

**People v Rose**

2023 NY Slip Op 33758(U)

March 24, 2023

Supreme Court, Westchester County

Docket Number: Ind. No. 21-0155

Judge: Susan Cacace

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.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

**FILED and ENTERED**  
  
**WESTCHESTER  
COUNTY CLERK**

-against-

**DECISION AND ORDER**

Indictment No. 21-0155

ALEXIS ROSE,

Defendant.

-----X  
CACACE, J.

**FILED**  
**MAR 24 2023**  
TIMOTHY S. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Upon consideration of the order to show cause submitted on behalf of the defendant, the Court has reviewed the order to show cause and affirmation in support of counsel for the defendant, Lynda Visco, Esq., and the affirmation in opposition and memorandum of law of Assistant District Attorney John O'Rourke.

By order to show cause, the defendant seeks the severance of counts charged under the instant indictment, specifically seeking the severance of Counts 1, 2 and 3, from Counts 4 and 5, upon the trial of the instant indictment. Pursuant to Counts 1, 2 and 3 of the instant indictment, the defendant stands charged, respectively, with a single count of Murder in the Second Degree pursuant to Penal Law § 125.25(1) under Count 1, a single count of Criminal Possession of a Weapon in the Second Degree pursuant to Penal Law § 265.03(3) under Count 2, and a single count of Criminal Possession of a Weapon in the Second Degree pursuant to Penal Law § 265.03(1)(b) under Count 3, all of which are alleged to have been committed by the defendant within the residence of Janelle Wells-Cummings (hereinafter, Victim #1) located at 157 Warburton Avenue in the City of Yonkers on March 5, 2021 (hereinafter, Victim #1's residence). Pursuant to Counts 4 and 5 of the instant

indictment, the defendant is charged, respectively, with a single count of Criminal Contempt in the First Degree pursuant to Penal Law § 215.51(b)(i), and a single count of Criminal Contempt in the Second Degree pursuant to Penal Law § 215.50(3), the first of which is alleged to have been committed by the defendant within the victim's residence on March 5, 2021, and the second of which is alleged to have been committed by the defendant during the several hours leading up to, and upon, his uninvited entry while armed with a handgun into V #1's residence in spite of an extant order of protection that had been issued against him and on her behalf by the Yonkers City Court.

MOTION TO SEVER COUNTS CHARGED UNDER INDICTMENT

The defendant moves this Court to sever Counts 1, 2 and 3 (hereinafter, the homicide/weapon counts) which are based upon a criminal transaction alleged to have occurred at approximately 8:50 PM on March 5, 2021, from Counts 4 and 5 (hereinafter, the criminal contempt counts) which are based upon a criminal transaction alleged to have occurred immediately prior to 8:50 PM on March 5, 2021, for the purpose of conducting separate trials pertaining to each allegedly separate criminal transaction in the interest of justice and for good cause pursuant to CPL 200.20(3)(b). In opposition to the defendant's severance application, the People assert that all of the charged counts were properly joined under the instant indictment upon their assertion that the defendant's conduct alleged in support of all charged counts constituted a single criminal transaction pursuant to CPL 200.20(2)(a), and upon their further assertion that proof of the defendant's conduct alleged in support of the criminal contempt counts is material and admissible as evidence at the trial of the homicide/weapon counts pursuant to

CPL 200.20(2)(b), either of which would serve to deprive the Court of authority under CPL 200.20(3) to order the severance of counts sought by the defense through the present application.

At the outset, upon consideration of the defendant's proffer of good cause for the filing of the instant motion outside of the limitations period provided by CPL 255.20, the Court finds that defense counsel's assertion that she was justifiably delayed by the defendant's recent decision on February 15, 2023 to withdraw his notice of intention to seek a defense of not responsible by reason of mental disease or defect pursuant to CPL 250.10, and his ensuing expression to her of his desire to testify at trial in relation to the homicide/weapon counts in support his anticipated justification defense, while concomitantly asserting his desire to refrain from testifying at trial in relation to the criminal contempt counts, is sufficient to satisfy this Court that the defendant has demonstrated the requisite good cause within the meaning of CPL 255.20(3) to permit the entertainment of the instant severance application on the merits.

