

People v Mike
2012 NY Slip Op 33964(U)
April 9, 2012
Supreme Court, Onondaga County
Docket Number: 2012-0223
Judge: John J. Brunetti
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

Supreme Court of the State of New York
County of Onondaga

Criminal Term
Part III

PEOPLE OF THE STATE OF NEW YORK,
Plaintiff,

Indictment#:2012-0229-(1-4)
Index #:2012-0223

v.

CHRISTOPHER MIKE,
Defendant.

ORDER ON MOTIONS

Based upon this Court's pretrial order in the above action and pursuant to Rule 200.12 of the Uniform Rules for Courts Exercising Criminal Jurisdiction and Judiciary Law Section 2-b(3), it is hereby ordered as follows:

GRAND JURY MINUTES

Defendant's motion for inspection of the grand jury minutes for legal sufficiency is **GRANTED**. CPL §210.30(c).

The People are directed to provide the court with the grand jury minutes, i.e. a transcript of all testimony and all legal instructions which support the sufficiency of the indictment. Said transcript must be provided to the court within 14 calendar days of the date the court served the People with a copy of this order. Release of the minutes to defendant pursuant to CPL §210.30(3) will not be required.

Because of the confidential nature of grand jury transcripts and exhibits, and because a failure to promptly provide transcripts can result in assessment of speedy trial time or other sanctions against the People, and in accordance with discussions between this court and the District Attorney, the following procedure has been implemented for provision of grand jury transcripts to the court. A single copy of the grand jury transcript, together with two copies of a cover letter, should be hand delivered either to the court chambers or to the court itself during calendar call. The extra copy of the cover letter will be initialed by the court or court staff and retained by the People as proof of provision and the date thereof.

9310204

Grand jury transcripts received in inter-office mail will be rejected by the court.

GRAND JURY - LEGAL DEFECTIVENESS

Defendant further moves for dismissal of the Indictment on legal defectiveness grounds. Any motion to dismiss based upon grand jury defectiveness pursuant to CPL §210.20(1)(c) must be in writing and it is further the "defendant's burden to demonstrate, on written notice to the People ..., the existence of defects impairing the integrity of the Grand Jury proceeding and giving rise to a possibility of prejudice". People v. Santmyer, 255 AD2d 871 (4th Dept. 1998). Admittedly, it is almost impossible for a defendant to raise defects based upon a record to which he is not privy. Nonetheless, the statutes and the case law are clear that a defendant must allege facts in support of a motion to dismiss on grand jury defectiveness. People v. Santmyer, supra; CPL §210.20(1)(c); CPL §210.35; CPL §210.45. Defendant has failed to allege sufficient facts in support of his motion to dismiss on grand jury defectiveness grounds, and therefore that motion is **DENIED WITH LEAVE TO RENEW**. Should the court's review of the grand jury minutes reveal a potential deficiency, it will be disclosed to the parties and the defendant's motion will be deemed renewed pursuant to CPL §255.20(3).

MOTION FOR ARREST RECORD OF DEFENDANT

GRANTED. Should the People fail to provide a copy, the Clerk of the Court will do so.

MOTION FOR PRIOR STATEMENTS OF WITNESSES

See court's Pretrial Order, Section V.[B], page 4.

MOTION FOR ARREST RECORDS OF ALL PROSECUTION WITNESSES

See court's Pretrial Order, Section V.[B], page 4.

MOTION TO REVEAL PLEA AGREEMENTS/PROMISES

Defendant's motion requesting that the People be directed to provide defendant with the substance of any plea agreement(s) relative to prosecution witnesses is **GRANTED in concept**.

See court's Pretrial Order, Section III. [D], page 3.

DISCOVERY DEMANDS

Defendant moves for a variety of discovery. As to those demands which are made pursuant to CPL §240.20, the motion is **GRANTED** if preceded by a demand served 15 days prior to the motion, and **DENIED with leave to renew** otherwise.

As to those demands seeking to inspect property the People intend to introduce at trial, the motion is **GRANTED**.

As to exculpatory material, the motion is **GRANTED in concept**, but not necessarily as to every item demanded. As to prior statements and impeachment material, see Pre-trial Order Section III[D], page 3 and Section V.[B], page 4.

As to any other item, the defense is requested to identify the item in dispute and provide a letter setting forth the legal authority for such motion.

MOTION FOR EXCULPATORY MATERIAL

Defendant's motion for exculpatory material is **GRANTED in concept**, but not necessarily as to each and every particular demanded, if any. Since such a motion is constitutionally based, it need not be preceded with a demand pursuant to CPL §240.20(1)(h). Both parties may move for enforcement, clarification, re-argument or other relief with respect to this initial ruling.

MOTION TO SUPPRESS STATEMENTS [CPL §710.20(3)]

A. A pre-trial hearing is ordered on defendant's motion to suppress defendant's statement(s) based upon Miranda v. Arizona, 384 US 436 [1966] and traditional involuntariness grounds. The People need not prove the contents of the statements they attribute to the defendant because neither their truth [People v. Schompert, 19 NY2d 300] nor whether or not they were made [People v. Washington, 51 NY2d 214] are proper subjects for a suppression hearing. The contents of the statement attributed to the defendant by the People may become relevant if a continuous interrogation [People v. Chapple, 38 NY2d 112] or cat-out of the bag [People v. Tanner, 30 NY2d 102] issue arises at the hearing. Discovery upon such hearing of prior statements and criminal histories of witnesses shall be provided, upon demand, pursuant to CPL §240.44.

Note: If the defendant's moving papers assert a claim that physical or testimonial evidence is the product of an initial illegality [*i.e.*, "tainted fruit of the poisonous tree"], the hearing will be bifurcated. The People will be expected to go forward with a basis to avert suppression only on the issue of the claimed initial illegality. Should the court find an initial illegality, and should its product be properly classified as "secondary evidence", the court will schedule an attenuation and/or independent source and/or inevitable discovery hearing.

B. Both sides must be prepared to proceed on all specified issues on the date set for the hearing and to present post hearing arguments with supporting case law immediately after the proof is closed.

MOTION TO SUPPRESS IDENTIFICATION EVIDENCE [CPL §710.20(6)]

A. A bifurcated hearing is ordered on defendant's motion to suppress identification evidence on the grounds of suggestiveness. An independent source hearing may be ordered later should one become necessary. Discovery upon such hearing of prior statements and criminal histories of witnesses shall be provided, upon demand, pursuant to CPL §240.44.

B. Issues of law and fact "essential to the determination" of the motion to be adjudicated at the hearing will be specified at a court proceeding after inquiry of counsel by the court.

C. Both sides must be prepared to proceed on all specified issues on the date set for the hearing and to present post hearing arguments with supporting case law immediately after the proof is closed.

MOTION FOR SEVERANCE

Decision **RESERVED**.

REMAINING MOTIONS OR REQUESTS

All other motions and requests contained in Defendant's moving papers not specifically addressed herein are **DENIED WITH LEAVE TO RENEW** upon citation to specific legal authority which directly supports the request.

Dated: April 9, 2012.

John Brunetti
John Brunetti
Acting Justice of the Supreme Court

CLERK'S OFFICE
M. Dean Boyle

APR 27 A 11:27

FILED & ENTERED