

People v Sergio

2008 NY Slip Op 30411(U)

February 13, 2008

Supreme Court, Kings County

Docket Number: 0003431/2007

Judge: Patricia DiMango

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, CRIMINAL TERM: PART 30

-----X
 THE PEOPLE OF THE STATE OF NEW YORK :
 :
 -against- :
 : Indictment No. 3431/2007
 LAURA SERGIO, :
 :
 Defendant. :

DECISION AND ORDER

-----X
 THE PEOPLE OF THE STATE OF NEW YORK :
 : Indictment No. 3508/2007
 -against- :
 :
 ANDRIA SERGIO, :
 :
 Defendant. :

HON. PATRICIA M. Di MANGO:

The People seek an order, pursuant to the authority of People v Ricardo B (73 NY2d 228), for a dual-jury trial of the above-captioned indictments. Otherwise stated, the People are requesting this court to order that these two cases proceed to trial together, but with two separate juries, on the ground that the cases against both defendants will be supplied by essentially the same witnesses and that the use of the “dual jury procedure will obviate the necessity for multiple trials, thereby avoiding unwarranted burdens upon the resources of the criminal justice system and upon testifying witnesses,” and would “also promote fairness to the defendants.” Both defendants have independently opposed this motion.

Defendant Laura Sergio is charged under Indictment No. 3431/2007 with Murder in the Second Degree, Manslaughter in the First Degree, Manslaughter in the Second Degree, and Endangering the Welfare of a Child. These charges all relate to events which took place on or about and between April 6 and April 7, 2007, during which the defendant Laura Sergio gave birth to a baby girl, whom the People allege was born alive but was then asphyxiated by Laura Sergio, who then gave the body to her sister Andria Sergio, who in turn disposed of the body in trash bags outside of the defendants’ home. Upon this motion the People additionally allege that, knowing that a crime had taken

place, Andria Sergio "cleaned blood from the location of the murder," and gathered and disposed of "numerous items which would have led authorities to evidence of the murder," in addition to disposing of the body of the deceased baby.

Based upon her alleged participation in these acts, defendant Andria Sergio was charged under Indictment No. 3508/2007 with Hindering Prosecution in the First, Second, and Third Degrees, Tampering with Physical Evidence, and Improperly Disposing of the Dead Body of a Human Being.

The indictment against Laura Sergio was filed on April 13, 2007 and that against Andria Sergio was filed April 20, 2007. During their pendency both cases had been proceeding separately, for various reasons¹. Also, it bears mention that Andria Sergio had exercised her right to testify before the Grand Jury and her Grand Jury also heard testimony on her behalf from her mother and another sister (all indicating that no one was aware of the fact that Laura Sergio had been pregnant or had given birth). Meanwhile, counsel for defendant Laura Sergio had given notice of the defense's intention to present a psychiatric defense².

It is against this backdrop that the People have brought the instant motion, which was filed on November 21, 2007, some seven months after the indictment was filed. Each defendant has submitted papers in opposition to the People's application, and the court has heard oral argument on the matter. Additionally, the People submitted papers in reply, following the oral argument had herein.

In his opposition to a dual jury trial, defendant Andria Sergio's attorney asserts, in the main, three points mandating denial of the motion: (1) that the motion is improper and unauthorized by law since the two defendants were separately indicted, and are not

¹ Both defendants highlight this fact and allege that the People have represented all along that they were proceeding separately against the two defendants and both defense counsel maintain that the instant motion is a strategic "about face" to buttress the weak or non-existent case against defendant Andria Sergio. While effectively conceding that the two cases were prosecuted separately from the outset, and separate indictments obtained, the People attribute this to various matters, and intimate that, among other things, the People acceded to the wishes of prior defense counsel for Andria Sergio in not pursuing a joint indictment against both defendants. Of course, this does not address what has occurred since the two separate indictments have been obtained and no one disputes that negotiations had taken place regarding the possibility of a disposition in Andria Sergio's case.

