

**People v Blue**

2009 NY Slip Op 33481(U)

November 16, 2009

Supreme Court, Westchester County

Docket Number: Ind. No. 0397/09

Judge: Robert DiBella

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

- against -

MARK A. BLUE,

Defendant.

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DIBELLA, J.

The defendant is charged by indictment with Attempted Murder in the First Degree; Assault in the First Degree and Unlawful Imprisonment in the First Degree. The defendant allegedly committed these offenses on or about March 13, 2009 in the City of Mount Vernon. The court held a Sandoval/Molineux hearing on November 16, 2009, pursuant to a Decision and Order (Hubert, J.) dated July 20, 2009.

The People seek to admit evidence, should the defendant testify at trial, of the following convictions: (1) a 1981 Misdemeanor conviction for Possession of Stolen Property in the Third Degree; (2) a 1981 Youthful Offender Adjudication for Sexual Abuse in the Second Degree; (3) a 1982 conviction for Assault in the Third Degree and the underlying facts, wherein the defendant had an argument with a fellow female resident of a group home, then proceeded to strike her, put her in a headlock, throw her to the ground and throw hot soup and coffee on her. He also stomped on the back of her head; (4) a 1984 conviction for Assault in the First

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DECISION & ORDER  
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TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

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Degree and the underlying facts, wherein the defendant struck a male victim with a hatchet and fractured his skull; (5) a 1990 conviction for Possession of a Forged Instrument and the underlying facts, wherein the defendant altered the amount of a check from his employer and subsequently cashed the check; and (6) a Florida conviction in 1994 for Aggravated Battery, Aggravated Child Abuse; Threats and Resisting Arrest without any of the underlying facts.

The People also seek to introduce evidence pursuant to People v. Molineux, 164 N.Y. 264, that on March 31, 1988, the defendant had an argument with his brother and stabbed him in the arm and hand with a kitchen knife.

**SANDOVAL RULING**

Pursuant to People v. Sandoval, 34 N.Y.2d 371 (1974), this court must strike a balance between the probative value of the defendant's prior criminal conduct as to the defendant's credibility and the possibility that the jury will view such evidence as evidence of the defendant's guilt. This court must also consider "the effect on the validity of the fact finding process if the defendant does not testify out of fear of the impact of impeachment testimony for reasons other than its direct effect on credibility." Id. at 378. In balancing these factors this court recognizes the Sandoval compromise as a mechanism for minimizing the prejudicial impact of admitting otherwise relevant evidence of a defendant's past criminal conduct.

The court finds that the defendant's convictions all bear directly on the issue of his credibility and his willingness to place his own interests above the interests

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of society. See People v. Zada, 82 A.D.2d 926 (2d Dept. 1981); People v. Hunter 580 NYS2d 387, 388 (2d Dept. 1992).

However, after weighing the prejudicial effect of the proposed testimony against its probative worth for impeachment purposes, the court finds that should the defendant testify the People may inquire about his 1984 conviction for Assault in the First Degree with the underlying facts; his 1990 conviction for Possession of a Forged Instrument with the underlying facts; and his 1994 Florida conviction without any facts.

Thus, the People may not inquire as to any of the facts and circumstances underlying defendant's 1981 Youthful Offender adjudication for Sexual Abuse in the Second Degree; his 1981 conviction for Possession of Stolen Property in the Third Degree or his 1982 conviction for Assault in the Third Degree.

**MOLINEUX RULING**

As a general rule, evidence of uncharged criminal conduct is inadmissible if offered for no other purpose than to raise an inference that a defendant is of a criminal disposition. See People v. Fiore, 34 N.Y.2d 81. However, evidence of uncharged crimes may be admitted where it shows motive, intent, the absence of mistake or accident, a common scheme or plan, or the identity of the guilty party. See People v. Molineux, *supra*.

In the instant case, the court finds that the matter involving the defendant in 1988 wherein he is alleged to have stabbed his brother with a kitchen knife does not

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fall under the Molineux exception. Identity is not in issue in this case and the underlying facts of this 1988 incident, when viewed as a whole, are not so unusual as to demonstrate a unique pattern in the commission of the crime. See People v. Keller, 215 A.D.2d 502 (2d Dept. 1995). Moreover, the court finds that the potential prejudice to the defendant outweighs any probative value of this evidence.

Accordingly, the People are not permitted to admit such evidence in their case-in-chief.

This is the Decision and Order of the court.

Dated: White Plains, New York  
November 16, 2009

  
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HON. ROBERT DIBELLA, J.C.C.

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