

**People v Brown**

2022 NY Slip Op 34859(U)

October 12, 2022

Supreme Court, Westchester County

Docket Number: Ind. No. 22-71281-01

Judge: Robert A. Neary

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**FILED  
AND  
ENTERED  
ON 10-12-2022  
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

NASIR BROWN,

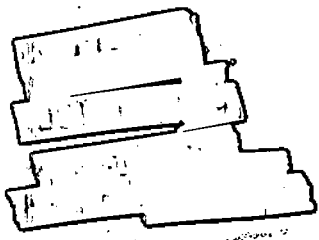
Ind. No. 22-71281-01

Defendant.

-----X

NEARY, J.

The defendant, Nasir Brown, has been charged with the crimes of Criminal Sale of a Controlled Substance in the Third Degree (six counts) and Criminal Possession of a Controlled Substance in the Third Degree (six 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



**FILED**  
OCT 11 2022  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Memorandum of Law. Having read all of the submitted papers and reviewed the court file, this Court makes the following determination.

1. MOTION TO SUPPRESS ANY IDENTIFICATION MADE OF THE DEFENDANT TO LAW ENFORCEMENT PERSONNEL PURSUANT TO CPL SECTIONS 710.20(4) AND 710.60(1) OR IN THE ALTERNATIVE FOR A WADE HEARING

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.

2. MOTION TO INSPECT AND RELEASE THE GRAND JURY MINUTES AND TO DISMISS THE INDICTMENT OR REDUCE THE CHARGES PURSUANT TO CPL SECTION 210.30

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.

3. MOTION FOR A 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)].

4. and 5.      MOTION FOR BRADY MATERIAL/ROSARIO MATERIAL

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 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 arguably 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].

6. MOTION TO HOLD ANY HEARINGS ORDERED AT LEAST TWENTY DAYS PRIOR TO THE COMMENCEMENT 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.

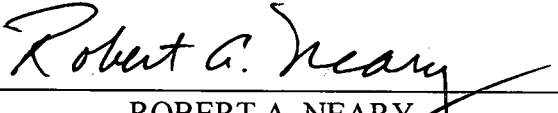
7. MOTION TO RESERVE RIGHT TO FILE ADDITIONAL MOTIONS IF NECESSARY

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 12, 2022

  
ROBERT A. NEARY  
SUPREME COURT JUSTICE

*People v. Nasir Brown*  
Indictment No. 22-71281-01

Courtney L. Johnson  
Assistant District Attorney  
Westchester County  
Office of the District Attorney  
Richard J. Daronco Courthouse  
111 Martin Luther King Blvd.  
White Plains, New York 10601  
[cjohnson@westchesterda.net](mailto:cjohnson@westchesterda.net)

Michael Borrelli, Esq.  
Attorney for Defendant  
The Law Office of Michael J. Borrelli, P.L.L.C.  
640 Halstead Avenue, Suite 105  
Mamaroneck, New York 10543  
[michael@mjborellilaw.com](mailto:michael@mjborellilaw.com)