

People v Bristow

2016 NY Slip Op 33230(U)

June 6, 2016

Supreme Court, Westchester County

Docket Number: Ind. No. 15-00615-01

Judge: Robert A. Neary

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This opinion is uncorrected and not selected for official publication.

JUN 06 2016
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

FILED
AND
ENTERED
ON 6-6-2016
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

JUSTIN BRISTOW,

Ind. No. 15-00615-01

Defendant.

-----X

NEARY, J.

The defendant, Justin Bristow, has been charged with the crimes of Robbery in the First Degree (two counts), Attempted Assault in the First Degree, Assault in the Second Degree (two counts), Criminal Possession of a Weapon in the Second Degree (two counts), criminal Possession of a Weapon in the Third Degree and Menacing the Second Degree (two counts). 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.

People v. Justin Bristow
Indictment No. 15-00615-01

MOTION FOR DISCOVERY AND INSPECTION PURSUANT TO CPL ARTICLE 240

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].

People v. Justin Bristow
Indictment No. 15-00615-01

MOTION TO STRIKE NOTICE OF IDENTIFICATION

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

MOTION TO SUPPRESS IDENTIFICATION

This motion is granted to the limited extent of conducting a hearing prior to trial to determine whether or not the noticed identifications are unduly suggestive. [See *United States v. Wade*, 388 US 218, 87 S Ct. 1926, 18 LE2d 1149]. Specifically, the Court shall determine whether the identifications were so improperly suggestive as to taint any in-court identification. In the event the identifications are found to be unduly suggestive, the Court shall then go on to consider whether the People have proven by clear and convincing evidence that an independent source exists for such witness' proposed in-court identification.

MOTION TO INSPECT THE GRAND JURY MINUTES AND DISMISS INDICTMENT AND MOTION TO INSPECT AND REDUCE INDICTMENT 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

People v. Justin Bristow
Indictment No. 15-00615-01

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.

MOTION TO SUPPRESS PRIOR CONVICTIONS AND IMMORAL ACTS

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, 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

People v. Justin Bristow
Indictment No. 15-00615-01

conduct a *Ventimiglia* hearing immediately prior to trial to determine whether or not any evidence of uncharged crimes may be used by the People to prove their case in chief.

MOTION TO STRIKE SCANDALOUS AND PREJUDICIAL STATEMENTS PURSUANT TO CPLR SECTION 3024(B)

This motion is denied. The language concluding the indictment merely identifies the defendant's acts as public, rather than private wrongs and such language should not be stricken as prejudicial. [*People v. Winters*, 194 AD2d 703, 599 NYS2d 293, *lv. denied* 82 NY2d 761, 603 NYS2d 1003, 624 NE2d 189; see *People v. Gill*, 164 AD2d 867, 599 NYS2d 376, *appeal denied*, 76 NY2d 893, 561 NYS2d 555, 562 NE2d 880; *People v. Garcia*, 170 Misc. 2d 543, 647 NYS2d 355]. The defendant's remaining contentions are without merit and his application is accordingly denied.

MOTION TO STRIKE ALIBI NOTICE

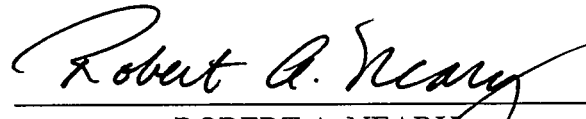
This motion is denied. Contrary to the defendant's contentions, it is well-settled that CPL §250.00 is indeed in compliance with the constitutional requirements (see *People v. Dawson*, 185 AD2d 854, 587 NYS2d 358, *appeal denied* 80 NY2d 974, 591 NYS2d 143, 605 NE2d 879; *People v. Cruz*, 176 AD2d 751, 574 NYS2d 1006, *appeal denied* 79 NY2d 855, 580 NYS2d 727, 588 NE2d 762; *People v. Gill*, 164 AD2d 867, 599 NYS2d 376, *appeal denied* 76 NY2d 893, 561 NYS2d 555, 562 NE2d 880; *People v. Peterson*, 96 AD2d 871, 578 NYS2d 358)

People v. Justin Bristow
Indictment No. 15-00615-01

and provides equality in the required disclosure (see *People v. Peterson*, 90 AD2d 871, 578 NYS2d 358; see generally *Wardius v. Oregon*, 412 US 470, 93 S Ct. 2208, 37 LE2d 82).

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

Dated: White Plains, New York
June 6, 2016


ROBERT A. NEARY
ACTING SUPREME COURT JUSTICE

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