

**People v Braham**

2007 NY Slip Op 34576(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

FILED  
AND ENTERED  
ON 12-13 2007  
WESTCHESTER  
COUNTY CLERK

00.

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

**DECISION & ORDER**

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

Indictment No.: 07-1077

Defendants.

**FILED**  
DEC 13 2007  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

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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 and memorandum of law, 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, Lloyd Braham, while in the vicinity of 138 West 4<sup>th</sup> 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 the

robbery, the co-defendant Carlos Jean-Baptiste 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 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.

B. 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).

C. 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.

D&E. MOTION TO STRIKE AND/OR SUPPRESS IDENTIFICATION

Defendant's motion to strike the identification notices served by the People is denied. The language in the notices served by the People in accordance with CPL §710.30 informed the defendant of the time and place and manner in which the identifications were made (CPL §710.30[1]; see *People v. Lopez*, 84 N.Y.2d 425, 618 N.Y.S.2d 879, 643 N.E.2d 501; *People v. Hartley*, 224 A.D.2d 712, 638 N.Y.S.2d 924, *appeal denied* 90 N.Y.2d 858, 661 N.Y.S.2d 185, 683 N.E.2d 1059).

Defendant has moved in the alternative to suppress the use at trial of the identification evidence. The People have noticed three identification procedures of the defendant. The People claim that all three identifying witnesses had a "prior familiarity" with the defendant. Consequently, defendant's application is granted to the extent that a hearing shall be held prior to trial to determine whether the identification procedures were 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 procedures were not confirmatory, then the hearing will be expanded to determine the propriety of the identifications. Specifically, the Court shall determine whether the identifications were so improperly suggestive as to taint any in-court identification. In the event the identifications are found to be unduly suggestive, the

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

F. 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.

G. MOTION TO STRIKE PREJUDICIAL LANGUAGE FROM INDICTMENT

Denied. The language concluding the indictment merely identifies the defendant's acts as public, rather than private wrongs and such language should not be stricken as prejudicial (*People v. Winters*, 194 A.D.2d 703, 599 N.Y.S.2d 293, *lv. denied* 82 N.Y.2d 761, 603 N.Y.S.2d 1003, 624 N.E.2d 189; see *People v. Gill*, 164 A.D.2d 867, 599 N.Y.S.2d 376, *appeal denied*, 76 N.Y.2d 893, 561 N.Y.S.2d 555, 562 N.E.2d 880; *People v. Garcia*, 170 Misc. 2d 543, 647 N.Y.S.2d 355). The defendant's remaining contentions are without merit and his application is accordingly denied.

H. 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).

I. 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 4<sup>th</sup> 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 either from the Lincoln Navigator or from the basement apartment located at 258 East 4<sup>th</sup> 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 locations searched (see *People v. Ramirez-Portoreal*, 88 N.Y.2d 99, 108, 643 N.Y.S.2d 502, 666 N.E.2d 207).<sup>1</sup>

J. MOTION TO SEVER

Defendant moves for severance on the ground that antagonistic defenses exist between defendant and the co-defendants (see *People v. Mahboubian*, 74 N.Y.2d 174, 544 N.Y.S.2d 769, 543 N.E.2d 34). "[S]everance is compelled where the core of each

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<sup>1</sup>The 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 inside the Lincoln Navigator or the basement apartment.

defense is in irreconcilable conflict with the other and where there is a significant danger, as both defenses are portrayed to the trial court, that the conflict alone would lead the jury to infer defendant's guilt" (*Id.* at 184). In the absence of any allegations regarding the nature of the defendants' defenses and how the core of each defense is in irreconcilable conflict with the other, defendant's motion for severance on this ground is denied.

Defendant further moves for severance pursuant to *Bruton v. United States* (391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476). Since it is not possible to determine whether the holding in *Bruton* is applicable until the *Huntley* hearings are conducted as to defendant and his co-defendants, defendant's motion for severance on this ground is denied as premature. However, the denial is without prejudice to renew the motion at a more appropriate time (see CPL §255.20[3]).

Dated: White Plains, New York  
December 12, 2007



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HON. LESTER B. ADLER  
SUPREME COURT JUSTICE

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