

People v Johnson
2017 NY Slip Op 33195(U)
June 15, 2017
County Court, Dutchess County
Docket Number: 22/2017
Judge: Edward T. McLoughlin
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CRIMINAL

Court/County: NYCoCt / Dutchess

Type: _____

Case Title: _____

Docket Number: 22/2017

EXPERT(s): _____

Doc Reviewer: April LlaveJUDGE: Edward T. McLoughlin

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	

COUNTY COURT : DUTCHESS COUNTY

PRESENT: HON. EDWARD T. McLOUGHLIN
County Court Judge

DECISION AND ORDER
OMNIBUS MOTION and
PEOPLE'S MOTION FOR
RECIPROCAL DISCOVERY

THE PEOPLE OF THE STATE OF NEW YORK

Ind. No. 22/2017

Plaintiff,

- against -

TYRELL JOHNSON,

WILLIAM V. GRADY, ESQ.
District Attorney by
Ryan J. LeGrady, Esq.
Attorney for Plaintiff

Defendant.

TODD W. CARPENTER, ESQ.
Attorney for Defendant

Notice of Motion _____ X
Affirmation in Support _____ X
Cross Motion _____ X
Answering Affirmation RE:
Omnibus Motion and in
Support of Cross Motion _____ X

The foregoing documents were considered in deciding these motions.

The defendant has been indicted for Operating a Motor Vehicle While Intoxicated, a Class D Felony (Vehicle and Traffic Law §1192[3] and §1193[1][c][2]) and Obstructing Governmental Administration in the Second Degree, a Class A Misdemeanor (Penal Law §195.05).

By omnibus motion, the defendant seeks various forms of relief.

INSPECTION - DISMISSAL - REDUCTION

The motion to inspect the grand jury minutes is granted to the extent that the Court has reviewed the minutes. (CPL 210.30[2][3].

The motion to release the minutes of the testimony or the

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instructions to the parties to assist the Court in making a determination of the sufficiency of the evidence or the propriety of the instructions is denied. (CPL 210.30[3]; People v. Fetcho, 91 N.Y.2d 765).

The motion to reduce the indictment is granted, solely to the extent that the first count of the indictment is reduced from Operating a Motor Vehicle While Intoxicated as a Class D Felony to Operating a Motor Vehicle While Intoxicated as a Class A Misdemeanor. (Vehicle and Traffic Law §1192[3]).

The Court orders this reduction based upon insufficient evidence before the Grand Jury of the defendant's identity and a sufficient nexus to the certificates of conviction presented to the Grand Jury. The testimony before the Grand Jury fails to illicit any evidence of a date of birth for the defendant. As such, there is insufficient evidence to connect this defendant with the individual named in the certificates of conviction.

This order is stayed for 30 days pursuant to CPL §210.20(6). The Court requests that the People notify the Court and defense counsel in writing if they accept the Court's ordered reduction and are willing to waive the 30 day stay to enable the matter to proceed, or if they will re-present the matter pursuant to CPL §210.60(6)(b).

In all other respects, the motion to dismiss or reduce is denied. The indictment, as amended, is based upon competent and admissible evidence which is legally sufficient to establish and provide reasonable cause to believe that the defendant committed each offense

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charged therein as amended. (CPL §190.65[1]); People v. Jennings, 69 NY2d 103). The instructions given to the grand jury were adequate to enable the Grand Jury to make an informed and intelligent decision as to whether an indictment was authorized. People v. Calbud, 49 NY2d 389.

The motion to dismiss on the ground that the grand jury proceeding was defective (CPL §210.20[1][c] and §210.35) is denied.

SUPPRESSION OF STATEMENTS

The defendant's motion to suppress statements alleged to have been made by the defendant as contained in the Huntley Notice served by the People is granted solely to the extent that a hearing on the motion will take place prior to trial. (CPL §710.60[4]).

SUPPRESSION OF OBSERVATIONS OF INTOXICATION AND DEFENDANT'S CHEMICAL TEST REFUSAL

The defendant moves to suppress any observations made by law enforcement of him, as a result of an alleged illegal seizure and illegal arrest on October 16, 2016. (CPL §710.20[1]); Dunaway v. New York, 442 US 200.

The People oppose the defendant's application and assert that the defendant has failed to set forth sufficient facts in his moving papers to warrant a hearing.

