

People v Sanchez

2011 NY Slip Op 34233(U)

June 14, 2011

County Court, Westchester County

Docket Number: 11-0106

Judge: Barry E. Warhit

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DANIEL SANCHEZ,

Defendant.

-----X

WARHIT, J.

FILED
AND ENTERED
ON 6/14 2011
WESTCHESTER
COUNTY CLERK

DECISION & ORDER

Indictment No.: 11-0106

FILED
JUN 15 2011
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, DANIEL SANCHEZ, been indicted for on or about June 3, 2010 having committed one count each of Criminal Sale of a Controlled Substance in the Third Degree, Criminal Possession of a Controlled Substance in the Third Degree and Criminal Possession of a Controlled Substance in the Seventh Degree and for on or about June 8, 2010 also having committed one count each of Criminal Sale of a Controlled Substance in the Third Degree, Criminal Possession of a Controlled Substance in the Third Degree and Criminal Possession of a Controlled Substance in the Seventh Degree. The defendant has filed an omnibus motion consisting of a Notice of Motion and Affirmation in Support thereof. In response, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Upon consideration of these papers, the stenographic transcript of the grand jury minutes and the Consent Discovery Order entered in this case, this Court disposes of this motion as follows:

I. MOTION TO INSPECT AND DISMISS (ART. 210)

Defendant's motion is granted to the limited extent that this Court conducted an in-camera inspection of the minutes of the grand jury proceeding. The Court finds no basis to dismiss or reduce any count of the indictment as proof, of the required quantum, was put before the grand jurors with respect to each count of the indictment (See, CPL §210.30[2]).

The Grand Jury was properly instructed (See, People v. Calbud, 49 NY2d 389, 402 NE2d 1140; and see, People v. Valles, 62 NY2d 36, 476 NYS2d 50, 464 NE2d 418). The minutes further reveal that a quorum of the grand jurors was present during the presentation of evidence, that the Assistant District Attorney properly instructed the Grand Jury on the law, and that only those grand jurors who heard all the evidence were permitted to participate in voting the matter.

There is no basis upon which to release the minutes of the grand jury proceeding, either in whole or in part, since the Court does not require assistance in rendering any determination and the defendant has not set forth a compelling or particularized need for the production of the grand jury minutes.

II. MOTION FOR DISCOVERY AND INSPECTION

The defendant's motion for discovery is granted to the extent provided for in Article 240 of the Criminal Procedure Law. If the People have not yet provided items set forth in CPL Article 240, or which they consented to provide in the Consent Discovery Order entered in this matter, the People are directed to do so forthwith.

With respect to exculpatory evidence, if any, the People are aware of their obligation, and have explicitly recognized their continuing duty to disclose exculpatory material at the earliest possible date (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 become aware of any material which is arguably exculpatory which they are not willing to consent to disclose immediately, the People are directed to bring such information or material to the Court's attention for an in camera inspection and a judicial determination concerning whether such information or material shall be disclosed.

In all other respects, the defendant's application for discovery and inspection is denied as the defendant seeks material and information beyond the scope of discovery (see, People v. Colavito, 87 NY2d 423, 639 NYS2d 996, 663 NE2d 308; Matter v. 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).

III. MOTION TO SUPPRESS IDENTIFICATION EVIDENCE

Defendant's application for suppression is denied. Defendant's application for a Wade hearing is granted. A hearing shall be held prior to trial to determine whether or not the identification procedures at issue were unduly suggestive and conducive to irreparably mistaken identification or whether, as the People assert, they were

“merely confirmatory”. If the hearing should adduce evidence that any of the identification procedures was unduly suggestive, the People shall set forth the independent source for any in-court identification (United States v. Wade, 388 US 218, 87 C. Ct. 1926, 18 LE2d 1149; People v. Chipp, 75 NY2d 327, 552 NE2d 608, 553 NYS2d 72).

IV. MOTION FOR SPEEDY TRIAL DISMISSAL

Defendant has moved this Court pursuant to CPL § 210.20(1)(g), for an order directing the dismissal of the within indictment on grounds that the approximately nine (9) month period of pre-accusatory delay is substantial and amounts to a violation of the defendant’s constitutional and due process right to a speedy trial within the meaning of the United States Constitution and the New York State Constitution (see, CPL § 30.20). The People oppose dismissal of the indictment and assert the delay was only eight (8) months and five days and that such delay did not violate the defendant’s constitutional or statutory due process right to speedy trial pursuant to CPL § 30.20.

In deciding whether there is merit to the defendant’s contention, the Court must balance the defendant’s right to the prompt commencement of a criminal proceeding against: (1) the length of the delay; (2) the reason for the delay; (3) the degree of actual prejudice to the defendant; and (4) the seriousness of the underlying offense (People v. Taranovich, 37 NY2d 442, 445; People v. Brown, 262 AD2d 419; People v. Quiroz, 192 AD2d 730; People v. LaRocca, 172 AD2d 628; People v. Bryant, 65 AD2d 333, 336)

The People and the defendant concur the defendant is charged with crimes

alleged to have occurred on June 3, 2010 and June 8, 2010 and that he was not formally charged for this criminal conduct until March 2, 2011. Defendant submits this protracted delay has resulted in prejudice to his ability to defend against the charges.

