

People v Reittie

2019 NY Slip Op 34940(U)

August 22, 2019

County Court, Westchester County

Docket Number: Indictment No. 19-0099

Judge: George E. Fufidio

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER

SIRJUSTIN REITTIE,

Indictment No.: 19-0099

Defendants.

FILED ↗

AUG 27 2019

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FUFIDIO, J.

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, SIRJUSTIN REITTIE, having been indicted on or about May 13, 2019 for driving while intoxicated (Vehicle and Traffic Law § 1192[3]), assault in the third degree (Penal Law § 120.00[3]), criminal mischief in the fourth degree (Penal Law § 145.00 [3]), unlicensed operation of a motor vehicle (Vehicle and Traffic Law § 509 [1]) has filed an omnibus motion which consists of a Notice of Motion, an Affirmation in Support and a Memorandum of Law. In response, 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 entered in this case, this Court disposes of this motion as follows:

A. MOTION TO SUPPRESS PHYSICAL EVIDENCE

A *Mapp/Dunaway* hearing will be conducted prior to trial to determine the propriety of the search resulting in the seizure of property (*Mapp v. Ohio*, 367 US 643 [1961]). The hearing will also address whether any evidence was obtained in violation of the defendant’s Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

B. MOTION TO SUPPRESS STATEMENTS

The Court grants the Defendant’s motion to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the Defendant, which have been noticed by the People pursuant to CPL 710.30 (1)(a) were involuntarily made by the Defendant within the meaning of CPL 60.45 (*see* CPL 710.20 (3); CPL 710.60 [3][b]; *People v Weaver*, 49 NY2d 1012 [1980]), obtained in violation of Defendant’s Sixth Amendment right to counsel, and/or obtained in violation of the Defendant’s Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

C. MOTION TO SUPPRESS CHEMICAL TEST REFUSAL

The Court grants the Defendant’s motion to the extent that a hearing will be held to determine if the police properly followed the chemical test refusal procedure as set forth in Vehicle and Traffic Law section 1194(2)(f), in order to allow the People to utilize the presumption that such a refusal entitles them to use.

D. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY

This motion is granted to the extent that a hearing shall be held to consider whether or not the noticed identifications made of the Defendant were unduly suggestive (*United States v Wade*, 388 US 218 [1967]). Specifically, the court shall determine whether the identifications were so improperly suggestive as to taint any in-court identification.

In the event the identifications are 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 and the People will have the opportunity to put forth evidence that during the accident, which was a high speed collision from behind on Interstate 95 at 3:00 am, while the victim's car was spinning out of control, the occupants of the victim's car had enough of an opportunity to view the driver of the car as to qualify as an independent source permitting an in court identification (*People v Cotto*, 268 AD2d 441 [2nd Dept. 2000]).

E. MOTION PRECLUDE STATEMENTS NOT NOTICED

The People have not expressed any indication that they plan on using any statements made by the Defendant other than the ones already noticed, but should they intend to, they will have to show good cause as to why they were not noticed within fifteen days of arraignment (CPL 710.30) and if that showing is made, then the Court will conduct a *Huntley* hearing.

F. MOTION FOR SANDOVAL AND VENTIMIGLIA HEARINGS

The 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 act, and vicious or immoral conduct (see, *People v Sandoval*, 34 NY2d 371[1974]). The People have consented to, and it is now ordered that immediately prior to trial the court will conduct a *Sandoval* hearing.

At the hearing, the People are required to notify the Defendant of all specific instances of his criminal, prior uncharged criminal acts and 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 he elects to testify at trial (CPL 240.43). The Defendant shall then bear the burden of identifying any instances of his prior misconduct that he submits the People should not be permitted to use to impeach his credibility. The Defendant shall be required to identify the basis of his belief that each event or incident may be unduly prejudicial to him should he decide testify as a witness on his own behalf and thereby prevent him from exercising this right (see, *People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

The Defendant's application for a *Ventimiglia* hearing is denied as premature, because the People have not indicated an intention to use any evidence of prior bad act or uncharged crimes of the Defendant in its case in chief (see, *People v Molineaux*, 168 NY2d 264 [1901]; *People v Ventimiglia*, 52 NY2d 350 [1981]). The People have stated that if they do intend to use any *Molineaux* evidence that they will inform the defense and the court of their intention and at that point the Defendant may renew this aspect of his motion.

G & H. MOTION FOR DISCOVERY, DISCLOSURE AND INSPECTION
CPL ARTICLE 240

Except where the People have already disclosed or consented to the inspection and discovery of certain evidence, the Defendant's motion for discovery is granted to the extent provided for in CPL 240. If there any further items discoverable pursuant to Criminal Procedure Law Article 240 which have not been provided to defendant pursuant to this Order, they are to be provided forthwith or the People shall seek a protective order explaining to the Court why certain items have not been provided to the Defendant pursuant to CPL 240.

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]). 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 the material must be disclosed to the defendant.


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]).

I. MOTION RESERVING THE RIGHT TO FILE ADDITIONAL MOTIONS

Defendant's motion reserving the right to file additional motions is denied. Should the Defendant file any other motions that were not raised in his *Omnibus* motion, then they will need to be in compliance with CPL 255.20(2).

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

Dated: White Plains, New York
August 22, 2019



Honorable George E. Fufidio
Westchester County Court Justice

To:

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