

People v Owens

2021 NY Slip Op 34120(U)

October 19, 2021

Supreme Court, Westchester County

Docket Number: Ind. No. 21-00385-01

Judge: Robert A. Neary

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FILED

OCT 19 2021

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

<p>FILED AND ENTERED ON <u>10-19-2021</u> WESTCHESTER COUNTY CLERK</p>

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

- against -

DECISION AND ORDER

MICHAEL OWENS,

Ind. No. 21-00385-01

Defendant.

-----X

NEARY, J.

The defendant, Michael Owens, has been charged with the crimes of Criminal Possession of a Weapon in the Second Degree, Criminal Possession of a weapon in the Third Degree, Criminal Possession of a Firearm and Criminal Possession of a Weapon in the Fourth Degree. The defendant has made an omnibus motion which consists of a Notice of Motion and an Affirmation 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.

I. and II. MOTION TO INSPECT THE GRAND JURY MINUTES PURSUANT TO
PEOPLE v. ST. LAWRENCE and MOTION TO INSPECT AND DISMISS 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.

III. MOTION TO SUPPRESS STATEMENTS (*HUNTLEY*)

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 (see *Dunaway v. New York*, 442 US 200, 99 S. Ct. 2248, 60 LE2d 824).

IV. and V. MOTION TO SUPPRESS ALL EVIDENCE OBTAINED AS A RESULT OF THE UNLAWFUL SEIZURE OF THE DEFENDANT PURSAUNT TO CPL §710.20 (DUNAWAY) and MOTION TO SUPPRESS PHYSICAL EVIDENCE (MAPP)

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 (see *Mapp v. Ohio*, 367 US 643, 81 S Ct. 1684, 6 LE2d 1081) and whether any evidence was obtained in violation of the defendant's Sixth Amendment right to counsel and/or obtained in violation of the defendant's Fourth Amendment rights. [See *Dunaway v. New York*, 42 US 200, 99 S Ct. 2248, 60LE2d 824].

VI. MOTION TO PRECLUDE CROSS-EXAMINATION OF DEFENDANT ON PRIOR CRIMINAL RECORD OR UNCHARGED BAD ACTS (SANDOVAL)

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, 489 NYS2d 102, *lv. denied* 66 NY2d 616, 494 NYS2d 1039, 483 NE2d 243].

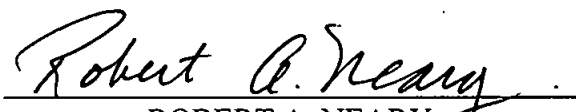
VII. MOTION FOR RESERVATION OF RIGHTS

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.

[See CPL §255.20(3)].

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

Dated: White Plains, New York
October 19, 2021


ROBERT A. NEARY
SUPREME COURT JUSTICE

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