The defendant's moving papers, taken in conjunction with the People's moving papers, provide a sufficient factual basis upon which to grant the hearing requested. See People v. Burton, 6 NY3d 584.

Therefore, the defendant's motion to suppress the police

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officer's observations of him is granted solely to the extent that a hearing on the motion will take place prior to trial. (CPL §710.60[4]).

The defendant also moves to suppress evidence of his refusal to submit to a chemical test on the date in question. That application is granted solely to the extent that a hearing will be held prior to trial. People v. Boone, 71 AD2d 859 (2nd Dept. 1979); People v. Robles, 180 Misc. 2d 512 (Criminal Court, Bronx County 1999).

PRECLUSION OF ALCO-SENSOR RESULTS

The defendant moves to preclude any results obtained from an alco-sensor alleged to have been utilized by law enforcement during his stop and arrest.

This application is denied as moot. A review of the Grand Jury minutes provides that the defendant did not submit to an alco-sensor test during the stop on October 16, 2016.

MOTION TO DELETE REFERENCE TO FELONY DESIGNATION

The defendant moves to delete any reference in the indictment as to the level of DWI that he is charged with. Based upon the Court's earlier decision reducing the first count to a misdemeanor, this application is rendered moot.

If the People chose to represent the matter to the Grand Jury, and the Grand Jury finds that the defendant should be indicted for a felony level Driving While Intoxicated charge, the defendant may renew this application.

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It should be noted, that if the defendant concedes his prior Driving While Intoxicated convictions outside of the presence of the jury, the jury need not hear what level crime of Driving While Intoxicated he may be charged with.

DISCOVERY AND INSPECTION

Defendant's motion for discovery is granted solely to the extent that the District Attorney is directed to make available to the defendant's attorney any and all property and information required to be disclosed at the appropriate times pursuant to CPL §240.20. At the time of defendant's arraignment on March 24, 2016, the People served a document entitled Voluntary Disclosure Form. In all other respects, the defendant's motion for discovery and inspection is denied.

The Prosecution has moved for reciprocal discovery pursuant to CPL §240.30. This motion is granted solely to the extent that the defendant's attorney is directed to make available to the district attorney any and all property and information required to be disclosed pursuant to CPL §240.30.

Both sides are reminded that they are under a continuing obligation to comply with the Court's directive up to and including the time of trial.

SANDOVAL HEARING

Defendant's motion for a Sandoval Hearing is granted. The hearing will be held on a date prior to the trial.

The District Attorney shall notify defendant's attorney of

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all specific instances of defendant's alleged criminal convictions, underlying acts, prior uncharged criminal, vicious or immoral conduct of which the District Attorney has knowledge and intends to use at trial for purposes of impeaching the credibility of the defendant. Such notification shall be made in writing with a copy to the Court at least one business day prior to the date scheduled for the hearing.

MOLINEUX

Defendant's motion for a Molineux Hearing is denied as unnecessary at this time since the People have not made any application pursuant to the dictates of People v. Ventimiglia, 52 N.Y.2d 350 to offer evidence of any specific instances of uncharged crimes which they intend to offer in their direct case.

If the People intend to make an application pursuant to People v. Ventimiglia, they should do so within 45 days of this Order or 30 days prior to trial - whichever is sooner.

LEAVE TO FILE ADDITIONAL MOTIONS

Defendant's request for leave to file additional motions is denied unless defendant can first make a showing of good cause.

MEMORANDUM OF LAW

The decision as to the need or advisability of the submission of Memorandum of Law will be made subsequent to any pre-trial hearings.

PRE-TRIAL HEARING TRANSCRIPTS

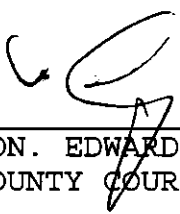
Transcripts of any pre-trial hearing shall be provided in accord with a schedule to be determined at the pre-trial hearing provided that defendant's attorney makes the request for a transcript at the conclusion of the hearing.

This constitutes the decision and order of this Court.

So ordered:

Dated: Poughkeepsie, New York
~~May~~ 15, 2017

June



HON. EDWARD T. McLOUGHLIN
COUNTY COURT JUDGE

TO: Ryan J. LeGrady, Esq.
Dutchess County District Attorney's Office
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Poughkeepsie, NY 12601

Todd W. Carpenter, Esq.
4 Liberty Street
Poughkeepsie, NY 12601