

People v Maynard

2010 NY Slip Op 34059(U)

April 20, 2010

County Court, Westchester County

Docket Number: 2009-1643

Judge: Robert K. Holdman

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COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK,

FILED
AND
ENTERED:
ON 4/20/2010
WESTCHESTER
COUNTY CLERK

DECISION & ORDER

-against-

Ind. # 2009-1643

TROY MAYNARD,

Defendant.

HOLDMAN, J.

FILED
APR 20 2010
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant stands accused under Indictment number 09-1643 of Assault in the First Degree, two counts of Assault in the Second Degree and two counts of Criminal Possession of a Weapon in the Fourth Degree.

It is alleged that on August 11, 2009 in the City of Yonkers, the defendant, acting in concert with others, with the intent to cause serious physical injury to another person, did cause such injury to such person by means of a dangerous instrument.

By notice of motion dated March 29, 2010, with accompanying affirmation, the defendant moves for omnibus relief. In response, the People have submitted an affidavit in opposition sworn to April 12, 2010 with accompanying memorandum of law.

The motion is decided as follows:

Bill of Particulars

The bill of particulars supplied by the People is sufficient.

Discovery and Inspection

The People's response to the defendant's request for discovery and inspection is sufficient. The District Attorney is reminded of the continuing obligation to provide exculpatory information to the defendant. See *Brady v. Maryland*, 373 U.S. 83 (1963). Exculpatory information includes any information that would be "favorable to the defense, material either to guilt or punishment, or affecting the credibility of prosecution witnesses," irrespective of whether the District Attorney credits such information. *People v. Baxley*, 84 N.Y.2d 208, 213 (1994). The District Attorney is directed to disclose any such information to the defense. However, with regards to the numerous reports and witnesses' statements and/or agreements the defense has requested, defense is well aware that such materials are not discoverable at this time and this Court will not require the People to furnish such documents at this juncture. C.P.L. §§ 240.44(1), 240.45(1). The People are reminded of their obligations with respect to the defendant's request for scientific, medical or other tests or examination conducted as well as the reports, notes and documentation prepared as a result.

Grand Jury Minutes/Dismissal of Indictment

The 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 granted. The minutes reveal that a quorum of the grand jurors was

present during the presentation of evidence and at the time the District Attorney's instructed the grand jury on the law. However, the evidence before the grand jury was not legally sufficient to support each and every count in the indictment.

In perusing the grand jury minutes, an obvious error is revealed during the legal instruction with respect to the first count in the indictment. The People asked the grand jury "to consider Assault in the First Degree," yet then went on to read the legal elements of Assault in the Second Degree as defined under Penal Law section 120.05(1). The People then asked the grand jury to consider two counts of Assault in the Second Degree under differing theories, Penal Law section 120.05(1) and 120.05(2). The People reread the elements for Penal Law section 120.05(1) that was previously read for Assault in the First Degree. Therefore, with respect to the first count in the indictment charges the defendant with Assault in the First Degree, the first count is dismissed. The first count accuses the defendant acting in concert with co-defendant Massey, with the intent to cause serious physical injury to another person, did cause such injury to such person, by means of a dangerous instrument. Since all of the elements necessary to establish Assault in the First Degree was not read to the grand jury, the true bill with respect to the first count cannot stand. The first count is dismissed. Moreover, the elements that were read to the grand jury of Assault in the Second Degree have already been voted on and encompassed within the third count of the indictment. To reduce Assault in the First Degree to Assault in the Second Degree would be duplicative of the third count. Therefore, is no reason to reduce this count. Accordingly, the first count of the indictment is dismissed as legally insufficient.

Notwithstanding dismissal of the first count, after reviewing the grand jury

minutes and the indictment, this Court finds that the charges against defendant Maynard are both factually and legally insufficient. Therefore, with respect to the indictment against defendant Maynard, the indictment is dismissed.

The People charged defendant Maynard with Assault in the First Degree and related charges under the theory of acting in concert¹ with co-defendant Massey and two unapprehended males. However, the People failed to establish that defendant Maynard acted in concert with anyone. The testimony of the complainant in the grand jury only established that the defendant, Troy Maynard, was present at the location with a glass bottle in his hand and defendant Maynard and the other men "came up into" the complainant's face. The complainant testified that he was struck once about the left side of his face with a bottle by co-defendant, Kassie Massey, and the next thing he remembered was waking up in a hospital. Mere presence at the scene of a crime, even with knowledge that the crime is taking place, (or mere association with a perpetrator of a crime,) does not by itself make a defendant criminally liable for that crime. In viewing the presentation in the light most favorable to the People, there was no testimony with respect to what, if anything, defendant Maynard may have done or said during the altercation between the complainant and the co-defendant Massey.

During the presentation, the Assistant District Attorney failed to allow the complainant to articulate a factual rendition of the events to establish a theory of acting in concert and failed to permit the complainant to testify to any statements made by the perpetrators of the assault that, perhaps, would have established the mens rea

¹ When one person engages in conduct which constitutes an offense, another is criminally liable for such conduct when, acting with the state of mind required for the commission of that offense, he or she solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct.

necessary. Instead, the Assistant District Attorney asked many inappropriate leading questions; had the complainant testify to hearsay with respect to his injuries; and introduced medical records into evidence after the legal instructions were already read to the grand jury and without establishing any foundation for these records. There is no testimony or evidence introduced to establish that defendant Maynard "solicited, requested, commanded, importuned, or intentionally aided that person [or persons] to engage in that conduct, and that he did so with the state of mind required for the commission" of the assault. P.L. § 20.00. Accordingly, finding the evidence factually and legally insufficient, the indictment against Troy Maynard is dismissed with leave to represent. The defendant's application for release of the Grand Jury minutes is accordingly denied. The defendant's motion to dismiss the indictment for a defect in the District Attorney's instructions on the law to the Grand Jury is granted.

In view of the foregoing, the remaining outstanding motions are not addressed.

This Decision shall constitute the Order of this Court.

ENTER

Dated: White Plains, New York
April , 2010.

APR 20 2010



HON. ROBERT K. HOLDMAN
Court of Claims Justice
Acting Supreme Court, Westchester County

HON. ROBERT K. HOLDMAN