

People v Quaye

2012 NY Slip Op 33955(U)

April 19, 2012

Supreme Court, Kings County

Docket Number: 6492/2011

Judge: Miriam Cyrulnik

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM PART 20

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

HUMPHRIES QUAYE,
JERROD DRUMGOOLE,

Defendants

Ind. No. 6492/2011

-----X

Miriam Cyrulnik, J.S.C.:

Defendant Humphries Quaye moves to sever his case from that of co-defendant Jerrod Drumgoole, pursuant to CPL §200.40 (1). The People oppose. In determining this motion, the court reviewed defendant Quaye’s Notice of Motion to Sever and the People’s Affirmation in Opposition. Defendant Drumgoole did not submit a reply to the instant motion.

The single indictment charges defendants jointly with:

- Robbery in the First Degree;
- Robbery in the Second Degree;
- Grand Larceny in the Fourth Degree;
- Petit Larceny;
- Criminal Possession of Stolen Property in the Fifth Degree;
- Criminal Possession of a Weapon in the Second Degree;
- Criminal Possession of a Weapon in the Third Degree; and
- Criminal Possession of a Weapon in the Fourth Degree.

These charges stem from a single incident that took place in the vicinity of 415 Albemarle Road on or about July 29, 2011.¹

Defendant Quaye contends that his case should be severed from that of defendant Drumgoole, claiming that, although he may have been present when the alleged incident occurred,

¹ The court notes that the indictment satisfies the elements for joinder, pursuant to CPL §200.40 (1) (a), (b) & (c).

he did not acquiesce in any criminal activity. Defendant Quaye further claims that defendant Drumgoole has “set him up” in order to further his (Drumgoole’s) defense (Defendant’s Affirmation in Support, p. 2).² Defendant Quaye concludes that he will be unduly prejudiced by a jury’s inability to distinguish proof related to the respective defendants in a joint trial.

The People respond that the charges in question are properly joined, pursuant to CPL §§200.20 and 200.40; defendants’ defenses are not irreconcilable; no conflict has been shown that would lead a jury to infer either defendant’s guilt; and defendant Quaye has failed to establish good cause for severance.

Initially, the court notes that defendant Quaye’s motion is untimely. According to CPL §255.20, upon which CPL §200.40 specifically relies, “...all pre-trial motions shall be served or filed within forty five days after arraignment and before commencement of trial, or within such additional time as the court may fix upon application of the defendant prior to entry of judgment.”

In the case at bar, defendant Quaye was arraigned on the indictment on October 18, 2011, making the deadline for pre-trial motions December 3, 2011. Defendant Quaye’s motion to sever is dated March 2, 2012, well outside this deadline. Even if the court was to allow for the fact that defendant’s present counsel did not appear on his case until December 8, 2011, defendant waited nearly ninety days from that date to serve the instant motion, without application for additional time or demonstrating good cause for the delay.

However, even if defendant Quaye’s motion to sever was timely, the court finds no ground upon which to grant it.

“The decision to grant or deny a separate trial is vested in the sound judgment of the trial

² Defendant Quaye offers no explanation of how defendant Drumgoole “set him up,” or by what means his (Drumgoole’s) defense will be furthered if their cases are not severed.

judge” (*People v. Chaplin*, 181 AD2d 828 [2d Dept 1992], *lv denied* 79 NY2d 1047 [1992]; *see also* *People v. Lane*, 56 NY2d 1, 8 [1982]). The court must “weigh the public interest in avoiding duplicative, lengthy and expensive trials against the defendant’s interest in being protected from unfair disadvantage” (*id*; *People v Gonzalez*, 229 AD2d 398 [2d Dept 1996], *lv denied*, 88 NY2d 985 [1996]).


It is well established that “severance is compelled where the core of each defense is in irreconcilable conflict with the other and where there is a significant danger, as both defenses are portrayed to the trial court, that the conflict alone would lead the jury to infer the defendant’s guilt” (*see* *People v. Mahboubian*, 74 NY2d 174, 184 [1989]; *People v. Chaplin*, 181 AD2d 828 [1992], *supra*; *People v. Huggins*, 2010 NY Slip Op 50535U [Sup Ct NY County 2010] [granting severance of defendants’ cases where two co-defendants’ defenses would lead jury to infer guilt of the third co-defendant]).

The court finds that severance of defendant Quaye’s case from that of co-defendant Drumgoole is not warranted in this matter. The facts of the instant matter are not so complex or unusual, nor are the defenses expected to be so difficult to unravel, that it threatens to result in a jury’s inference of the defendant Quaye’s guilt simply by proceeding with both defendants together (*see* *People v. Gwathney*, 298 AD2d 526, 527 [2d Dept 2002], *lv denied* 99 NY2d 536 [2002] [“proof of the crimes was separately presented, uncomplicated, and easily segregable in the minds of the jurors”]). Defendant Quaye has failed to demonstrate that there exists a situation where a disparity among the defenses threatens the core of each defendant’s case, such that the guarantee of a fair trial for each individual defendant would be compromised.

Accordingly, defendant Quaye's motion to sever is denied.

This constitutes the Decision and Order of the Court.

Dated: April 19, 2012



J.S.C.