² It is the court's belief that the defense may seek to establish that Laura Sergio had been unaware of her own pregnancy and did not comprehend this even upon or after giving birth.

co-defendants; (2) that his client is being denied her constitutional and statutory rights to a speedy trial; and (3) that the People have failed to establish that a multiple jury trial would not unduly prejudice [either] defendant.

With regard to the speedy trial claim, counsel for Andria Sergio asserts that in the ten months since Andria Sergio's arrest and indictment he has repeatedly stated his readiness for trial and requests one as soon as possible. He further alleges that the motion, herein, is a delaying tactic on the part of the People. He, therefore, requests that these adjournments be chargeable to them.³

Further, both counsel argue that their entire trial strategy has been prejudiced and compromised by this late application by the People.

Observing that a dual trial is, in certain respects, a joint trial, Andria Sergio's attorney states that he has been proceeding with his defense independently of that of Laura Sergio. However if the two are to be treated as co-defendants at a joint trial, he would have been consulting and strategizing with Laura Sergio's attorney in anticipation of trial to coordinate their defenses and witness examinations.

Counsel asserts that he would have argued more vociferously about the timeliness of Laura Sergio's discovery had he known the timing of Andria Sergio's trial hinged on the readiness of Laura Sergio.

In sum, counsel urges that the prejudice of all of these factors far outweighs the dubious, alleged benefits of a dual trial herein and that this matter does not meet the criteria set forth in Ricardo B.

Counsel for Laura Sergio also urges that she would be greatly prejudiced by a dual trial herein and he too notes that he had been proceeding on the assumption that the two sisters would be tried separately based on the People's representations to that effect.

Laura Sergio's attorney indicates that the counts contained in the indictment filed against his client are inconsistent and do not comport with the evidence. Even more importantly, that the People's theories against his client are inconsistent with the charges of criminal liability asserted against her sister Laura, and that this too precludes proceeding against them in a joint trial.

³Counsel makes these claims without a formal motion pursuant to CPL 30.30 or CPL 30.20.

As to Laura Sergio, specifically, it is noted that the People claim (and will attempt to prove) that Laura wrapped a live newborn baby in towels which were placed in a plastic bag which bag was ultimately placed with the trash on the back porch of the Sergio house, thereby having created a condition which caused the death of the baby, warranting a charge of depraved indifference murder.

By contrast, as to Andria Sergio, counsel asserts that the People contend that Andria assisted her sister in placing the towels, in which the baby was contained, into a plastic bag and that she knew that the baby was in the towels. However, according to the People's theory, the baby had to have been dead when placed in the towels and that Andria knew that a dead baby was in the towels and that she helped place them in a bag. For, if the baby was alive (as the People contend with respect to Laura), then Andria would properly be charged as an accomplice with Laura in the baby's depraved indifference (or possibly even intentional) murder, rather than being charged with the far less severe crimes of hindering prosecution, tampering with physical evidence, and improperly disposing of a dead body. In counsel's view, these are inconsistent positions and that, ultimately, they cannot both be pursued (and certainly not simultaneously).

In the view of counsel for Laura Sergio, it is clear that the defendants have antagonistic defenses and that, with a dual trial, it would be impossible to restrict proper cross-examination or to avoid the "prejudicial and adverse spillover effects" upon the other defendant. It would not be fair or appropriate to curtail one defendant's cross-examination because of a possible adverse effect upon the other's defendant's jury, thereby requiring a mistrial. Moreover, all of these matters cannot possibly be foreseen in advance and thereby avoided, but rather, many will arise instantaneously in the natural flow of cross-examination and yet, may give rise to a mistrial.

Laura Sergio's attorney asserts that, notwithstanding that the People allege that the proof against both defendants is supplied by the same evidence, the People fail to allege in detail the specifics of such alleged evidence in support of their motion, particularly in view of the clear conflict in their respective theories against each defendant. Moreover, although the People allege upon this motion that, with the exception of one witness, all of the witnesses' testimony will be relevant to the cases against each defendant, counsel notes that, here too, the People have failed to indicate who these witnesses are and how each witness' testimony is relevant to the case against each defendant.

