

People v Brown

2018 NY Slip Op 33803(U)

July 30, 2018

County Court, Westchester County

Docket Number: 18-0306

Judge: Anne E. Minihan

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FILED
AND ENTERED
ON 7-30-2018
WESTCHESTER

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER
Ind No.: 18-0306

CANDACE BROWN

Defendant. **FILED**
-----X
JUL 31 2018

MINIHAN, A.

NEW YORK COUNTY CLERK
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, CANDACE BROWN, by Westchester County Indictment No. 18-0306 is charged with Criminal Sale of a Controlled Substance in the Third Degree (Penal Law § 220.39[1]) (two counts) and Criminal Possession of a Controlled Substance in the Third Degree (Penal Law § 220.16[1]) (two counts), and has filed an omnibus motion consisting of a Notice of Motion, an Affirmation in Support thereof, and a Memorandum of Law. In response thereto, the People have filed an Affirmation in Opposition together with a Memorandum of Law.

Upon consideration of these papers, the stenographic transcript of the grand jury minutes and the Consent Discovery Order dated May 8, 2018, entered in this case, this Court disposes of this motion as follows:

A.

MOTION to INSPECT and to DISMISS and/or REDUCE
CPL ARTICLE 190

The court grants the defendant's motion to the limited extent that the court has conducted, with the consent of the People, an *in camera* inspection of the stenographic transcription of the grand jury proceedings. Upon such review, the court finds no basis upon which to grant defendant's application to dismiss or reduce the indictment.

The defendant, who bears the burden of refuting with substantial evidence the presumption of regularity which attaches to official court proceedings (*People v Pichardo*, 168 AD2d 577 2d Dept 1990)), has offered no sworn factual allegations, in support of her argument that the grand jury proceedings were defective. The minutes reveal a quorum of the grand jurors was present during the presentation of evidence, and that the Assistant District Attorney properly instructed the grand jury on the law, and only permitted those grand jurors who heard all the evidence to vote the matter (*see People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]).

The evidence presented to the grand jury, if accepted as true, is legally sufficient to establish every element of each offense charged (CPL 210.30[2]). “Courts assessing the sufficiency of the evidence before a grand jury must evaluate whether the evidence, viewed most favorably to the People, if unexplained and uncontradicted--and deferring all questions as to the weight or quality of the evidence--would warrant conviction” (*People v Mills*, 1 NY3d 269, 274-275 [2002]). Legally sufficient evidence means competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant’s commission thereof (CPL 70.10[1]; see *People v Flowers*, 138 AD3d 1138, 1139 [2d Dept 2016]). “In the context of a Grand Jury proceeding, legal sufficiency means prima facie proof of the crimes charged, not proof beyond a reasonable doubt” (*People v Jessup*, 90 AD3d 782, 783 [2d Dept 2011]). “The reviewing court’s inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of every element of the charged crimes, and whether the Grand Jury could rationally have drawn the guilty inference. That other, innocent inferences could possibly be drawn from those facts is irrelevant to the sufficiency inquiry as long as the Grand Jury could rationally have drawn the guilty inference” (*People v Bello*, 92 NY2d 523, 526 [1998]).

Based upon the *in camera* review, since this court does not find release of the grand jury minutes or any portion thereof necessary to assist it in making any determinations and as the defendant has not set forth a compelling or particularized need for the production of the grand jury minutes, defendant’s application for a copy of the grand jury minutes is denied (*People v Jang*, 17 AD3d 693 [2d Dept 2005]; CPL 190.25[4][a]).

B.

MOTION for DISCOVERY, DISCLOSURE and INSPECTION
CPL ARTICLE 240

The parties have entered into a stipulation by way of a Consent Discovery Order consenting to the enumerated discovery in this case. Defendant’s motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 240. If there any further items discoverable pursuant to Criminal Procedure Law Article 240 which have not been provided to defendant pursuant to the Consent Discovery Order, they are to be provided forthwith.

As to the defendant’s demand for exculpatory material, the People have acknowledged their continuing duty to disclose exculpatory material at the earliest possible date upon its discovery (see *Brady v Maryland*, 373 US 83 [1963]; *Giglio v United States*, 405 US 150 [1972]). The People have also acknowledged their duty to comply with *People v Rosario*, (9 NY2d 286 [1961]). In the event that the People are or become aware of any material which is arguably exculpatory and they are not willing to consent to its disclosure to the defendant, they are directed to immediately disclose such material to the Court to permit an *in camera* inspection and determination as to whether such must be disclosed to the defendant.

As to the defendant's demand for scientific related discovery, the People have acknowledged their continuing duty to disclose any written report or document concerning a physical or mental examination or test that the People intend to introduce, or the person who created such report or document, at trial pursuant to CPL 240.20(1)(c).

Defendant's motion for a further Bill of Particulars, to provide the identity of the buyer in the alleged drug sale, is denied. The Bill of Particulars set forth in the Consent Discovery Order provided to the defendant has adequately informed the defendant of the substance of her alleged conduct and in all respects complies with CPL 200.95. Defendant's application for disclosure of the name of the undercover officer is denied so as to protect the undercover's identity and safety during on-going investigations (*see People v Hinton*, 31 NY2d 71 [1972]; *People v White*, 170 AD2d 629 [2d Dept 1991]).

