

People v Shubrick

2022 NY Slip Op 34752(U)

September 22, 2022

Supreme Court, Westchester County

Docket Number: Ind. No. 21-70508-01

Judge: Robert A. Neary

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SEP 22 2022

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

**FILED
AND
ENTERED
ON 9-22-2022
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

TYRESE SHUBRICK,

Ind. No. 21-70508-01
21-00290-01

Defendant.

-----X
NEARY, J.

The defendant, Tyrese Shubrick, has been charged with the crimes of Murder in the Second Degree (two counts), Manslaughter in the First Degree, Robbery in the First Degree (two counts), Burglary in the Second Degree and Assault in the Third 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 DISMISS PURSUANT TO CPL ARTICLE 210 and MOTION TO INSPECT AND DISMISS OR REDUCE 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 (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 FOR DISCLOSURE OF INFORMANTS

This motion is denied. The defendant moves for disclosure of the identity of informants without demonstrating what relevant testimony any such witness would have on the issue of his innocence or guilt. [See *People v. Goggins*, 34 NY2d 163, 356 NYS2d 571, 313 NE2d 41, *cert. denied* 419 US 1012, 95 S. Ct. 332, 42 LE2d 286; *People v. Pena*, 37 NY2d 642, 376 NYS2d 452, 339 NE2d 149].

MOTION FOR DISCLOSURE OF FAVORABLE MATERIAL – BRADY

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.

MOTION FOR DISCLOSURE OF DEALS AND AGREEMENTS

The People recognize their continuing duty to disclose the terms of any deal or agreement made between the People and any prosecution witness at the earliest possible date. [See *Brady v. Maryland*, 373 US 83, 83 S. Ct. 1194, 10 LE2d 215; *Giglio v. United States*, 405 US 150, 92 S. Ct. 763, 31 LE2d 104; *People v. Steadman*, 82 NY2d 1, 603 NYS2d 382, 623

NE2d 509; *People v. Wooley*, 200 AD2d 644, 606 NYS2d 738, *appeal denied* 83 NY2d 878, 613 NYS2d 138, 635 NE2d 307].

MOTION FOR SANDOVAL HEARING/MOTION FOR DISCLOSURE OF UNCHARGED BAD ACTS PURSUANT TO CPL 240.43

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)].

MOTION TO STRIKE NOTICE AND MOTION TO STRIKE IDENTIFICATION

The motion to strike notice is denied. Said notice is in conformity with the statutory requirements of CPL §710.30.

This motion is granted with respect to the viewing of a photographic array to a witness to the limited extent of conducting a hearing prior to trial to determine whether or not the noticed identifications are unduly suggestive. [See *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.

With respect to the viewing in the grand jury of surveillance video depicting the actual crime in progress, the motion to suppress is denied as this is not the type of viewing which is subject to suppression. The viewing by a witness of the crime scene video does not involve a selection procedure but consists of the witness ratifying events as they occurred. [See *People v. Gee*, 99 NY2d 158].

MOTION TO CONDUCT PRE-TRIAL HEARING TWENTY DAYS IN ADVANCE OF TRIAL

The defendant's motion to schedule pre-trial hearings twenty days prior to trial is denied. The hearings will be scheduled at a time that is convenient to the Court, upon due consideration of all of its other cases and obligations.

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

Dated: White Plains, New York
September 22, 2022



ROBERT A. NEARY
SUPREME COURT JUSTICE

People v. Tyrese Shubrick
Indictment No. 21-70508-01
21-00290-01

Adrian Murphy
Assistant District Attorney
Westchester County
Office of the District Attorney
Richard J. Daronco Courthouse
111 Martin Luther King Blvd.
White Plains, New York 10601
amurphy@westchesterda.net

Mary Pat Long, Esq.
Office of Clare J. Degnan, Esq.
Attorney for Defendant
Legal Aid Society
150 Grand Street, Suite 100
White Plains, New York 10601
mplong@laswest.org