

People v Brown

2021 NY Slip Op 34069(U)

June 16, 2021

Supreme Court, Westchester County

Docket Number: Ind. No. 20-0532-02

Judge: Robert A. Neary

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FILED
AND
ENTERED
ON 6-21-2021
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

Ind. No. 20-0532-02

ANTOINETTE BROWN,

Defendant.

-----X
NEARY, J.

FILED

JUN 21 2021

TIMOTHY C. IDONI
COUNTY CLERK

The defendant has been charged with ~~COUNTY OF WESTCHESTER~~ 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 DISMISS FACIALLY INSUFFICIENT INDICTMENT

This motion is denied. The indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's commission thereof with sufficient precision as to clearly apprise the defendant of the conduct which is the subject of the indictment [CPL §200.50]. The indictment charges each and every element of the crimes, and alleges that the defendant committed the acts which constitute the crimes at a specified place during a specified time period and, therefore, is sufficient on its face. [People v. Iannone, 45 NY2d 589, 412 NYS2d 110, 384 NE2d 656; People v. Cohen, 52 NY2d 584, 439 NYS2d 321, 421 NE2d 813].

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 items set forth in CPL 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 are or become aware of any material which is arguable exculpatory but they are not willing to consent to its 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 996, 663 NE2d 308; Matter of Brown v. Grosso, 285 AD2d 642, 729 NYS2d 492, lv. denied 97 NY2d 605, 737 NYS2d 52, 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 696, lv. denied 83 NY2d 755, 613 NYS2d 127, 241 NE2d 279].

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 STRIKE ALIBI DEMAND

This motion is denied. Contrary to the defendant's contentions, it is well-settled that CPL §250.00 is indeed in compliance with the constitutional requirements (see People v. Dawson, 185 AD2d 854, 587 NYS2d 358, appeal denied 80 NY2d 974, 591 NYS2d 143, 605 NE2d 879; People v. Cruz, 176 AD2d 751, 574 NYS2d 1006, appeal denied 79 NY2d 855, 580 NYS2d 727, 588 NE2d 762; People v. Gill, 164 AD2d 867, 599 NYS2d 376, appeal denied 76 NY2d 893, 561 NYS2d 555, 562 NE2d 880; People v. Peterson, 96 AD2d 871, 578 NYS2d 358) and provides equality in the required disclosure (see People v. Peterson, 90 AD2d 871, 578 NYS2d 358; see generally Wardius v. Oregon, 412 US 470, 93 S Ct. 2208, 37 LE2d 82).

MOTION FOR A BILL OF PARTICULARS

This motion is granted. The People are directed to provide a Bill of Particulars to the defendant which adequately informs the defendant of the substance of his alleged conduct and in all respects complies with CPL §200.95.

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 TANGIBLE EVIDENCE

This branch of the defendant's motion is granted solely to the extent of conducting a Mapp hearing prior to trial to determine the propriety of any search resulting in the seizure of property. [Mapp v. Ohio, 367 US 643, 81 S Ct. 1684, 6 LE2d 1081] and whether any evidence was 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 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 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.

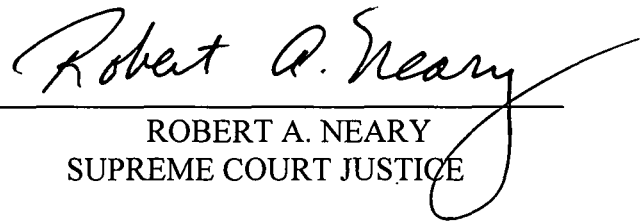
According, the defendant's motion for a severance is denied as premature, with leave to renew upon a determination of the admissibility of co-defendants' alleged statements, and upon a showing that a joint trial will result in unfair prejudice to him and substantially impair his defense.

MOTION FOR TIME TO FILE FUTURE 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 reasonable have raised in this motion.

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

Dated: White Plains, New York
June 16, 2021



ROBERT A. NEARY
SUPREME COURT JUSTICE