

People v Diggs

2018 NY Slip Op 34045(U)

April 9, 2018

County Court, Orange County

Docket Number: 2018-070

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. 2018-070
Index #1234/2018

RAMEL DIGGS,

Defendant.

-----x
CRAIG STEPHEN BROWN, Judge.

Defendant Ramel Diggs moves for an order granting the following relief:

1. For an Order, pursuant to CPL §210.30, granting an examination by the Court and the defendant of the minutes of the Grand Jury proceeding which resulted in the indictment against the defendant, and dismissing the indictment pursuant to CPL §210.20(1)(b), upon the ground that the evidence before the Grand Jury was not legally sufficient to establish the offenses charged or any lesser included offense or reducing the charges in the indictment pursuant to CPL §210.20(1-a), upon the ground that the evidence before the Grand Jury was legally sufficient to support only a lesser included offense.
2. For an Order, dismissing the indictment pursuant to CPL §210.20(1)(a), upon the ground that the indictment or a count thereof is defective within the meaning of CPL §210.25.

3. For an Order, dismissing the indictment pursuant to CPL §210.20(1)(c), upon the ground that the indictment was found at a defective Grand Jury proceeding within the meaning of CPL §210.35.
 4. For an Order of discovery pursuant to CPL §240.40.
 5. For an Order, for disclosure of evidence or material of an exculpatory nature, pursuant to *Brady v. Maryland*, 373 U.S. 83.
 6. For an Order, pursuant to CPL §710.20(2), suppressing from use as evidence at trial any testimony regarding an observation of the defendant either at the time or place of the commission of the offense or upon some other occasion relevant to the case, upon the ground that any such previous identification was improperly made, or in the alternative, that a hearing pursuant to CPL §710.60(4) be ordered to determine said issue.
 7. For an Order, pursuant to CPL §710.20(1), to suppressing from use as evidence at trial, any tangible property on the ground that said property was obtained by means of an unlawful search and seizure, or in the alternative, that a hearing, pursuant to CPL §710.60(4), be ordered to determine said issue.
 8. For an Order, pursuant to CPL §216.05, ordering a substance abuse evaluation and based upon the results, granting the Judicial Diversion Program to the defendant or in the alternative, that a hearing pursuant to CPL §216.05(3)(a)(b) be granted for the Court to deem the defendant eligible to participate in substance abuse treatment following completion
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of the evaluation and thereby enter into the Judicial Diversion Program.

9. 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 §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.
10. Granting an audibility hearing as to any audio or video recordings of the defendant.

The following papers were read:

Notice of Motion - Affirmation of Eric S. Shiller, Esq.	1 - 2
Kerry M. Kolek, Esq.'s Affirmation in Response - Affidavit of Service	3 - 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
AND DISMISS INDICTMENT**

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 FOR DISCOVERY AND INSPECTION

The request for information set forth in paragraphs “8”, “9”, and “10” of defendant’s counsel’s affirmation is denied on the basis that such information was previously provided in the Voluntary Disclosure Form or the People have consented to the inspection thereof.

The request for information set forth in paragraph “7” is granted and the People are directed to provide (unless already provided) any such information within ten (10) days of the date of this Order.

The request for information set forth in paragraph “11” is denied based upon the District Attorney’s representation that no such information is presently known.

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 IDENTIFICATION TESTIMONY

The defendant’s motion is granted to the extent that a hearing is hereby ordered pursuant to CPL §710.60(4) to determine the admissibility of any identification evidence.

MOTION TO SUPPRESS PHYSICAL EVIDENCE

The defendant’s motion is granted to the extent that a hearing is hereby ordered pursuant to CPL §710.60(4) to determine the admissibility of seized physical evidence.

[* 5]

**MOTION FOR AN ORDER DIRECTING DEFENDANT
TO UNDERGO AN ALCOHOL AND SUBSTANCE
ABUSE EVALUATION**

The defendant's motion is denied; however, the defendant is able to undergo an alcohol and substance abuse evaluation on his own, and present testimony related thereto during the course of the Judicial Diversion hearing.

MOTION FOR JUDICIAL DIVERSION HEARING

The defendant's motion is granted to the extent that a judicial diversion hearing may be scheduled after receipt of an alcohol and substance abuse evaluation.

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 AN AUDIBILITY HEARING

The defendant's motion for an audibility hearing is granted.

ADJOURNED DATE

This matter is scheduled for a conference to be held on April 10, 2018 at 9:15 A.M. The defendant, the defendant's counsel, and District Attorney are directed to be present.

[*6]

The aforesaid constitutes the Decision and Order of the Court.

Dated: April 9, 2018
Goshen, New York

ENTER



HON. CRAIG STEPHEN BROWN
COUNTY COURT JUDGE

TO: ERIC S. SHILLER LAW OFFICE, P.C.
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