

People v Harvey

2022 NY Slip Op 34946(U)

October 19, 2022

Supreme Court, Westchester County

Docket Number: Ind. No. 22-71493-01

Judge: Robert A. Neary

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FILED JP
OCT 19 2022
TIMOTHY C. DONA
COUNTY CLERK
COUNTY OF WESTCHESTER

**FILED
AND
ENTERED
ON 10-19-2022
WESTCHESTER
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

- against -

NEIL PATRICK HARVEY,

Defendant.

-----X
NEARY, J.

DECISION AND ORDER

Ind. No. 22-71493-01

The defendant, Neil Patrick Harvey, has been charged with the crimes of Criminal Possession of a Weapon in the Third Degree, Criminal Possession of a Weapon in the Fourth Degree and Menacing in the Second 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 a Notice of Cross-Motion to Amend CPL 710.30 Notices and an Affirmation in Opposition of Defendant's Omnibus Motion and in Support of People's Cross

Motion 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 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].

B. and C. MOTION TO INSPECT GRAND JURY MINUTES AND DISMISS AS LEGALLY INSUFFICIENT INDICTMENT PURSUANT TO CPL ARTICLE 210 and 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.

D. 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)].

E. MOTION TO SUPPRESS ALL EVIDENCE OBTAINED AS A RESULT OF THE UNLAWFUL ARREST (*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) 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].

F. MOTION TO SUPPRESS THE IMPROPERLY PERFORMED IDENTIFIATION PROCEDURES (*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. The hearing will also address

whether the evidence in question was obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment right. [See *Dunaway v. New York*, 442 US 200.90, 99 S. Ct. 2248, 60 LE2d 824].

G. MOTION TO SUPPRESS STATEMENTS PURSUANT TO CPL ARTICLE 710 (HUNTLEY 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).

H. MOTION FOR LEAVE TO SUBMIT LATE NOTICE OF INTENT TO OFFER PSYCHIATRIC DEFENSE PURSUANT TO CPL ARTICLE 250.10(2)

The defendant's motion to file a late notice is granted in the interests of justice.

I. MOTION TO CONDUCT PRE-TRIAL HEARINGS TWO WEEKS IN ADVANCE OF TRIAL

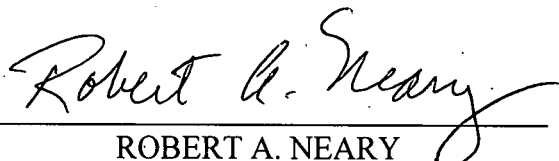
The defendant's motion to schedule pre-trial hearings two weeks in advance of trial is denied. The hearings will be scheduled at a time that is convenient to the Court, upon due consideration of all of its other cases and obligations.

PEOPLE'S CROSS-MOTION TO AMEND CPL 710.30 NOTICES

The People's motion to amend the 710.30 notices to correct an obvious typographical error is granted. The Court notes that the defendant has made the appropriate motions to suppress.

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

Dated: White Plains, New York
October 19, 2022



ROBERT A. NEARY
SUPREME COURT JUSTICE

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