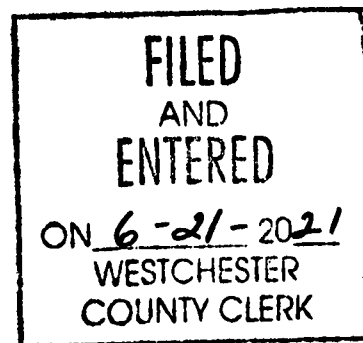


People v Alford
2021 NY Slip Op 34068(U)
June 16, 2021
Supreme Court, Westchester County
Docket Number: Ind. No. 20-0532-01
Judge: Robert A. Neary
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

- against -

DECISION AND ORDER

SHAKEYMA ALFORD,

Defendant.

-----X
NEARY, J.

FILED No.20- 0532-01
JUN 21 2021
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant, has been charged with the crimes of Burglary in the Third Degree and Grand Larceny in the Fourth Degree. 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.

MOTION TO INSPECT THE GRAND JURY MINUTES AND TO DISMISS AND/OR
REDUCE THE INDICTMENT

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 (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) and 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.

The Court does not find that the release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court in making this determination.

MOTION TO A SANDOVAL/VENTIMIGLIA HEARING

This branch of the defendant's motion is granted to the limited extent of conducting a Sandoval hearing immediately prior to trial at which time: (1) the People must notify the defendant of all specific instances of the defendant's prior uncharged criminal, vicious or immoral conduct of which the People have knowledge and which the People intend to use at trial for the purposes of impeaching the credibility of the defendant (see CPL §240.43); and (2) the defendant must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf. [See People v. Malphurs, 111 AD2d 266, 269].

In addition, with respect to the defendant's application pursuant to People v. Ventimiglia, 52 NY2d 350, this Court grants this aspect of the motion to the limited extent of conduct a Ventimiglia hearing immediately prior to trial to determine whether or not any

evidence of uncharged crimes may be used by the People to prove their case in chief.

MOTION TO SUPPRESS STATEMENTS PURSUANT TO CPL ARTICLE 710

This branch of the defendant's motion is granted 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, 429 NYS2d 399, 406 NE2d 1335), obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (Dunaway v. New York, 442 US 200, 99 S. Ct. 2248, 60 LE2d 824).

MOTION TO SUPPRESS IDENTIFICATION

This motion is granted to the limited extent of conducting a hearing prior to trial to determine whether or not the noticed identifications are unduly suggestive. [United States v. Wade, 388 US 218, 87 S Ct. 1926, 18 LE2d 1149]. 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.

MOTION TO SUPPRESS STATEMENTS

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.

MOTION FOR A SEVERANCE

The defendant moves for a severance from his co-defendant. The defendant was properly joined in the same indictment. [See CPL §200.40(1)]. The Court may, however, for good cause shown order that defendant be tried separately. Good cause includes a showing that defendant would be “unduly prejudiced by a joint trial.” [See CPL §200.40(1)]. Further, where the proof against all defendants is supplied by the same evidence, “only the most cogent reasons warrant a severance.” [See People v. Bornholdt, 33 NY2d 75, 87, cert. denied 416 US 95 and People v. Kevin Watts, 159 AD2d 740]. And, “. . . a strong public policy favors joinder, because it expedites the judicial process, reduces court congestion, and avoids the necessity of recalling witnesses. . . .” [People v. Mahboubian, 74 NY2d 174, 183].

This Court must determine the admissibility and possibility of the redaction of the co-defendants’ statements and whether the co-defendants will be testifying at defendant’s trial.

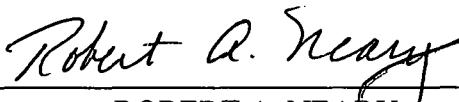
According, the defendant’s motion for a severance is denied as premature, with leave to renew upon a determination of the admissibility of co-defendants’ alleged statements, and upon a showing that a joint trial will result in unfair prejudice to him and substantially impair his defense.

MOTION TO SUPPRESS TANGIBLE PROPERTY AND COMPEL PRODUCTION OF SEARCH WARRANT AFFIDAVIT PURSUANT TO CPL ARTICLE 710

With respect to any property seized pursuant to a search warrant, the motion to suppress is denied as moot based upon the People's representations that they do not intend to introduce any such evidence at trial.

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

Dated: White Plains, New York
June 16, 2021



ROBERT A. NEARY
SUPREME COURT JUSTICE