

If, after consideration of the evidence presented during that hearing, the Court finds that the procedure was not confirmatory, then the hearing will be expanded to determine the propriety of the identification. Specifically, the Court shall determine whether the identification was so improperly suggestive as to taint any in-court identification. In the event the identification is found to be unduly suggestive, the Court

¹The Court notes that, even if the defendant had established standing, it appears from the People's opposition papers that no tangible evidence was recovered from the basement apartment.

shall then go on to consider whether the People have proved by clear and convincing evidence that an independent source exists for such witness's proposed in-court identification.

Defendant's motion for a hearing to determine if the identification of the defendant was the product of an impermissible arrest is denied since the challenged evidence was acquired by the police before the alleged Fourth Amendment violation (see *United States v. Crews*, 445 U.S. 463, 100 S.Ct. 1244, 63 L.Ed.2d 537).

H&I. MOTION FOR SANDOVAL/VENTIMIGLIA HEARING

1. Sandoval - Granted solely to the extent that a *Sandoval* hearing shall be held immediately prior to trial at which time:

A. 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 purposes of impeaching the credibility of the defendant (see CPL §240.43); and

B. 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 A.D.2d 266, 489 N.Y.S.2d 102, *lv. denied* 66 N.Y.2d 616, 494 N.Y.S.2d 1039, 485 N.E.2d 243).

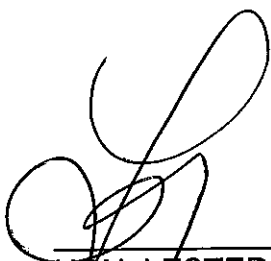
2. Ventimiglia - The People's papers appear to indicate that they have no evidence of any prior bad acts of the defendant which they intend to introduce at trial. Accordingly, the request for a *Ventimiglia* hearing is denied at the current time. In the event that the People subsequently determine that they will seek to introduce such

evidence, they shall so notify the Court and defense counsel and a *Ventimiglia* hearing (see *People v. Ventimiglia*, 52 N.Y.2d 350, 438 N.Y.S.2d 261, 420 N.E.2d 59) shall be held 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. The People are urged to make an appropriate decision in this regard sufficiently in advance of trial to allow any *Ventimiglia* hearing to be consolidated and held with the other hearings herein.

J. MOTION FOR TIME TO FILE FUTURE MOTIONS

Denied. Any future motions 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.

Dated: White Plains, New York
December 12, 2007



HON. LESTER B. ADLER
SUPREME COURT JUSTICE

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