People v Johnson
2017 NY Slip Op 33194(U)
June 20, 2017
County Court, Dutchess County
Docket Number: 24/2017
Judge: Peter M. Forman
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CRIMINAL

Court/County:_____ **Type:**_____

Case Title:_____

Docket Number: 00024-2017

EXPERT(s): _____ **Doc Reviewer:** April Llave

JUDGE: Peter M. Forman **File date:**_____

Mark the Correct Category	Crime Type	LBL2
	White Collar Crime	CRIM100
	Drugs	CRIM120
X	DUI/DWI	CRIM140
	Immigration	CRIM160
	RICO	CRIM180
	Murder	CRIM200
	Burglary	CRIM220
	Robbery	CRIM240
	Illegal Possession of Guns/Firearms	CRIM260
	Terrorism	CRIM270
	Electronic Espionage	CRIM280
	Miscellaneous	CRIM300

Mark the Correct Category	Doc Label (LBL) or Category		Doc Description
	Motion Order	**_MO**	**LBLX**
	Trial Order	**_TO**	**LBLX**
	Trial Pleading	**_TP**	**LBLX**
	Trial Motion, Memorandum, and Affidavit	**_TM**	**LBLX**
	Trial Deposition and Discovery	**_TD**	
	Trial Filing	**_TF**	
	Police Report	**_AR**	
	Arrest Warrant	**_AW**	
	Search Warrant	**_SW**	
	Wiretap Warrant	**_WW**	
	Trial Transcript	**_TT**	
	Verdict, Agreement and Settlement (actuals)	**_VS**	
	Jury Instruction (actual)	**_JI**	
	Expert Depositions	**_ED**	
	Expert Transcripts	**_ET**	
	Partial Expert Testimony	**_EP**	
	Expert Report and Affidavit	**_ER**	
	Paper Only	**_PO**	
	Exhibits (Note-worthy)	**_EX**	
	Judgments of Conviction	**_JC**	
	Curriculum Vitae	**_CV**	

STATE OF NEW YORK: COUNTY OF DUTCHESS
COUNTY COURT

IND# 621-2017

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

KASHIF JOHNSON,

Defendant

DECISION AND ORDER

Ind. No. 24/2017

William V. Grady,
District Attorney
by: Margaret M. Walker, Esq.

Kara Gerry, Esq.
Attorney for Defendant

HON. PETER M. FORMAN, County Court Judge

The following papers were read and considered in deciding this motion:

2017 JUN 30 AM 11:06
DUTCHESS COUNTY
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	PAPERS NUMBERED
NOTICE OF OMNIBUS MOTION	1
AFFIRMATION IN SUPPORT	2
EXHIBITS	3-4
NOTICE OF CROSS-MOTION	5
ANSWERING AFFIRMATION	6

Defendant stands accused by the Grand Jury of the County of Dutchess of the following crimes: Operating a Motor Vehicle While Under the Influence of Alcohol (per se), a Class D Felony, in violation of §1192(2) and §1193(1)(c)(ii) of the Vehicle and Traffic Law; and Operating a Motor Vehicle While Under the Influence of Alcohol (common law), a Class D Felony, in violation of §1192(3) and §1193(1)(c)(ii) of the Vehicle and Traffic Law.

By Omnibus Motion, Defendant seeks various forms of relief which this Court will address in order. This Court will also address the People's cross-motion for reciprocal discovery.

GRAND JURY MINUTES AND INDICTMENT

With respect to Defendant's motion for inspection of the Grand Jury minutes and dismissal or reduction of the indictment, the same is granted to the extent that the Court has reviewed such minutes for the purpose of determining Defendant' s motion to dismiss or reduce the charges to a lesser included offense upon the grounds that said inspection would allegedly show that the evidence upon which the indictment was based was legally incompetent, insufficiently corroborated or otherwise inadmissible. CPL §190.65(1). Having examined the minutes of the testimony before the Grand Jury of Dutchess County, this Court determines that the indictment is based upon evidence which is legally sufficient to establish that Defendant committed the offenses as set forth therein, and that competent and admissible evidence before the Grand Jury provides reasonable cause to believe that Defendant committed those offenses [CPL §190.65; ***People v. Swamp***, 84 N.Y.2d 725(1994); ***People v. Haney***, 30 N.Y.2d 328 (1972)].