The Court of Appeals has “steadfastly refused to set forth a per se period beyond which a criminal prosecution may not be pursued” (People v. Taranovich, *supra*, at 445). Constitutional violations of speedy trial and due process have not been found in instances of pre-accusatory delay consisting of multiple years, rather than months as presented in this case (*see*, People v. Jones, 267 AD2d 250 (no constitutional violation found after seven (7) year delay); People v. Suero, 235 AD2d 357)(same result for six (6) year pre-indictment delay).

The delay at issue in this case does not, per se, require dismissal on Constitutional grounds, especially as the defendant is charged with serious crimes, including two (2) class “B” felonies and two (2) class “D” felony counts.

The issues raised by the defendant may be determined summarily, without the need for an evidentiary hearing (*see*, CPL § 210.45 [5][a]-[b]; People v. Smith, *supra*; People v. Ceasar, 6 AD3d 547; *cf.* People v. Townsend, 38 AD2d 569). However, in this instance, this Court finds a hearing is required as the People merely averred the pre-accusatory delay at issue was occasioned because law enforcement was “gathering evidence to indict the defendant” and due to the “customary practice in undercover narcotic investigations”.

The Court of Appeals has recognized law enforcement’s need to conduct further investigation and gather sufficient evidence to bring related cases as a sufficient basis for pre-accusatory delay (*see*, People v. Smith, 60 AD3d 706; and *see*, People v.

Kirkley, , 295 AD2d 759, citing People v. Singer, 44 NY2d 241, 254). However, it is incumbent upon the People to assert facts relevant to the pending case to prove this to be the case. It is not sufficient to rely upon the Court's presumed knowledge of the customary practice associated with undercover drug sales, especially in a case where the People do not aver the defendant was arrested as part of a "drug sweep" or allege the undercover officer involved in investigating the defendant's alleged criminal conduct remained engaged within the area thereby rendering his/her safety of concern. Moreover, the People have not set forth any facts to explain the conclusory assertion that the pre-accusatory delay was because law enforcement was "gathering evidence to indict the defendant".

Based upon the foregoing, the papers submitted lack sufficient information upon which this Court can make a summary determination regarding whether or not the defendant's Constitutional right to a speedy trial was abridged. Therefore, it is ordered that a hearing shall be held to determine whether or not the period of pre-accusatory delay at issue violated the defendant's Constitutional right to a speedy trial.

V. MOTION FOR SANDOVAL AND VENTIMIGLIA HEARINGS

Defendant moves for a pre-trial hearing at which the Court shall determine the extent to which the People may inquire into the defendant's prior criminal convictions, prior uncharged criminal and vicious or immoral conduct.

Upon consent, immediately prior to jury selection, pursuant to People v. Sandoval (34 NY2d 371, 357 NYS2d 849), a hearing shall be conducted at which the People will be required to notify the defendant of any specific instances of his criminal,

prior uncharged criminal, vicious or immoral conduct of which they have knowledge and intend to use to impeach the defendant's credibility if he chooses to testify at trial (CPL § 240.43).

At the close of the People's presentation, the defendant shall bear the burden of identifying for the Court those instances of his prior misconduct which he believes the People should not be permitted to use for impeachment purposes. The defendant shall further bear the burden of supplying the Court with reasons that any event or incident the People intend to use will be unduly prejudicial to the defendant's ability to testify as a witness on his own behalf (see, People v. Matthews, 68 NY2d 118, 506 NYS2d 149; People v. Malphurs, 111 AD2d 266, 489 NYS2d 102, lv. denied 66 NY2d 616, 494 NYS2d 1039, 483 NE2d 243).

Concerning the defendant's application for a hearing, pursuant to People v. Ventimiglia, this application is denied as premature to the extent the People have not yet indicated any intention to use evidence of any prior bad act or uncharged crime of the defendant during its case-in-chief (52 NY2d 350, 438 NYS2d 261, 420 NE2d 59; and see, People v. Molineaux, 168 NY2d 264, 61 NE 286). Should the People seek to introduce such evidence, they are to do so upon notice to the defendant and, at that time, the defendant shall have the opportunity to renew this aspect of his motion.

VI. MOTION FOR A BILL OF PARTICULARS

This motion is denied. The Bill of Particulars set forth in the Consent Discovery Order provided to the defendant has adequately informed the defendant of the

substance of his alleged conduct and in all respects complies with CPL § 200.95.

The foregoing constitutes the opinion, decision and order of this Court. .

Dated: White Plains, New York
June 14, 2011



Honorable Barry E. Warhit
Westchester County Court

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