

People v Negron

2015 NY Slip Op 33030(U)

October 13, 2015

Supreme Court, Westchester County

Docket Number: Ind. No. 15-00696-01

Judge: Robert A. Neary

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OCT 13 2015
TIMOTHY S. DONI
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. 15-00696-01

Defendants.

-----X

NEARY, J.

The defendant, Dawn Negron, 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 and Memorandum of Law 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.

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Indictment No. 15-00696-01

A. and B. MOTION TO DISMISS and MOTION TO INSPECT AND DISMISS OR REDUCE PURSUANT TO CPL ARTICLE 210

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.

C., D. and E. MOTION FOR DISCOVERY AND INSPECTION, MOTION FOR DISCLOSURE OF MATERIAL INFORMATION and DEMAND FOR EXCULPATORY INFORMATION

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 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].

F. MOTION TO STRIKE NOTICES PURSUANT TO CPL ARTICLE 710

This motion is denied. Said notice is in conformity with the statutory requirements of CPL §710.30.

G. MOTION TO SUPPRESS STATEMENTS PURSUANT TO CPL ARTICLE 710

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).

H. MOTION FOR PRODUCTION OF INFORMANTS

This motion is denied. The defendant moves for disclosure of the identity of informants without stating what relevant testimony any such witness would have on the issue of her innocence or guilt. [See *People v. Goggins*, 34 NY2d 163, 356 NYS2d 571, 313 NE2d 41, *cert. denied* 419 US 1012, 95 S. Ct. 332, 42 LE2d 286; *People v. Pena*, 37 NY2d 642, 376 NYS2d 452, 339 NE2d 149].

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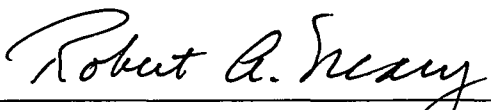
I., J. and K. MOTION TO SUPPRESS PRIOR BAD ACTS (*SANDOVAL* AND *VENTIMIGLIA*) AND FOR CPL 240.43 NOTICE

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 her burden of informing the Court of the prior misconduct which might unfairly affect her as a witness in her own behalf. [See *People v. Malphurs*, 111 AD2d 266, 269].

In addition, with respect to the defendant's application pursuant to *People v. Ventimiglia*, 52 NY2d 350, this Court grants this aspect of the motion to the limited extent of conduct a *Ventimiglia* hearing immediately prior to trial to determine whether or not

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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Indictment No. 15-00696-01

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