

People v Black

2017 NY Slip Op 33279(U)

August 18, 2017

County Court, Orange County

Docket Number: 2017-399

Judge: Craig Stephen Brown

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
COUNTY COURT : ORANGE COUNTY

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PEOPLE OF THE STATE OF NEW YORK,

DECISION & ORDER

-against-

Ind. No. 2017-399
Index No. 4193-2017

JAMES BLACK,

Defendant.

-----X
CRAIG STEPHEN BROWN, J.C.C.

Defendant JAMES BLACK moves for the following relief:

1. Dismissal of the indictment pursuant to CPL Article 210 on the grounds that the evidence before the grand jury was insufficient and that the prosecution did not properly instruct the grand jury as to the law; or, if the Court does not dismiss after determining the evidence is insufficient, reducing the charges in the indictment to any lesser included offense(s) that is supported by the evidence, and, pursuant to CPL Section 210.30(3) disclosure to the defense of the grand jury minutes so that counsel can assist the Court in its determination of this motion.
2. Suppressing from use at trial pursuant to Article 710 of the CPL evidence consisting of:
 - (a) a record or potential testimony describing or reciting a statement of the defendant involuntarily made within the meaning of CPL Section 60.45.
 - (b) tangible property obtained by means of an unlawful search and seizure.
3. Prohibiting the prosecution from questioning the defendant regarding any prior commission of criminal, vicious, or immoral acts which it may use to impeach the

defendant on cross-examination at trial and, pursuant to CPL Section 240.43, directing the District Attorney to disclose to counsel any prior uncharged act which the prosecution intends to use at trial to impeach defendant on cross-examination.

- 4. Directing that counsel be provided with all Brady material in the possession of the District Attorney that would tend in any way to exculpate the defendant, or lead this Court to suppress before trial any evidence the prosecution intends to offer at trial or impeach the testimony of any prosecution witness.

The following papers were read:

Notice of Motion -Affirmation of Michael E. Davis, Esq. - Affidavit of Service	1 - 3
John Geidel, Esq.'s Affirmation in Response - Annexed Exhibits - Affidavit of Service	4 - 6
Indictment - Grand Jury Minutes - Search Warrant Applications - Search Warrants	7 - 10

Upon the foregoing papers it is hereby ORDERED that the defendant's motion is decided as follows:

MOTION TO INSPECT GRAND JURY MINUTES

The Motion is granted to the extent that the Court has reviewed the minutes of the Grand Jury and finds that the Indictment is based upon legally sufficient evidence and that the Grand Jury was properly instructed with respect to the applicable law.

MOTION TO SUPPRESS STATEMENTS

The Motion is granted to the extent that a hearing is hereby ordered pursuant to CPL §710.60 (4) to determine the admissibility of statements allegedly made by the defendant.

[* 3]

MOTION TO SUPPRESS PHYSICAL EVIDENCE

The Motion is granted to the extent that a hearing is hereby ordered pursuant to CPL §710.60(4) to determine the admissibility of physical evidence allegedly obtained from defendant. A hearing must be held to determine whether the blood sample was legally obtained from the defendant.

MOTION TO SUPPRESS EVIDENCE OBTAINED PURSUANT TO SEARCH WARRANTS

Defendant's motion to suppress physical evidence obtained pursuant to two search warrants is denied. The Court has reviewed the applications for the issuance of the search warrants and finds that the search warrants were based upon probable cause.

Defendant's motion for a hearing to controvert the search warrants is denied on the ground that defendant failed to make the necessary substantial preliminary showing that the warrant was based upon an affidavit containing false statements made knowingly or intentionally, or with reckless disregard for the truth (See, *Franks v Delaware*, 438 US 154, *People v Cohen*, 90 NY2d 632, *People v Alfinito*, 16 NY2d 181, *People v Rhodes*, 49 AD3d 668, *People v Tordella*, 37 AD3d 500 [2nd Dept.: 2007], *lv. app. den.*, 8 NY3d 991, *People v Novick*, 203 AD2d 692, {2nd Dept.:2002}, *lv. app. den.* 98 NY2d 712).

MOTION FOR A SANDOVAL HEARING

The Motion is granted to the extent that a hearing is hereby 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. The Court further orders the People to provide defendant's attorney with a true copy of defendant's DCJS Summary Case

[* 4]

History and to disclose to defendant's attorney any and all acts about which they intend to use as impeachment. The above information must be provided to defendant's attorney at least three days, excluding Saturdays, Sundays and holidays, prior to the commencement of jury selection.

MOTION PURSUANT TO *BRADY V. MARYLAND*

Defendant's Motion is granted to the extent that it is hereby ordered that the District Attorney provide defendant with any and all documents and materials as required under *Brady v. Maryland*.

ADJOURNED DATE

This matter is scheduled for a conference to be held on August 28, 2017, at 9:15 A.M. The defendant, the defendant's counsel, and assistant District Attorney are directed to be present.

The aforesaid constitutes the Decision and Order of the Court.

Dated: August 18, 2017
Goshen, New York

E N T E R


HON. CRAIG STEPHEN BROWN
COUNTY COURT JUDGE

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