People v Reynolds
2015 NY Slip Op 33016(U)
November 20, 2015
Supreme Court, Westchester County
Docket Number: Indictment No. 15-0581
Judge: Susan M. Capeci
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FILED
AND
ENTERED
ON 11-23-2015
WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

- against -

KEITH REYNOLDS,
Defendant.

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DECISION & ORDER

Indictment No:15-0581

FILED
NOV 23 2015
COUNTY CLERK
COUNTY OF WESTCHESTER

CAPECI, J.,

The defendant, having been charged by indictment with criminal sale of a controlled substance in the third degree (P.L. 220.39 (1)), criminal possession of a controlled substance in the third degree (P.L. 220.16 (1)), assault in the second degree (P.L. 120.05 (3)), obstructing governmental administration in the second degree (P.L. 195.05), and criminal sale of marihuana in the fourth degree (P.L. 221.40), now makes this motion seeking omnibus relief.

The defendant has submitted an affirmation from his attorney and memorandum of law support of his omnibus motion, in which he seeks the following relief: 1) inspection of the grand jury minutes by the Court and the defendant, and thereafter, for the dismissal of the indictment and/or reduction of the charges contained therein; 2) severance of counts 3 and 4 from the indictment; 3) motion for further discovery and disclosure of Brady material; 4) motion for a bill of particulars; 5) motion to strike the CPL 710.30 identification notices as insufficient; 6) motion to suppress or preclude identification evidence or a Wade hearing; 7) motion to suppress or preclude statements or a Huntley hearing; 8) motion to suppress physical evidence; 9) a

Sandoval/Ventimiglia hearing; and 10) an order striking the People's request for an alibi notice.

The People have submitted an affirmation in opposition in which they consent to provide discovery limited to the parameters of CPL article 240, as well as Brady material. They also consent to a Sandoval hearing, to an in camera inspection of the grand jury minutes by the Court to assess legal sufficiency, and to a Huntley hearing. The People otherwise oppose the motion. The Court now finds as follows.

1. MOTION TO INSPECT/DISMISS/REDUCE

This application is granted to the extent that the Court has conducted an in camera inspection of the minutes of the Grand Jury proceedings. Upon review of the evidence presented, this Court finds that all counts of the indictment were supported by sufficient evidence and that the instructions given were appropriate. There was no infirmity which would warrant a dismissal of the instant indictment. Accordingly, that branch of the motion which seeks dismissal of the indictment is denied. The Court further finds no facts which would warrant releasing any portion of the minutes of the grand jury proceedings to the defense (CPL 210.30 (3)).

2. MOTION TO SEVER COUNTS 3 AND 4 FROM THE INDICTMENT

The defendant seeks to sever counts 3 and 4 of the indictment, charging him with assault in the second degree and obstructing governmental administration in the second degree committed on December 3, 2014, from counts 1, 2 and 5, which each charge drug offenses committed on different dates (counts 1 and 2 committed on October 1, 2014, and count 5 committed on May 22, 2014). He contends that it is

unnecessarily prejudicial for these offenses to be tried together, because it is not necessary for the People to prove a connection between the drug sale/possession and his later assault on a police officer during his arrest.

The People oppose the motion to sever, arguing that these offenses are properly joinable in a single indictment pursuant to CPL 200.20 (2)(b) because the defendant stands charged with assaulting a police officer after being arrested for the drug offenses he is also charged with. Thus, the charges are directly related and each would be admissible on the trial of the others.

Two offenses are "joinable" when, even though based upon different criminal transactions, "such offenses or the criminal transactions underlying them, are of such nature that either proof of the first offense would be material and admissible as evidence in chief upon a trial of the second, or proof of the second would be material and admissible as evidence in chief upon a trial of the first" (CPL 200.20(2)(b); see also CPL 100.45(1) [applying CPL 200.20 to misdemeanor informations]).

The defendant's motion to sever counts 3 and 4 from the remaining counts of the indictment is denied since the defendant is charged with committing the assault and obstructing governmental administration charges at the time he was being placed under his arrest for the drug offenses. Thus, the charges are directly connected, and proof of each of the offenses would be material and admissible at a trial on the others (see People v McCloud, 121 AD3d 1286, 1289 (3d Dept 2014); People v Lee, 275 AD2d 995 (4th Dept 2000)).

3. MOTION FOR DISCOVERY AND INSPECTION/ BRADY

The defendant has been provided with consent discovery in this case.

Therefore, the defendant's demand for disclosure of items or information to which he is entitled pursuant to the provisions of CPL 240.20(1) (a) through (k) is granted upon the People's consent. The application is otherwise denied as it seeks items or information which are beyond the scope of discovery and the defendant has failed to show that such items are material to the preparation of his defense (CPL 240.40 (1) (a); People v Bianco, 169 Misc2d 127 (Crim. Ct, Kings Co. 1996)).

