

People v Gaynor

2017 NY Slip Op 33303(U)

September 21, 2017

County Court, Orange County

Docket Number: 5172-2017

Judge: Craig Stephen Brown

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 ORIGINAL

STATE OF NEW YORK
COUNTY COURT : ORANGE COUNTY

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PEOPLE OF THE STATE OF NEW YORK,

-against-

MARYSSA GAYNOR ,

Defendant.

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CRAIG STEPHEN BROWN, J.C.C.

DECISION & ORDER

Ind. No. 2017-497
Index No. 5172-2017

Defendant MARYSSA GAYNOR moves for an Order granting the following relief:

1. MOTION FOR DISMISSAL: Pursuant to CPL §210.20(1)(a) and 210.25(1), on the ground that the indictment is defective and that it does not substantially conform to the requirements of CPL Article 200;
2. MOTION TO INSPECT GRAND JURY MINUTES: Pursuant to CPL §210.30, providing that the Court examine the stenographic Grand Jury minutes for the purpose of determining whether the evidence before the Grand Jury was legally sufficient to support the charges contained in the indictment; and
3. MOTION FOR DISMISSAL: Pursuant to CPL §210.20(1)(b) and 210.30, dismissing the indictment on the ground that the evidence before the Grand Jury was not legally sufficient to establish the offenses charged;
4. MOTION FOR DISMISSAL: Pursuant to §210.30, providing that the Court examine the Grand Jury minutes and subsequently order

[* 2]

dismissal of the indictment pursuant to CPL 210.20(1)(c) and 210.35, on the ground that the Grand Jury proceeding was defective;

5. MOTION TO PRECLUDE: The introduction of any evidence of the defendant at trial, on the grounds that the prosecution has not timely served a CPL 710.30 notice;
6. MOTION TO SUPPRESS: Pursuant to CPL §710.20(3) and 710.70(1), suppressing the use in evidence at trial of any record or potential testimony reciting or describing a statement of the defendant made involuntarily, within the meaning of CPL §60.45, to a public servant engaged in law enforcement activity or to a person then acting under the direction of said public servant, or in the alternative, a *Huntley* hearing upon the issue pursuant to CPL 710.60(4);
7. MOTION TO DISMISS: Pursuant to *Dunaway v. New York*, 440 U.S. 300, 99 S. Ct. 248 (1979), as the defendant's warrantless arrest was without probable cause; or in the alternative, granting a pre-trial hearing to determine whether probable cause for arrest existed;
8. MOTION TO PRECLUDE: The "Field Sobriety Tests," or a hearing to determine their scientific reliability and admissibility pursuant to *Frye v. U.S.*, 293 F. 1013 (C.A. D.C. 1923);
9. MOTION TO PRECLUDE: The arresting officer's conclusion that the defendant "failed" the field sobriety tests, and the use of the term "field sobriety test";
10. MOTION TO SUPPRESS: Pursuant to CPL §710.20(1) and 710.70(1),

suppressing the use in evidence at trial of tangible property (such as the officer's observations, breath samples, and the like) that was taken from or derived from the unlawful stop and seizure of the defendant;

11. MOTION TO PRECLUDE: Pursuant to *People v. Sandoval*, 34 N.Y.2d 371, 357 N.Y.S.2d 849, 314 N.E.2d 413 (1974), prohibiting the district attorney from questioning the defendant for the purpose of impeaching the defendant's credibility, should the defendant choose to testify at trial, concerning any alleged previous bad acts, arrests or convictions in which the defendant may have been involved, or in the alternative, granting a pre-trial hearing to determine the admissibility of prior offenses;
12. MOTION FOR DISCOVERY: Pursuant to CPL Article 240 and delivery to the defendant of all evidence favorable to the defendant under the authority of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963);
13. TRANSCRIPTS OF HEARING: Pursuant to *People v. Sanders*, 31 N.Y.2d 463, 341 N.Y.S.2d 305, 293 N.E.2d 555 (1973), requiring that any hearings granted in this case be held at least twenty (20) days prior to the commencement of the trial in order to allow sufficient time for the transcription of the minutes;
14. MOTION TO PRECLUDE: Pursuant to *People v. Thomas*, 121 A.D.2d 73, 509 N.Y.S.2d 668 (1986), prohibiting the district attorney from introducing evidence regarding the results of the Alco-Sensor breath screening test;

15. Leave to submit subsequent motions; and

16. Permission to file late motions.

The following papers were read:

Notice of Motion - Affirmation of Joseph F. Buono, Esq. - 1 - 4
Annexed Exhibits - Affidavit of Maryssa Gaynor

Anika Mohammed, Esqs.'s Affirmation in Response - 5 - 6
Affidavit of Service

Grand Jury Minutes - Indictment - Voluntary Disclosure Form 7 - 9

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

**MOTION TO INSPECT GRAND JURY MINUTES AND
DISMISS INDICTMENT**

The motion is denied. 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 PRECLUDE AND 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 TO DISMISS BASED UPON ARREST
WITHOUT PROBABLE CAUSE**

The defendant's motion for dismissal on the ground that the arrest was made without probable cause is denied.

