

People v Davis
2007 NY Slip Op 34577(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

QC

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,'

DECISION & ORDER

FILED

Indictment No.: 07-1077

DEC 13 2007
TIMOTHY C. DONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendants.

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 8, 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, Warren Davis, a/k/a "Stone," 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

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 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 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.

C. 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 Sixth Amendment right to counsel.

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 SEVER

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

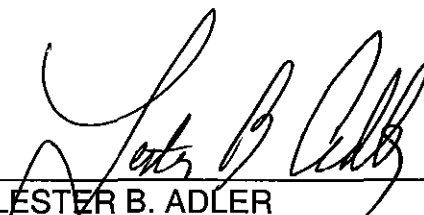
F. MOTION FOR TIME TO FILE FUTURE MOTIONS

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.

G. MOTION TO CONDUCT PRE-TRIAL HEARINGS TWO WEEKS
IN ADVANCE OF TRIAL

Defendant's motion to schedule pre-trial hearings two weeks prior to trial is denied. The hearings will be scheduled at a time that is convenient to the Court, upon due consideration of all of its other cases and obligations.

Dated: White Plains, New York
December 12, 2007



HON. LESTER B. ADLER
SUPREME COURT JUSTICE

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