Counsel for Laura Sergio discussed various other problems inherent in there effectively being a joint trial herein and the ways in which his client could be prejudiced by virtue of the "joint prosecution."

Finally, notwithstanding the People's claim that a dual trial of these cases would actually promote fairness to the defendants, counsel does not find that the People have shown this and rejects the People's offer on behalf of his client, Laura Sergio and prefers to go to trial with Laura Sergio alone.

Upon oral argument, in response to an inquiry by the court, the prosecuting Assistant District Attorney conceded that her primary or sole actual reason for this request was "judicial economy," specifically that proof of the case against Andria Sergio entailed proving the Murder or Manslaughter case against Laura Sergio and that the People would be calling 15 to 20 witnesses to establish the crimes against both defendants. These witnesses will consist primarily of medical personnel and other staff from Lutheran Hospital, the emergency medical technicians who responded to the Sergio home, police officers, and medical experts.

Following oral argument, the People submitted a reply to the defendants' oppositions to the instant application. However, in their **reply** papers, the People now assert that their application is "inherently a motion to consolidate with a concession by the People that additional assurances be put in place to protect the rights of these defendants," and that this court has the "inherent power to consolidate these indictments⁴ and order a dual jury trial on the application of the People as submitted."

The court has considered all of the parties' submissions as well as having heard extensive oral argument on the matter, and, upon due consideration of all of the above as well as the court files and prior proceedings had upon each of these cases, the court respectfully determines that the motion must be denied.

Analysis

This court commences its discussion by observing that the device of a multiple jury trial came about as an answer to the problem presented where two or more defendants were to be jointly tried, usually for the same crimes, but could not be jointly tried before the same jury because one or more defendants had given statements which

⁴ Insofar as these two defendants were not indicted together, for whatever reasons, and the People have never formally moved for consolidation, this court does not find it appropriate to now deem their application for a dual jury trial **in their reply papers** to be the equivalent of a motion to consolidate, particularly where the People did not address all the relevant considerations for and **against consolidation in their moving papers**, much less formally requested same and focused **primarily** on the matters of witness convenience and judicial economy.

could not be introduced at a joint trial. (See, Bruton/Cruz (Bruton v United States, 391 U.S. 123; Cruz v New York, 481 U.S. 186).

As noted above, this court will not deem the instant motion to be the equivalent of an application for consolidation given the impropriety of making a new motion in reply papers. Further, the court finds that it is rather late in these proceedings to now be making such an application with no reasons or justification given for the delay, and that both defendants would be unfairly prejudiced if such application were to be granted at this point in time.

This court agrees with the cogent arguments made by defense counsel regarding the inherently inconsistent theories of the People as to the time and manner of death of Baby Girl Sergio vis-a-vis each defendant, the conflicting defenses and strategies of each defendant, the great disparity in the nature of the charges against each defendant, and the unusual factual circumstances here presented. This court finds, in the exercise of its discretion, that a consolidation of these two cases would not be appropriate, and would in fact cause undue prejudice to both defendants, and in particular, great prejudice to Andria Sergio.

The court next turns to the actual application presented for its determination, namely the request for a dual jury trial.

The court concurs with the defense's assessment of the relevant case law that the device of a dual jury is only appropriate where two cases were joined at inception⁵ and the multiple jury device is an appropriate alternative to a complete severance⁶, or, where, consolidation has been granted and the defense demonstrates the sort of prejudice a joint trial would engender which could be completely obviated by the use of multiple juries.

⁵ While the People cite People v Hayes (179 AD2d 438; lv. denied, 79 NY2d 858) in support of their application because there too one defendant was accused of hindering prosecution and tampering with evidence, in Hayes, the defendant had been jointly indicted and tried with co-defendants charged with murder. However, there, unlike in the matter at bar, there was no factual issue as to whether the victim was dead before defendant Hayes allegedly helped dismember and dispose of the body. Moreover, in requesting severance, the defendant there did not raise any allegations of prejudice before the trial court, and such application was denied.

