

People v Zachary

2017 NY Slip Op 33297(U)

September 8, 2017

County Court, Orange County

Docket Number: 4551-2017

Judge: Craig Stephen Brown

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STATE OF NEW YORK
COUNTY COURT : ORANGE COUNTY

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PEOPLE OF THE STATE OF NEW YORK,

DECISION & ORDER

-against-

, Ind. No. 2017-466
Index No. 4643-2017

NIGEL ZACHARY,

Defendant.

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

Defendant NIGEL ZACHARY 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 charge(s) in the indictment to any lesser included offense(s) that is supported by the evidence, and
2. Granting, pursuant to CPL §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.
3. Precluding from use at trial pursuant to Article 710 of the CPL evidence consisting of:
 - a. Pursuant to CPL §§710.20(3) and (4) and 60.45, an order to suppress the evidence of statements allegedly made by the defendant, or, in the alternative, granting a hearing pursuant to *People v. Huntley*, 15 N.Y.2d 72 (1965), in that the statements

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were obtained in violation of the defendant's constitutional rights.

- b. An order pursuant to CPL §710.60(2) suppressing the use of evidence consisting of tangible property, observations, lab reports, and statements obtained by means of or as a fruit of an unlawful stop, search and seizure under circumstances precluding admissibility thereof in a criminal action against the defendant; or in the alternative, an order directing that a hearing be held prior to trial pursuant to CPL §710.60(4) for the purpose of finding facts essential to the determination thereof.
4. Directing delivery to defendant of all evidence favorable to him under the authority of *Brady v. Maryland*, 373 U.S. 82 (1963) 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.
5. Directing that the People provide the defendant with a complete record of his arrest, conviction and disposition record in this and any other jurisdiction and any prior criminal, vicious or immoral acts with which the people intend to impeach the defendant at trial and directing that a pre-trial *Sandoval/Ventimiglia/Molineaux* hearing to be held, CPL §240.43.
6. Directing that the People notify defense counsel and the Court immediately of any possible conflicts, with particulars so that Legal Aid can confirm such conflict and advise the court.
7. Discovery pursuant to CPL §240.40.

The following papers were read:

Notice of Motion - Affirmation of Donald J. Gillies, Esq. - Affidavit of Service	1 - 3
Christopher Kelly, Esq.'s Affirmation in Response	4
Grand Jury Minutes - Indictment - Voluntary Disclosure Form	5 - 7

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.

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*.

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 the defendant.

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 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 VENTIMIGLIA

Defendant's motion for relief pursuant to *People v Ventimiglia*, 52 NY2d 350, is denied with leave to renew in the event that the District Attorney seeks to introduce evidence at trial of defendant's prior bad acts or convictions.

MOTION FOR DISCOVERY

The request for information as set forth in paragraphs numbered "2", "10" and "12" of the "discovery" portion of defendant's Notice of Motion is denied on the basis that such information (statements of the defendant, video of the incident, and property obtained from the defendant) was previously provided or inspection was consented to in the Voluntary Disclosure Form.

The request for information as set forth in paragraph numbered "3" is denied based upon the representation of the People that no reports are presently known.

OTHER REQUESTED RELIEF

All other requests for relief are denied.

ADJOURNED DATE

This matter is scheduled for a conference to be held on September 12, 2017 at 9:15 A.M.

The defendant, the defendant's counsel, and District Attorney are directed to be present.

The aforesaid constitutes the Decision and Order of the Court.

Dated: September 8, 2017
Goshen, New York

ENTER



HON. CRAIG STEPHEN BROWN
COUNTY COURT JUDGE

TO: LEGAL AID SOCIETY OF ORANGE COUNTY, INC.

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