

People v Ben-Reuben
2017 NY Slip Op 32998(U)
April 28, 2017
County Court, Westchester County
Docket Number: 16-1348-02
Judge: Barbara G. Zambelli
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

- against -

ANDRE RAYSOR and ISHMAEL BEN-REUBEN,

Defendants.

-----X
ZAMBELLI, J.

DECISION & ORDER

Indictment No.: 16-1348-02

FILED



MAY 01 2017

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant has been indicted for robbery in the first degree, robbery in the second degree, and grand larceny in the fourth degree allegedly committed on or about October 19, 2016 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. INSPECT / DISMISS / REDUCE

The 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 other 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 SUPPRESS STATEMENTS

The People have served the defendant with one CPL §710.30 notice regarding an electronically recorded oral statement. The defendant moves to suppress the noticed statements on the grounds that they were made in custody without Miranda warnings and were involuntary; defendant further submits that he did not knowingly, intelligently and voluntarily waive his rights. The People oppose the defendant's motion and argue that defendant's statement was voluntarily made by defendant after being oral given his Miranda rights and signing a waiver thereof and agreeing to speak with the police.

Defendant's motion is granted to the extent that the Court will conduct a hearing prior to trial to determine whether Miranda warnings were necessary and, if so, whether the defendant 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.

3. MOTION TO PRECLUDE UNNOTICED STATEMENTS

The defendant moves in advance to preclude the People from introducing any statements at trial which were not noticed to him pursuant to CPL §710.30. Defendant does not allege that the People have actually served any such notices outside of the statutory time frame. The defendant's motion is therefore denied as moot with leave to renew in the event that the People seek to serve such notices in the future.

4. MOTION TO SUPPRESS IDENTIFICATION

The People noticed one identification of the defendant from a photo array and one in court identification which occurred at the felony hearing held in this matter. Defendant

argues that the identification procedure was unduly suggestive. The People oppose the motion and argue that the defendant is known to the witness as the witness lives in the same building with the co-defendant and the defendant has visited co-defendant there. The People further submit that two weeks prior to this incident, the defendant threatened to beat the witness for not opening the building door for him and the witness knows defendant from this as well. The People further deny that the identification was unduly suggestive. The People also argue that the witness has an independent basis from which to identify the defendant.

Defendant's motion is granted insofar as a hearing shall be held immediately before trial as to whether any police procedures employed were unduly suggestive, and, if so, whether an independent source exists for an in-court identification by the witnesses (People v. Pacquette, 17 N.Y.3d 87; People v. McLemore, 264 A.D.2d 858).

5. MOTION TO SUPPRESS PRIOR BAD ACTS (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 NY2d 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 NY2d 350).

This Decision constitutes the Order of the Court.

Dated: White Plains, New York
April 28, 2017



BARBARA G. ZAMBELLI
COUNTY COURT JUDGE

Hon. Anthony Scarpino, Jr.
District Attorney, Westchester County
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601
Attn: Jean Prisco, Esq.
Assistant District Attorney

Alexander Ayoub, Esq.
Attorney for Defendant Andrew Raysor
50 Main Street - Suite 1000
White Plains, New York 10606

Albert A. Annunziata, Esq.
Attorney for Defendant Ishmael Ben-Reuben
700-720 White Plains Road - Suite 318
Scarsdale, New York 10583

Nancy Barry, Esq.
Chief Clerk