⁶ Indeed, the use of multiple juries is to be evaluated under the same standards used in reviewing severance motions (see People v Irizarry, 83 NY2d 557, 560; see also, Ricardo B, id. at 233); however, in Irizarry, the co-defendants consented to a dual jury trial.

This court finds neither scenario to reflect the situation presented at bar and thus determines that the People's motion is inapplicable to this case.

Regardless, even if one were to find, as urged by the People that a dual jury could be ordered under the circumstances here presented, this court concludes that, on the merits, this application should be denied.

Otherwise stated, applying the criteria set forth in Ricardo B, this court does not find that the People have demonstrated that a dual jury trial would be appropriate here, would further the goals of the multiple jury device, and would not result in prejudice to either defendant or cause a greater burden to the court.

As the court in Ricardo B cautioned, "multiple juries are the exception, not the rule [and, despite the benefit to judicial economy,] [t]he first order of business of the criminal courts, however, is justice, not economy or convenience and the use of multiple juries can only magnify the problems inherent in joint trials because of the need to insulate the juries from inadmissible evidence or argument. Multiple juries are to be used sparingly and then only after a full consideration of the impact the procedure will have on the defendants' due process rights and after thorough precautions have been taken to protect those rights" (id. at 235).

In this case the defendants were never joined for trial in the first instance. Further, there is a great disparity between the charges alleged against each defendant and this court finds that there will be a significant amount of evidence admissible against only one defendant⁷ and not the other. A great potential for prejudicial error exists if both juries hear evidence or argument properly intended only for one defendant, and hence, the potential for mistrial necessitating retrial is significant. Thus, this court declines to order a dual trial herein.

On the contrary, given the seriousness of the charges against each defendant and the emotionally charged nature of the evidence to be presented, in order to ensure that

⁷ In this court's view, assuming Laura Sergio does present a psychiatric defense to the charges of murder and manslaughter, such testimony need not and indeed, probably should not be heard by Andria Sergio's jury, as the latter jury is only concerned with the question of the commission of such a crime and Andria's knowledge thereof, not Laura's possible lack of culpability therefor by virtue of her mental state. The receipt of such testimony (from experts and possibly other witnesses) and the People's attempted rebuttal thereof, would be very time-consuming and would leave Andria's jury waiting and idle for extensive periods of time, and wondering what was happening in their absence.

each defendant has a fair trial, this court concludes that the safer course is to avoid the potential for error inherent in the use of the dual jury device in this case (see, e.g., People v Glover, 4 AD3d 852, 853, lv. denied, 2 NY2d 740) and to hold separate trials for each defendant herein.

This court is not convinced that a dual trial herein would promote judicial economy or witness convenience. Rather, the proceedings would be complicated and burdened by the logistics of managing two separate juries and would more likely be protracted by the use of this device. In fact, should the People proceed with the trial of Laura Sergio first, and should that trial result in the finding of not guilty, the trial of Andria Sergio would then become a moot issue.

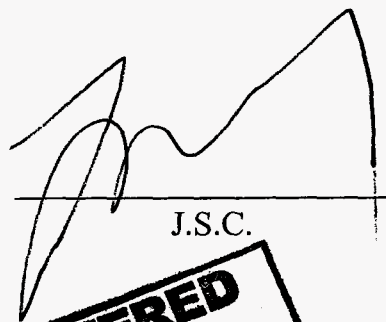
This, coupled with the undue prejudice inherent in the use of this device in a case where the defendants were not joined for trial in the first instance, and the particular factual and procedural circumstances here presented, as outlined by defense counsel, all militate against the use of a dual jury in this matter.

In sum, there are no overriding grounds for ordering a dual jury trial herein. To promote fairness and convenience all around, it is far preferable to maintain these two cases on their respective, separate trial tracks and not to delay one case for the illusory benefit of joinder with the other for trial.

Accordingly, the People's application for a dual jury trial of these two cases is, respectfully, denied.

The foregoing constitutes the decision and order of the court.

Dated: Brooklyn, New York
February 13, 2008



J.S.C.

ENTERED
FEB 13 2008
NANCY T. SUNSHINE
COUNTY CLERK