

People v Keller

2017 NY Slip Op 33064(U)

May 26, 2017

County Court, Westchester County

Docket Number: 16-1471

Judge: Susan M. Capeci

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FILED
AND
ENTERED
ON 5-31-2017
WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

DECISION & ORDER

- against -

MARYANN KELLER,
Defendant.

Indictment No: 16-1471

FILED
MAY 31 2017
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

CAPECI, J.,

The defendant, having been charged by indictment with 13 counts of aggravated criminal contempt in the first degree (P.L. 215.52 (3)) and criminal contempt in the first degree (P.L. 215.51 (b) (ii)), now makes this motion seeking omnibus relief.

The defendant has submitted an affirmation from her attorney in support of her omnibus motion, in which she seeks the following relief: 1) inspection of the grand jury minutes by the Court and the defendant, and thereafter, for the dismissal of the indictment and/or reduction of the charges contained therein; 2) motion for a bill of particulars; 3) disclosure of materials not previously provided through consent discovery, and Brady material; 4) a Sandoval/Ventimiglia hearing; and 5) a reservation of rights to make further pre-trial motions as necessary.

The People have submitted an affirmation in opposition in which they consent to provide discovery limited to the parameters of CPL article 240, as well as Brady material. They also consent to a Sandoval hearing, and an in camera inspection of the grand jury minutes by the Court to assess legal sufficiency, and consent to a Huntley hearing, but otherwise oppose the motion. The Court now finds as follows.

1. MOTION TO INSPECT/DISMISS/REDUCE

This 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 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)).

Contrary to the defendant's allegation, the defendant has been charged with crimes which are elevated by a prior conviction. The 13 charges of aggravated criminal contempt, as charged in the indictment under Penal Law §215.52 (3), require that a defendant have been previously convicted of the crime of criminal contempt in the first degree as defined in the statute, within the preceding five years. "The incorporation by specific reference to the statute operates without more to constitute allegations of all the elements of the crime required by explicit provision of the statute itself...for conviction under that statute" (People v Cohen, 52 NY2d 584, 586 (1981); see also People v Rodriguez, 62 AD3d 728 (2d Dept 2009)).

Since a prior conviction of criminal contempt in the first degree is an element of the crime of aggravated criminal contempt as charged in the indictment, the People properly filed a special information setting forth that conviction with the indictment (see People v Coleman, 145 AD3d 1641, 1642 (4th Dept 2016) ("the commission of first-

degree criminal contempt under P.L. 215.51 (c) is itself the criminal act required under the aggravated criminal contempt counts under section 215.52 (3)). The defendant's motion to dismiss the indictment on the basis that the People improperly filed a special information is thus denied.

2. MOTION FOR A BILL OF PARTICULARS

The defendant seeks a bill of particulars in this case. Although the People have already supplied the defendant with a bill of particulars, to the extent that her motion seeks a more specific bill of particulars, it is denied.

The function of a bill of particulars is to define more specifically the crime charged, or in other words, to clarify the pleading, not to serve as a discovery device (People v Davis, 41 NY2d 678 (1977); People v Kyoung Ja Choi, 259 AD2d 423 (1st Dept 1999). The indictment or bill of particulars must state such specifics "as may be necessary to give the defendant and the court reasonable information as to the nature and character of the crime charged" (People v Morris, 61 NY2d 290, 294 (1984)).

The bill of particulars which was served pursuant to and simultaneously with the consent order was sufficient to adequately inform the defendant of the substance of her alleged conduct and to enable her to prepare and conduct a defense (see People v Sanchez, 84 NY2d 440 (1994); People v Byrnes, 126 AD2d 735, 736 (2d Dept 1987); (People v Mackey, 49 NY2d 274 (1980)).

3. MOTION FOR DISCOVERY AND INSPECTION/ BRADY

The defendant has been provided with consent discovery in this case. Therefore, 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 (k) 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 her defense (CPL 240.40 (1) (a); People v Bianco, 169 Misc2d 127 (Crim. Ct, Kings Co. 1996)).

The defendant's demand for the production of Rosario material at this time is premature (see CPL 240.45(1); Catterson v Rohl, 202 AD2d 420 (2d Dept 1994)). Further, there is no statutory right to disclosure of all police reports concerning an ongoing investigation (Brown v Grosso, 285 AD2d 642 (2d Dept 2001); see also Pirro v LaCava, 230 AD2d 909 (2d Dept 1996)).

The People have acknowledged their continuing obligation to provide exculpatory information to the defendant (Brady v Maryland, 373 US 83), and are directed to disclose any such information to the defense.

4. MOTION FOR A SANDOVAL/VENTIMIGLIA HEARING


The defendant's motion for a Ventimiglia hearing is denied at this time since the People do not represent that they are seeking to introduce any of defendant's prior bad acts on their direct case. The defendant's motion may be renewed in the event the People later seek to offer such evidence at trial. The motion for a Sandoval hearing is granted and shall be renewed before the trial Judge.

5. MOTION FOR A RESERVATION OF RIGHTS TO MAKE FURTHER MOTIONS

The defendant seeks to reserve the right to make further motions as necessary. This motion is denied. CPL 255.20 is controlling with respect to the time frame for making pre-trial motions and there have been no allegations of good cause for making further motions outside of those time constraints.

This decision constitutes the Order of the Court.

Dated: White Plains, New York
May 26, 2017



HON. SUSAN M. CAPECI
A.J.S.C.

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