

**People v Flook**

2015 NY Slip Op 33027(U)

December 11, 2015

County Court, Westchester County

Docket Number: Indictment No. 15-0864-01

Judge: Barbara G. Zambelli

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This opinion is uncorrected and not selected for official publication.

FILED  
AND  
ENTERED ON  
Dec 11 2015  
WESTCHESTER  
COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK

DECISION & ORDER

- against -

Indictment No.: 15-0864-01

CORY FLOOK a/k/a "CO"  
and AKEEM KRUBALLY

FILED  
DEC 14 2015  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER  
Defendants

ZAMBELLI, J.

The defendant has been indicted for the crimes of Criminal Sale of a Controlled Substance in the Third Degree (four counts), Criminal Possession of a Controlled Substance in the Third Degree (four counts) and Criminal Possession of a Controlled Substance in the Seventh Degree (four counts), allegedly committed in the County of Westchester. He now moves by notice of motion with supporting affirmation and memorandum of law for omnibus relief. The People's response consists of an affirmation in opposition and a memorandum of law. Upon consideration of these papers, as well as review of the grand jury minutes and exhibits and the consent discovery order entered in this case, the motion is disposed of as follows:

1. MOTION TO INSPECT/DISMISS/REDUCE

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 were supported by sufficient evidence and that the instructions given were appropriate. There

was no infirmity or defect which would warrant a dismissal of the indictment or reduction to lesser crimes. 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 FOR DISCOVERY, DISCLOSURE, AND INSPECTION

This application is granted to the limited extent of ordering that the People are to provide the defendant with materials and information, the disclosure of which is required pursuant to the provisions of CPL §240.44 and §240.45. As to the defendant's demand for exculpatory material and information favorable to the defendant, the People have indicated their awareness of their continuing obligation to disclose any such material immediately upon its discovery. Where a question exists as to whether a particular item should be disclosed, they are directed to submit the material or information to the court, for examination in camera in order to resolve the issue.

The defendant's demand for disclosure of items or information to which she is entitled pursuant to the provisions of CPL §240.20(1) (a) through (l) 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]). With regard to witness names and statements the defendant's application for same at this stage of the proceedings is denied. The People recognize their duty to comply with People v. Rosario, 9 N.Y.2d 286; CPL §240.44, §240.45. To the extent that defendant seeks disclosure of agreements between the People and witnesses, the application is granted upon the People's acknowledgment of their duty to disclose same (Giglio v. United States, 405 U.S.

150).

3. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY

The People have noticed three identifications of the defendant from a single photo pursuant to CPL §710.30. The first identification was made on June 11, 2105 before the commission of the alleged crime. The identification was made in the Mount Vernon Police Department by Detective Wendell Griffin. The second identification was on the same date at approximately 7:25 p.m. by the undercover detective who purchased the narcotics. The third identification was by the undercover detective before the grand jury on August 25, 2015.

The defendant contends the single photo displays were improper and unduly suggestive.

The People counter that the identifications were merely confirmatory made by an undercover detective as an integral part of an investigation conducted prior to defendant's arrest and not the kind of suggestive procedure warranting a suppression hearing.

A hearing shall be held immediately before trial to determine whether the identifications were merely confirmatory (see, People v. Rodriguez, 79 N.Y.2d 445), or in the alternative, whether any police procedures employed were unduly suggestive, and, if so, whether an independent source exists for an in-court identification by the witness (see, People v. Pacquette, 17 N.Y.3d 87; People v. McLemore, 264 A.D.2d 858).

4. SANDOVAL/VENTIMIGLIA

Granted on consent of the People to the extent that this Court directs that a hearing be held immediately prior to trial. Prior to the commencement of jury selection, the People will disclose to defendant all specific instances of his prior uncharged crimes and bad acts

they expect to introduce at trial for impeachment purposes (CPL §240.43). Defendant must then sustain his burden of informing the Court of the prior convictions and misconduct which might unfairly affect him as a witness in his own behalf (People v. Matthews, 68 N.Y.2d 118 , 121-122). In the event the People seek to introduce defendant's prior bad acts on their direct case, the burden is on the People to seek a Ventimiglia hearing to determine the admissibility of such evidence (People v. Ventimiglia, 52 N.Y.2d 350).

5. MOTION TO STRIKE ALIBI DEMAND

This motion is denied. There is no merit to the defendant's contention that CPL §250.20 is unconstitutional (see, People v. Dawson, 185 A.D.2d 854; People v. Cruz, 176 A.D.2d 751; People v. Gil, 164 A.D.2d 867; People v. Peterson, 96 A.D.2d 871).

6. MOTION TO DISCLOSE INFORMANTS

The motion is denied, as the defendant's guilt or innocence of the crimes charged does not hinge on the testimony of any informant (People v. Goggins, 34 N.Y.2d 163, 168 (1974)).

7. MOTION TO DISCLOSE UNDERCOVER OFFICERS

Denied with leave to renew before the hearing and trial court.

8. MOTION TO UNSEAL THE SEARCH WARRANT

A decision on this ground is reserved. This case is restored to the calendar on Tuesday, December 15, 2015 for a conference on this issue.

This decision constitutes the Order of the Court.

Dated: White Plains, New York  
December 11, 2015

  
BARBARA G. ZAMBELLI  
COUNTY COURT JUDGE

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