**MOTION TO PRECLUDE FIELD SOBRIETY TESTS,
ARRESTING OFFICER'S CONCLUSION THAT DEFENDANT
FAILED FIELD SOBRIETY TESTS AND THE TERM "FIELD
SOBRIETY TEST"**

The defendant's motion to preclude the field sobriety tests, the arresting officer's conclusions regarding the field sobriety tests, and use of the term "field sobriety test" is denied. The defendant has failed to establish a valid legal basis to preclude said items.

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 District Attorney 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 it intends 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 FOR DISCOVERY AND INSPECTION (PARAGRAPHS 85-119)

The request for information set forth in paragraphs 85(a) and 113 of defendant's counsel's affirmation is denied based upon the District Attorney's representation that no such information is presently known.

The request for information set forth in paragraphs 85(b) and 85(c) is denied as the

[* 6]

defendant did not testify before the Grand Jury and there is no co-defendant or co-conspirator.

The request for information set forth in paragraphs 92 and 94 is granted. The People are directed to provide such information, if any, within ten (10) days of the date of this Order.

The request for information set forth in paragraph 96 is denied as the People have consented to the inspection of such tapes or recordings.

The request for information set forth in paragraph 99 is denied as the People have consented to the inspection of physical evidence and have provided the records or documents relating to any test or analysis.

The request for information set forth in paragraph 102 is denied as defendant's criminal record has been provided by the People.

The request for information set forth in paragraph 103 is denied as the People have provided written reports and have consented to the inspection thereof.

The request for information set forth in paragraph 106 is denied as the People have provided calibration/maintenance records, reference gas record, and the certification of the breath test operator.

The request for information set forth in paragraph 114 is denied as the People have consented to the inspection of any tapes or electronic recordings intended to be offered at trial or hearings.

The request for information set forth in paragraph 119 is denied as the People have provided written reports and have consented to the inspection thereof.

The request for information set forth in paragraphs 86, 87, 88, 89, 90, 91, 93, 95, 97, 98, 100, 101, 104, 105, 107, 108, 109, 116, 117, and 118 is denied as such information is not discoverable pursuant to CPL §240.20.

[* 7]

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.

***ROSARIO* MATERIAL**

The defendant's motion for *Rosario* material is denied as premature. The District Attorney has acknowledged his obligations pursuant to *People v. Rosario*, 9 NY2d 286, CPL §240.44, and CPL §240.45. In the event that the District Attorney fails to comply with said obligations, the defendant has available remedies.

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*.

HEARINGS IN ADVANCE OF TRIAL

The defendant's motion for the scheduling of pre-trial hearings a minimum number of days prior to trial is denied with leave to renew.

MOTION TO PRECLUDE ALCO-SENSOR TEST

The defendant's motion is granted to the extent that the results of the Alco-Sennsor test shall not be "admissible to establish intoxication" at the time of trial unless the defendant opens the door to the introduction of such evidence. (*People v. Krut*, 133 AD3d 781, 784 (2nd Dept., 2015) quoting *People v. Kulk*, 103 AD3d 1038, 1040 and citing *People v Thomas*, 70 N.Y.2d 823, 825, 523 N.Y.S.2d 437, *affg.* 121 A.D.2d 73, 509 N.Y.S.2d 668; *People v. Palencia*, 130 A.D.3d 1072, 1074, 15 N.Y.S.3d 89; *People v. MacDonald*, 227 A.D.2d 672, 674, 641 N.Y.S.2d

[* 8]
749, *affd.* 89 N.Y.2d 908, 653 N.Y.S.2d 267).

MOTION FOR LEAVE TO FILE ADDITIONAL AND LATE MOTIONS

Defendant's motion for leave to file additional and late motions is granted only to the extent set forth in CPL §255.20(3).

HEARING DATE

This matter is scheduled for a hearing to be held on September 22, 2017 at 10:30 A.M.

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

The aforesaid constitutes the Decision and Order of the Court.

Dated: September 21, 2017
Goshen, New York

ENTER



HON. CRAIG STEPHEN BROWN
COUNTY COURT JUDGE

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