

People v Negron

2015 NY Slip Op 33029(U)

October 13, 2015

Supreme Court, Westchester County

Docket Number: Ind. No. 15-00696-02

Judge: Robert A. Neary

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JR

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OCT 13 2015
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

**FILED
AND
ENTERED**
ON 10-13-2015
**WESTCHESTER
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
THE PEOPLE OF THE STATE OF NEW YORK

- against -

DECISION AND ORDER

DAWN NEGRON and MIGUEL MARTINEZ,

Ind. No. 15-00696-02

Defendant.

-----X
NEARY, J.

The defendant, Miguel Martinez, has been charged with the crimes of Robbery in the First Degree, Robbery in the Second Degree, Grand Larceny in the Fourth Degree, Menacing in the Second Degree and Criminal Possession of a Weapon in the Third Degree. The defendant has made an omnibus motion which consists of a Notice of Motion and an Affirmation in support thereof. In response, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Having read all of the submitted papers and reviewed the court file, this Court makes the following determination.

I. 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.

II. and III. DEMAND FOR DISCOVERY and MOTION FOR DISCOVERY PURSUANT TO CPL SECTION 240.10(1)(c)

The defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 240. If any items set forth in CPL Article 240 have not been provided to the defendant pursuant to the Consent Discovery Order in the instant matter, said items are to be provided forthwith.

The People recognize their continuing duty to disclose exculpatory material at the earliest possible date. [See *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 are or become aware of any material which is arguably exculpatory but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

To any further extent, the application is denied as seeking material or information beyond the scope of discovery. [See *People v. Colavito*, 87 NY2d 423, 639 NYS2d 996, 663 NE2d 308; *Matter of Brown v. Grosso*, 285 AD2d 642, 729 NYS2d 492, *lv. denied* 97 NY2d

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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].

IV. MOTION TO PRECLUDE EVIDENCE OF IDENTIFICATION PURSUANT TO CPL SECTION 710.30

The defendant's motion is denied as speculative and premature.

V. and VI. MOTION TO SUPPRESS ALL EVIDENCE OBTAINED AS A RESULT OF THE UNLAWFUL ARREST OF THE DEFENDANT PURSUANT TO CPL SECTION 710.20 and MOTION TO SUPPRESS TANGIBLE PROPERTY SEIZED FROM THE DEFENDANT PURSUANT TO CPL SECTION 710.20(1)

This branch of the defendant's motion is granted solely to the extent of conducting a *Mapp* hearing prior to trial to determine the propriety of any search resulting in the seizure of property (see *Mapp v. Ohio*, 367 US 643, 81 S Ct. 1684, 6 LE2d 108), and/or obtained in violation of the defendant's Fourth Amendment rights. [See *Dunaway v. New York*, 42 US 200, 99 S Ct. 2248, 60LE2d 824].

VII. MOTION TO SUPPRESS EVIDENCE OF STATEMENTS PURSUANT TO CPL SECTION 710.20(3)

This branch of the defendant's motion is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL §710.30 (1)(a), were involuntarily made by the defendant within the meaning of CPL §60.45 (see CPL §710.20(3), CPL §710.60[3][b]; *People v. Weaver*, 49 NY2d 1012, 429 NYS2d 399, 406 NE2d 1335), obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (see *Dunaway v. New York*, 442 US 200, 99 S. Ct. 2248, 60 LE2d 824).

VIII. MOTION TO PRECLUDE PURSUANT TO PEOPLE V. SANDOVAL

This branch of the defendant's motion is granted to the limited extent of conducting a *Sandoval* hearing immediately prior to trial at which time: (1) the People must notify the defendant of all specific instances of the defendant's prior uncharged criminal, vicious or immoral conduct of which the People have knowledge and which the People intend to use at trial for the purposes of impeaching the credibility of the defendant (see CPL §240.43); and (2) the defendant must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf. [See *People v. Malphurs*, 111 AD2d 266, 489 NYS2d 102, *lv. denied* 66 NY2d 616, 494 NYS2d 1039, 483 NE2d 243].

IX. MOTION TO SEVER THE TRIAL OF THE INSTANT DEFENDANT'S CASE FROM THAT OF HIS CO-DEFENDANT PURSUANT TO CPL SECTIONS 100.45 AND 200.40

The defendant moves for a severance from his co-defendant. The defendant was properly joined in the same indictment. [See CPL §200.40(1)]. The Court may, however, for good cause shown order that defendant be tried separately. Good cause includes a showing that defendant would be “unduly prejudiced by a joint trial.” [See CPL §200.40(1)]. Further, where the proof against all defendants is supplied by the same evidence, “only the most cogent reasons warrant a severance.” [See *People v. Bornholdt*, 33 NY2d 75, 87, *cert. denied* 416 US 95 and *People v. Kevin Watts*, 159 AD2d 740]. And, “. . . a strong public policy favors joinder, because it expedites the judicial process, reduces court congestion, and avoids the necessity of recalling witnesses. . . .” [*People v. Mahboubian*, 74 NY2d 174, 183].

This Court must determine the admissibility and possibility of the redaction of the co-defendant's statements and whether the co-defendant will be testifying at defendant's trial.

According, the defendant's motion for a severance is denied as premature, with leave to renew upon a determination of the admissibility of co-defendant's alleged statements, and upon a showing that a joint trial will result in unfair prejudice to him and substantially impair his defense.

X. and XI. MOTION TO INSPECT THE GRAND JURY MINUTES PURSUANT TO CPL SECTION 210.30(2) and MOTION TO DISMISS THE INDICTMENT PURSUANT TO CPL SECTIONS 210.30 AND 210.35

The defendant's motion to inspect the Grand Jury minutes is granted. Upon an *in camera* inspection of the Grand Jury minutes by Court, the motion to dismiss the indictment or reduce a charged offense in the indictment is denied.

The Court has reviewed the minutes of the proceeding before the Grand Jury. The Grand Jury was properly instructed (See *People v. Calbud*, 49 NY2d 389, 426 NYS2d 389, 402 NE2d 1140 and *People v. Valles*, 62 NY2d 36, 476 NYS2d 50, 464 NE2d 418) and the evidence presented, if accepted as true would be legally sufficient to establish every element of the offenses charged. [See CPL §210.30(2)]. In addition, the minutes reveal that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, and that it was instructed that only those grand jurors who had heard all the evidence could participate in voting on the matter.

The Court does not find that the release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court in making this determination.


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XII. RESERVATION OF DEFENDANT'S RIGHT TO SUPPLEMENT THESE MOTIONS
OR MAKE FURTHER MOTIONS

This motion is denied. Any future motion must be brought by way of order to show cause setting forth reasons as to why said motion was not brought in conformity with CPL §255.20.

This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
October 13, 2015


ROBERT A. NEARY
ACTING SUPREME COURT JUSTICE

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