Except to the extent that the defendant's application has been specifically granted herein, it is otherwise denied as seeking material or information beyond the scope of discovery (*see People v Colavito*, 87 NY2d 423 [1996]; *Matter of Brown v Grosso*, 285 AD2d 642 [2d Dept 2001]; *Matter of Brown v Appelman*, 241 AD2d 279 [2d Dept 1998]; *Matter of Catterson v Jones*, 229 AD2d 435 [2d Dept 1996]; *Matter of Catterson v Rohl*, 202 AD2d 420 [2d Dept 1994]).

C.

MOTION to STRIKE IDENTIFICATION NOTICE

This motion is denied. Said notice is in conformity with the statutory requirements of CPL 710.30.

D.

MOTION to SUPPRESS IDENTIFICATION TESTIMONY
CPL 710

Defendant's motion is granted to the extent of conducting a hearing prior to trial to determine if the identifying witness had a sufficient prior familiarity with defendant as to render the witness impervious to police suggestion (*see People v Rodriguez*, 79 NY 2d 445 [1992]). If the court finds that there was not a sufficient prior familiarity with defendant on the part of the witness, the court will then consider whether or not the noticed identification was unduly suggestive (*see United States v Wade*, 388 US 218 [1967]). Specifically, the court shall determine whether the identification was so improperly suggestive as to taint any in-court identification. If the identification is found to be unduly suggestive, the court shall then go on to

consider whether the People have proven by clear and convincing evidence that an independent source exists for such witness' proposed in-court identification.

E.

MOTION to STRIKE ALIBI NOTICE

Defendant's motion to strike the alibi notice is denied. Contrary to defendant's contentions, it is well-settled that CPL 250.20 is indeed in compliance with the constitutional requirements (*see People v Dawson*, 185 AD2d 854 [2d Dept 1992]; *People v Cruz*, 176 AD2d 751 [2d Dept 1991]; *People v Gill*, 164 AD2d 867 [2d Dept 1990]) and provides equality in the required disclosure (*see People v Peterson*, 96 AD2d 871 [2d Dept 1983]; *see generally Wardius v Oregon*, 412 US 470 [1973]).

F.

MOTION for DISCLOSURE of DEALS and UNIDENTIFIED INFORMANTS

The People recognize their continuing duty to disclose the terms of any deal or agreement made between the People and any prosecution witness at the earliest possible date (*see People v Steadman*, 82 NY2d 1 [1993]; *Giglio v United States*, 405 US 150 [1972]; *Brady v Maryland*, 373 US 83 [1963]; *People v Wooley*, 200 AD2d 644 [2d Dept 1994]).

The defendant moves for disclosure of the identity of any informants without demonstrating what relevant testimony any such witness would have on the issue of her innocence or guilt (*see People v Goggins*, 34 NY2d 163 [1974]; *People v Rivera*, 98 AD3d 529 [2d Dept 2012]; *People v Pena*, 37 NY2d 642 [1975]). Defendant's application is, thus, denied.

Additionally, the Court notes that there is no need for a *Darden* hearing as the undercover police officer participated in the alleged narcotics sales. Defendant allegedly sold cocaine to an undercover officer on two occasions. Therefore, the probable cause to arrest defendant was based upon the officer's observations, not information provided by any unknown informant.

G.

MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

Defendant has moved for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into the defendant's prior criminal convictions,

prior uncharged criminal, vicious or immoral conduct. The People have consented to a *Sandoval* hearing. Accordingly, it is ordered that immediately prior to trial a hearing shall be conducted pursuant to *People v Sandoval* (34 NY2d 371[1974]). At said hearing, the People shall be required to notify the defendant of all specific instances of her criminal, prior uncharged criminal, vicious or immoral conduct of which they have knowledge and which they intend to use in an attempt to impeach the defendant's credibility if she elects to testify at trial (CPL 240.43).

At the hearing, the defendant shall bear the burden of identifying any instances of her prior misconduct that she submits the People should not be permitted to use to impeach her credibility. The defendant shall be required to identify the basis of her belief that each event or incident may be unduly prejudicial to her ability to testify as a witness on her own behalf (see *People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

To the extent defendant's application is for a hearing pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]), it is denied since the People have not indicated an intention to use evidence of any prior bad act or uncharged crimes of the defendant during its case in chief (see *People v Molineaux*, 168 NY 264 [1901]). If the People move to introduce such evidence, the defendant may renew this aspect of her motion.

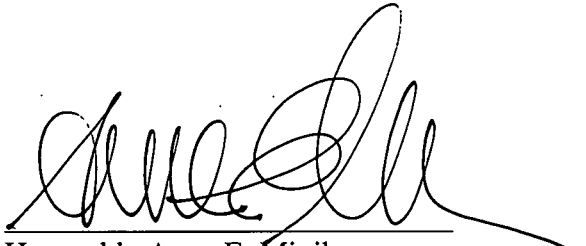
H.

MOTION for LEAVE to FILE FUTURE MOTIONS

This branch of defendant's motion is denied. Should defendant intend to bring further motions for omnibus relief, she must do so by order to show cause setting forth reasons as to why her motion was not and could not have been brought in conformity with CPL 255.20 (see CPL 255.20[3]).

The foregoing constitutes the opinion, decision and order of this court.

Dated: White Plains, New York
July 30, 2018



Honorable Anne E. Minihan
Acting Supreme Court Justice

To: HON. ANTHONY A. SCARPINO, Jr.
District Attorney, Westchester County
111 Dr. Martin Luther King, Jr., Boulevard
White Plains, New York 10601
BY: Maria I. Wager, Esq.
Assistant District Attorney

Linda Koenig, Esq.
Attorney for Candace Brown
399 Knollwood Road, Suite 111
White Plains, New York 10603