Further, this Court determines that the evidence is legally sufficient to support every element of the charges contained in said indictment and any lesser included offenses, and that legally sufficient evidence was presented to establish that Defendant committed such offenses. See ***People v. Jensen***, 86 N.Y.2d 248 (1995); ***People v. Jennings***, 69 N.Y.2d 103 (1986); ***People v. Mayer***, 1 A.D.3d 461 (2nd Dept. 2003). This Court has also reviewed the instructions given by the Assistant District Attorney to the Grand Jury and finds that the same satisfy the applicable standards [***People v. Calbud, Inc.***, 49 N.Y.2d 389(1980)]. Further, this Court finds nothing that would render this indictment defective. Accordingly, Defendant's motion to dismiss or reduce the indictment is denied.

Defendant's motion to be provided with a copy of the Grand Jury minutes is denied in the exercise of discretion. Defendant's motion to be provided with a copy of the legal instructions given to the Grand Jury is also denied in the exercise of discretion.

DISCOVERY

Defendant's motion for discovery is granted to the extent that the District Attorney is directed to make available to Defendant's attorney any and all property and information required to be disclosed pursuant to CPL 240.20.

Defendant also requests disclosure of all documents, notes or reports in the possession of the People, including statements of witnesses, police officers or informants. This request essentially seeks discovery of ***Rosario*** material. The People are under no obligation to disclose this material at this stage of the proceedings. Defendant's motion seeking production of this material is denied, subject to the People's compliance with their obligations under CPL §240.43 and §240.45, and with their continuing obligations under ***Brady v. Maryland*** and its progeny.

The People's motion for reciprocal discovery is granted to the extent that Defendant is directed to make available to the People any and all property and information required to be disclosed pursuant to CPL 240.30.

BRADY AND IMPEACHMENT MATERIAL

Defendant's motion to be provided with all ***Brady*** and impeaching material is granted to the extent that the People shall provide Defendant with any evidence in their possession or control which may tend to exculpate Defendant or which is otherwise favorable to him [***Brady v. Maryland***, 373 U.S. 83 (1963) and ***United States v. Bagley***, 473 U.S. 667 (1985)].

SUPPRESSION OF STATEMENTS

Defendant's motion to suppress the statements identified in the CPL §710.30 notice served by the People is granted to the extent that a ***Huntley*** hearing will be held prior to trial. [CPL§710.60[4]; ***People v. Huntley***, 15 N.Y.2d 72 (1965)]. Defendant's motion to suppress the alleged statements on the grounds that he was arrested unlawfully and without probable cause is denied. Defendant has failed to set forth factual allegations sufficient to warrant such a hearing. [CPL §710.60(4). ***People v. Mendoza***, 82 N.Y.2d 415 (1993); ***People v. Wright***, 54 A.D.3d 695, 863 N.Y.S.2d 253 (2 Dept. 2008)].

SANDOVAL

The Court grants Defendant's motion for a ***Sandoval*** hearing to the extent that a hearing is ordered which will be held immediately prior to trial to determine which, if any, bad acts or convictions may be used as impeachment in the event that the Defendant elects to testify at trial. See ***People v. Sandoval***, 34 NY2d 371 (1974). The District Attorney has provided Defendant's attorney with a true copy of Defendant's Division of Criminal Justice Services Summary Case History. The Court orders the District Attorney to disclose to Defendant's attorney any and all acts upon which it intends to impeach Defendant, including without limitation all prior instances of Defendant's alleged prior uncharged criminal, vicious or immoral conduct that the People intend to use at trial for the purposes of impeaching Defendant's credibility. [CPL §240.43].

VENTIMIGLIA

Defendant has requested that the People supply Defendant with all specific instances of prior uncharged conduct which the People will seek to offer against Defendant at trial upon its

direct case. The People have not made any application to offer evidence of any specific instances of uncharged crimes which they intend to offer in their direct case pursuant to ***People v Ventimiglia***, 52 N.Y.2d 350 (1981). If the People intend to make an application pursuant to ***People v Ventimiglia***, they should do so prior to the ***Sandoval*** hearing ordered herein.

PRE-TRIAL HEARING TRANSCRIPTS

Defendant's request that any pre-trial hearings be conducted at least seven (7) days prior to trial to allow sufficient time for the production of hearing transcripts is denied. All pre-trial hearings will be scheduled at the convenience of the Court and the parties herein. Transcripts will be provided to the defense prior to the commencement of trial testimony.

LEAVE TO FILE ADDITIONAL MOTIONS

Defendant's request for leave to file additional motions is granted to the extent that Defendant may file any motion that Defendant deems fit within the forty-five (45) day time limit. Subsequent to the forty-five (45) day time limit, Defendant may make further motions only upon a showing of good cause.

The foregoing constitutes the Decision and Order of this Court.

Dated: Poughkeepsie, NY
June 20, 2017

PETER M. FORMAN
COUNTY COURT JUDGE