

People v Patterson

2022 NY Slip Op 34858(U)

September 6, 2022

Supreme Court, Westchester County

Docket Number: Ind. No. 22-71277-01

Judge: Robert A. Neary

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AND
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ON 9-6-2022
WESTCHESTER
COUNTY CLERK

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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 -

SHAWN PATTERSON,

Defendant.

-----X

NEARY, J.

FILED

SEP 06 2022

TIMOTHY C. IDOMI
COUNTY CLERK
COUNTY OF WESTCHESTER

DECISION AND ORDER

Ind. No. 22-71277-01

The defendant, Shawn Patterson, has been charged with the crimes of Criminal Possession of a Controlled Substance in the Third Degree (five counts) and Criminal Sale of a Controlled Substance in the Third Degree (five counts). 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.

A. MOTION TO SUPPRESS IDENTIFICATION PURSUANT TO CPL ARTICLE 710

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. [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.

B. MOTION TO SUPPRESS USE OF PRIOR CONVICTIONS AND IMMORAL, CRIMINAL OR VICIOUS ACTS (SANDOVAL/VENTIMIGLIA HEARING)

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)].

C. MOTION TO STRIKE PREJUDICIAL LANGUAGE

This motion is denied. The language concluding the indictment merely identifies the defendant's acts as public, rather than private wrongs and such language should not be stricken as prejudicial. [*People v. Winters*, 194 AD2d 703, 599 NYS2d 293, *lv. denied* 82 NY2d 761, 603 NYS2d 1003, 624 NE2d 189; see *People v. Gill*, 164 AD2d 867, 599 NYS2d 376, appeal denied, 76 NY2d 893, 561 NYS2d 555, 562 NE2d 880; *People v. Garcia*, 170 Misc. 2d 543, 647 NYS2d 355]. The defendant's remaining contentions are without merit and his application is accordingly denied.

D. MOTION TO DISMISS FACIALLY INSUFFICIENT INDICTMENT PURSUANT TO CPL ARTICLE 210

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].

E. MOTION TO INSPECT GRAND JURY MINUTES AND DISMISS OR REDUCE THE INDICTMENT AS A DEFECTIVE PRESENTATION 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.

F. MOTION FOR PRE-TRIAL HEARINGS TWENTY DAYS BEFORE 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.

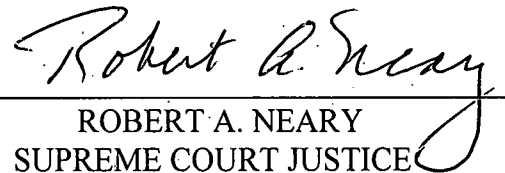
G. MOTION TO RESERVE RIGHT TO MAKE ANY AND ALL FURTHER MOTIONS

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 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
September 6, 2022


ROBERT A. NEARY
SUPREME COURT JUSTICE

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Indictment No. 22-71277-01

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