

People v White-Edney
2022 NY Slip Op 34790(U)
April 2, 2022
Supreme Court, Westchester County
Docket Number: Ind. No. 22/70077
Judge: Robert A. Neary
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APR 20 2022
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

FILED
AND
ENTERED
ON 4-26 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

TAIRUS WHITE-EDNEY,

Ind. No. 22-70077

Defendant.

-----X
NEARY, J.

The defendant, Tairus White-Edney, has been charged with the crimes of Criminal Possession of a Weapon in the Second Degree and Criminal Possession of a Firearm (two counts). 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.

1., 2., and 3. MOTION TO INSPECT THE GRAND JURY MINUTES, MOTION TO DISMISS THE INDICTMENT and MOTION TO REDUCE THE CHARGES

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.

4. MOTION TO SUPPRESS STATEMENTS OR IN THE ALTERNAIVE FOR A HUNTLEY/DUNAWAY 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 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).

5. and 6. MOTION TO PRECLUDE STATEMENTS AND IDENTIFICATION TESTIMONY

The defendant's motion is denied as speculative and premature

7. MOTION TO SUPPRESS ANY PROPERTY 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* 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].

8. MOTION TO DISMISS ON GROUNDS PURSUANT TO CPL 30.30(1)

This branch of the defendant's motion is granted solely to the extent that the Court will conduct a hearing to determine whether the defendant's right to a speedy trial pursuant to CPL 30.30(1) has been violated. A hearing is necessary as the papers submitted do not conclusively establish a sufficient excludable time period to allow the Court to decide the

matter. [See *People v. Cumberbatch*, 171 AD2d 671 (2nd Dept.); *People v. Lomax*, 50 NY2d 351].

9. MOTION FOR 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 §245.20[3]) 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].

10. MOTION FOR A BILL OF PARTICULARS AND DEMAND TO PRODUCE

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 pursuant to the Consent Discovery Order in the instant matter, said items are to be provided forthwith. The People are directed to comply with any demand for a Bill of Particulars

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].

11. MOTION TO RESERVE THE RIGHT TO AMEND OR SUPPLEMENT

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
April 2, 2022


ROBERT A. NEARY
SUPREME COURT JUSTICE

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