The defendant's demand for the production of Rosario material at this time is premature (see CPL 240.45(1); Catterson v Rohl, 202 AD2d 420 (2d Dept 1994)). Further, there is no statutory right to disclosure of all police reports concerning an ongoing investigation (Brown v Grosso, 285 AD2d 642 (2d Dept 2001); see also Pirro v LaCava, 230 AD2d 909 (2d Dept 1996)).

The People have acknowledged their continuing obligation to provide exculpatory information to the defendant (Brady v Maryland, 373 US 83), and are directed to disclose any such information to the defense.

4. MOTION FOR A BILL OF PARTICULARS

The People have already supplied the defendant with a bill of particulars in this case, as part of consent discovery. The Court finds that the bill of particulars provided was sufficient to adequately inform the defendant of the substance of his alleged conduct and to enable him to prepare and conduct a defense (see People v Sanchez, 84 NY2d 440 (1994); People v Byrnes, 126 AD2d 735, 736 (2d Dept 1987)).

5. MOTION TO STRIKE CPL 710.30 IDENTIFICATION NOTICES AS INSUFFICIENT

The People have served the defendant with identification notices pertaining to

identifications made of him by witnesses as follows: from a photograph on May 22, 2014 at 3:52 pm, and from a surveillance video at 3:27 pm on that same date; from a photograph on October 1, 2014 at 6:55 pm, and from a surveillance video on July 16, 2015 at 9:45 am.. The People also gave notice to the defendant that he was identified from a photograph, and from a surveillance video, by a witness who appeared before the Grand Jury on July 16, 2015.

In an identification notice served pursuant to CPL 710.30 (1)(b), the People are required to inform the defendant of the time, place and manner in which the identification was made (People v Lopez, 84 NY2d 425 (1997); People v Laing, 79 NY2d 166 (1992)). The identification notices served in this case meet these requirements and are thus sufficient. There is no requirement that the notices also state the names of the witnesses who made the identifications (see People v Owens, 190 Misc2d 49 (Crim. Ct, NY Co. 2001)). The defendant's motion to strike the notices as insufficient is denied.

6. MOTION TO SUPPRESS IDENTIFICATION EVIDENCE

Although the People assert that the CPL 710.30 notices were not even necessary because the identifications noticed to the defendant were either confirmatory or did not constitute identification procedures, those determinations must be made following a Wade hearing. The defendant's application is granted to the extent that a Wade hearing (United States v Wade, 388 US 218) shall be held prior to trial to determine whether the identifications were merely confirmatory (see People v Rodriguez (79 NY2d 445 (1992)), and if not, whether the police procedures employed were unduly suggestive or whether an independent source exists for the in-court

identifications.

7. MOTION FOR SUPPRESSION OF STATEMENTS

The People have provided the defendant with a CPL 710.30 notice pertaining to oral statements made by him on December 3, 2014 at the New Rochelle Police Department.

The defendant's motion for suppression of statements as set forth in the CPL 710.30 notice is granted to the extent that the Court will conduct a Huntley hearing prior to trial concerning the noticed statements allegedly made by the defendant for the purpose of determining whether Miranda warnings were necessary and, if so, whether he was so advised and made a knowing, intelligent and voluntary waiver thereof, or whether the statements were otherwise involuntarily made within the meaning of CPL 60.45.

8. MOTION TO SUPPRESS PHYSICAL EVIDENCE

The defendant's motion to suppress physical evidence is denied, as he has not asserted any factual allegations in support of this motion and has also not specified what items of physical evidence he is seeking to suppress (see People v Mendoza, supra; CPL 710.60(3)(b)).

9. MOTION FOR A SANDOVAL/VENTIMIGLIA HEARING

The defendant's motion for a Ventimiglia hearing is denied at this time since the People do not represent that they are seeking to introduce any of defendant's prior bad acts on their direct case. The defendant's motion may be renewed in the event the People later seek to offer such evidence at trial. The motion for a Sandoval hearing is granted and shall be renewed before the trial Judge.

10. MOTION TO STRIKE THE PEOPLE'S REQUEST FOR AN ALIBI NOTICE

The defendant contends that the People's demand for a Notice of Alibi should be stricken since the statute it is based on, CPL 250.20, is unconstitutional pursuant to Wardius v Oregon (412 US 470 (1973)). He claims the statute improperly requires the defense to supply names of alibi witnesses in advance of the People's requirement to provide names of rebuttal witnesses to the defense.

The defendant's motion is denied. New York State courts have specifically found this statute to be constitutional following the United States Supreme Court decision in Wardius v Oregon, supra (People v Dawson, 185 AD2d 854 (2d Dept 1992); People v Gill, 164 AD2d 867 (2d Dept 1990)).

This decision constitutes the Order of the Court.

Dated: White Plains, New York
November 20, 2015

HON. SUSAN M. CAPECI
A.J.S.C.

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