

People v Bonhomme
2009 NY Slip Op 33382(U)
August 19, 2009
Supreme Court, Westchester County
Docket Number: 09-00522-01
Judge: Robert A. Neary
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AND
ENTERED**
ON 8-19- 2009
**WESTCHESTER
COUNTY CLERK**

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AUG 19 2009
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

- against -

DECISION AND ORDER

VETAL BONHOMME,

Ind. No. 09-00522-01

Defendant.

-----X

NEARY, J.

The defendant, Vetal Bonhomme, has been charged with the crimes of Murder in the Second Degree, Criminal Possession of a Weapon in the Second Degree and Criminal Possession of a Weapon in the Third Degree. The defendant has made an omnibus motion which consists of a Notice of Motion, an Affirmation in Support, an Affidavit in Support and a Memorandum of Law in Support thereof. In response, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Lastly, the Court has received a Reply Memorandum of Law in Support. Having read all of the submitted papers and reviewed the court file, this Court makes the following determination.

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1. MOTION FOR DISCOVERY AND INSPECTION

The 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 at the earliest possible date. [See Brady v. Maryland, 373 US 83, 83 S Ct. 1194, 10 LE2d 215 and 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.

To any further extent, the application is denied as seeking material or information beyond the scope of discovery. [See People v. Colavito, 87 NY2d 423, 639 NYS2d 996, 663 NE2d 308; Matter of Brown v. Grosso, 285 AD2d 642, 729 NYS2d 492, lv. denied 97 NY2d 605, 737 NYS2d 52, 762 NE2d 930; Matter of Brown v. Appelman, 241 AD2d 279, 672 NYS2d 373; Matter of Catterson v. Jones, 229 AD2d 435, 644 NYS2d 573; Matter of Catterson v. Rohl, 202 AD2d 420, 608 NYS2d 696, lv. denied 83 NY2d 755, 613 NYS2d 127, 241 NE2d 279].

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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 and the proceedings were properly conducted. [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]. Moreover, 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 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 STATEMENTS PURSUANT TO CPL ARTICLE 710

This branch of the 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 the

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defendant, which have been noticed by the People pursuant to CPL §710.30 (1)(a), were involuntarily made by the defendant within the meaning of CPL §60.45 (see CPL §710.20(3), CPL §710.60[3][b]; People v. Weaver, 49 NY2d 1012, 429 NYS2d 399, 406 NE2d 1335), obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (Dunaway v. New York, 442 US 200, 99 S. Ct. 2248, 60 LE2d 824).

4. MOTION TO SUPPRESS IDENTIFICATION

This motion is granted to the limited extent of conducting a hearing prior to trial to determine whether or not the noticed identifications are unduly suggestive. [United States v. Wade, 388 US 218, 87 S Ct. 1926, 18 LE2d 1149]. 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 proven by clear and convincing evidence that an independent source exists for such witness' proposed in-court identification.

5. MOTION TO SUPPRESS WITNESS TESTIMONY

The defendant seeks to suppress witness testimony as the fruit of an unlawful arrest. The defendant's suspects that certain unnamed witnesses who may give testimony against him at trial were discovered by police through his cellular telephone which was removed from his

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person at the time of his arrest. For the fruit to the poisonous tree to be operative, a casual chain must be shown to exist from the alleged illegality to the procurement of, and the effect upon, the substance of the evidence sought to be employed. A bare assertion that the identity of witnesses was learned by illegal means is insufficient to warrant exclusion. [See People v. Dannic, 30 AD2d 689]. Moreover, even if illegal action were involved, the real issue is whether the witness would have come forward voluntarily upon application of additional interacting forces to be found in the personality and character of the witness or through further police investigation. [See People v. Mendez, 28 NY2d 94].

The defendant's speculation as to how some witnesses became known to police is insufficient to warrant a hearing. The defendant's motion is here denied.

6. MOTION FOR TIME TO FILE FUTURE SUPPRESSION 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. With respect to any property seized pursuant to a search warrant, and to the extent that the defendant seeks to suppress such evidence, the Court has reviewed the affidavit in support of the search warrant and finds that it did provide the signing magistrate with probable cause to believe that evidence could be located at the location described in the warrant. The Court further finds that the affidavit was properly sealed by the issuing court in order to protect the individuals

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listed therein from danger given the violent nature of the conduct alleged. [See People v. Zuran, 34 AD3d 857].

7. MOTION FOR "VIEWABILITY" HEARING

This motion is granted to the extent that a hearing will be held before trial to determine whether the videotape recordings are so inaudible and indistinct that a jury must speculate as to their contents. [See People v. Harrell, 187 AD2d 453, 589 NYS2d 531, *lv. denied* 81 NY2d 789, 594 NYS2d 736, 610 NE2d 409; People v. Morgan, 175 AD2d 930, 932, 573 NYS2d 765, *appeal denied* 79 NY2d 8611, 580 NYS2d 733, 588 NE2d 768].

8. MOTION FOR A SANDOVAL/VENTIMIGLIA 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, 269].

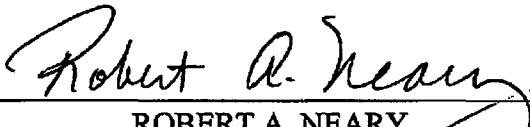
In addition, with respect to the defendant's application pursuant to People v. Ventimiglia, 52 NY2d 350, this Court grants this aspect of the motion to the limited extent of

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conduct a Ventimiglia hearing 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. At the hearing, the People will disclose what, if any, alleged criminal, vicious or immoral acts they intend to use at trial.

This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
August 19, 2009


ROBERT A. NEARY
ACTING SUPREME COURT JUSTICE

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