

People v Ellis
2021 NY Slip Op 34059(U)
April 8, 2021
Supreme Court, Westchester County
Docket Number: Ind. No. 20-00032
Judge: Robert A. Neary
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FILED
APR 13 2021
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

**FILED
AND
ENTERED
ON 4 - 13 - 2021
WESTCHESTER
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

- against -

DECISION AND ORDER

JANAE ELLIS,

Ind. No. 20-00032

Defendant.

-----X

NEARY, J.

The defendant, Janae Ellis, has been charged with the crimes of Aggravated Driving While Intoxicated, as a felony (Vehicle and Traffic Law Section 1192[2-a]a), Driving While Intoxicated, as a felony (Vehicle and Traffic Law Section 1192[2]); Driving While Intoxicated, as a felony (Vehicle and Traffic Law Section 1192[3] and violations of Vehicle and Traffic Law Section 1110(a), failure to obey a traffic control device, and Vehicle and Traffic Law Section 1211(a), unsafe backing of a vehicle. The defendant has made an omnibus motion which consists of a Notice of Motion and an Affirmation and Memorandum of Law in support thereof. In response, the People have filed an Affirmation in Opposition together with a

Memorandum of Law. Having read all of the submitted papers and reviewed the court file, this Court makes the following determination.

A. MOTION TO INSPECT THE GRAND JURY MINUTES AND TO DISMISS AND/OR REDUCE THE INDICTMENT AS DEFECTIVE PRESENTATION PURSUANT TO CPL ARTICLE 210

The defendant's motion to inspect the Grand Jury minutes is granted. Upon an *in camera* inspection of the Grand Jury minutes by Court, the motion to dismiss the indictment or reduce a charged offense in the indictment is denied.

The Court has reviewed the minutes of the proceeding before the Grand Jury. The Grand Jury was properly instructed and the proceedings were properly conducted. [See *People v. Calbud*, 49 NY2d 389, 426 NYS2d 389, 402 NE2d 1140 and *People v. Valles*, 62 NY2d 36, 476 NYS2d 50, 464 NE2d 418]. Moreover, the evidence presented, if accepted as true, would be legally sufficient to establish every element of the offenses charged. [See CPL §210.30(2)]. In addition, the minutes reveal that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, and that it was instructed that only those grand jurors who had heard all the evidence could participate in voting on the matter.

B. MOTION TO SUPPRESS STATEMENT PURSUANT TO CPL ARTICLE 710 OR IN THE ALTERNATIVE FOR A HUNTLEY HEARING

This branch of the defendant's motion is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine the admissibility and voluntariness of any statements allegedly made by the defendant, which have been noticed by the People pursuant to

CPL §710.30 (1)(a), CPL §710.20(3), CPL §710.60[3][b]; *People v. Weaver*, 49 NY2d 1012, 429 NYS2d 399, 406 NE2d 1335.

C. MOTION TO SUPPRESS PHYSICAL EVIDENCE OR IN THE ALTERNATIVE FOR A MAPP/DUNAWAY HEARING

This branch of the defendant's motion is granted solely to the extent of conducting a *Mapp/Dunaway* hearing prior to trial to determine the propriety of any search resulting in the seizure of property and whether any evidence was obtained in violation of the defendant's Fourth Amendment rights. [See *Mapp v. Ohio*, 367 US 643, 82 S. Ct. 1684, 6 LE2d 1081; *Dunaway v. New York*, 442 US 200, 99 S. Ct. 2248, 60 LE2d 824]. The hearing will also address the circumstances surrounding the stop of the vehicle in question. [See *People v. Ingle*, 36 NY2d 413].

D. MOTION FOR A SANDOVAL/VENTIMIGLIA HEARING

Immediately prior to commencement of jury selection, the prosecutor shall, upon request of the defendant, notify the defendant of any prior criminal act which the People seek to use in the cross-examination of the defendant as well as all specific instances of the defendant's prior uncharged criminal, vicious or immoral conduct of which the prosecutor has knowledge and which the prosecutor intends to use at trial for the purposes of impeaching the credibility of the defendant. Thereafter, upon the defendant's request, the trial court shall conduct a *Sandoval* and/or *Ventimiglia* hearing prior to the commencement of trial. [See *People v. Sandoval*, 34 NY2d 371 (1974); *People v. Ventimiglia*, 52 NY2d 350 (1981); *People v. Molineux*, 168 NY 264 (1901)].

E. MOTION FOR DISCOVERY AND INSPECTION

The defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 245. If any of the items set forth in Criminal Procedure Law Article 245 have not been provided to the defendant in the instant matter, said items are to be provided forthwith.

The People recognize their continuing duty to disclose exculpatory material at the earliest possible date. [See *Brady v. Maryland*, 373 US 83, 83 S Ct. 1194, 10 LE2d 215 and *Giglio v. United States*, 405 US 150, 92 S Ct. 763, 31 LE2d 104]. If the People become aware of any material which is arguably exculpatory but they are not willing to consent to disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

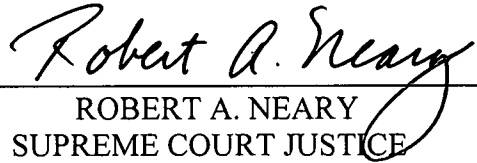
To any further extent, the application is denied as seeking material or information beyond the scope of discovery. [see *People v. Colavito*, 87 NY2d 423, 639 NYS2d 966, 663 NE2d 308; *Matter of Brown v. Grosso*, 285 AD2d 642, 729 NYS2d, *lv. denied* 97 NY2d 605, 737 NYS2d, 762 NE2d 930; *Matter of Brown v. Appelman*, 241 AD2d 279, 672 NYS2d 373; *Matter of Catterson v. Jones*, 229 AD2d 435, 644 NYS2d 573; *Matter of Catterson v. Rohl*, 202 AD2d 420, 608 NYS2d 420, 608 NYS2d 696, *lv. denied* 83 NY2d 755, 613 NYS2d 127, 241 NE2d 279].

F. MOTION TO RESERVE THE RIGHT TO MAKE FURTHER MOTIONS

Upon a proper showing, the Court will entertain appropriate additional motions based upon grounds of which the defendant could not, with due diligence, have been previously aware, or which, for other good cause, could not reasonably have been raised in this motion.

This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
April 8, 2021



ROBERT A. NEARY
SUPREME COURT JUSTICE

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