Turning to consider the merits of the defendant's application for severance, the Court first notes that the criminal contempt counts of the instant indictment charge crimes which inarguably stem from the defendant's alleged actions involving threatening text messages he sent to Victim #1 and his entry into Victim #1's residence while armed with a handgun on March 5, 2021 in violation of the terms of an extant temporary order of protection that had been issued against him in favor of Victim #1, whereas the defendant's actions subsequent thereto involve his uninvited entry into her residence for a matter of seconds until he allegedly used a handgun he possessed to fatally shoot Victim #1's guest therein (hereinafter, Victim #2). Against this backdrop, the defendant's attempt to assail the People's joinder of the criminal contempt counts with the homicide/weapon counts within the instant indictment - as he must in order to enable this Court

to possess the authority to grant severance upon consideration of his good cause and interest of justice arguments pursuant to CPL 200.20(3)(b) - is primarily focused upon a challenge to the propriety of the People's joinder of the charged counts pursuant to CPL 200.20(2)(a) through the claim that the criminal contempt counts and homicide/weapon counts reflected two distinct criminal transactions. Indeed, to the extent the defense can be understood to challenge the propriety of the People's joinder of these offenses pursuant to CPL 200.20(2)(b) through the claim that proof of one of the two sets of counts would not be material and admissible as evidence to prove the other set of counts at trial, the Court can glean only two conclusory statements presented by defense counsel through her affirmation submitted in support of the instant severance application. Specifically, defense counsel's argument against the People's inclusion of both sets of counts within the instant indictment pursuant to CPL 200.20(2)(b) can only be found within her averments that "[t]here is very little material evidence that would apply to both the trial on this indictment as well as a separate trial on the criminal contempt charges" and "the charge of homicide involves a victim separate from the criminal contempt charges." Ultimately, there is very little that this Court could draw therefrom which could arguably be understood to undermine the propriety of the People's joinder of the criminal contempt offenses with the homicide/weapon offenses within the instant indictment pursuant to CPL 200.20(2)(b), irrespective of whether this Court endorsed or rejected the defendant's argument that both sets of offenses were impermissibly joined pursuant to CPL 200.20(2)(a) in reliance upon CPL 40.10(2).

Rather, as the People's theory of the case may be generally understood to provide that the former romantic relationship between the defendant and Victim #1 had devolved to a point where the defendant's displeasure motivated him to send a multitude of angry and threatening text

messages to Victim #1 over a period of several hours immediately leading up to his uninvited entry into her residence at approximately 8:50 PM on March 5, 2021, and his rapidly ensuing use of a handgun to fatally shoot Victim #2 within that residence, it is patently clear that the People's joinder of the criminal contempt offenses and the homicide/weapon offenses within the instant indictment was proper pursuant to CPL 200.20(2)(b). More specifically, although the Court's consideration of the evidence of the defendant's text messages and uninvited entry with a handgun into Victim #1's residence in defiance of an extant temporary order of protection that had been issued in her favor quite obviously represents material and admissible evidence of his alleged commission of the criminal contempt counts charged under Counts 4 and 5, the Court also recognizes that such evidence is also material and admissible to show the defendant's motive and intent to kill Victim #2 in support of his alleged commission of the homicide/weapon counts charged under Counts 1, 2 and 3. Consequently, focusing solely upon an examination of the propriety of the People's joinder of all counts charged under the instant indictment pursuant to CPL 200.20(2)(b), without considering their argument that joinder was also proper pursuant to CPL 200.20(2)(a) based upon the proposition that all charged offenses constitute a single criminal transaction within the meaning of CPL 40.10(2)(a), the Court finds that the joinder of both the homicide/weapon counts with the criminal contempt counts within the instant indictment was proper, even if the Court were to accept the defendant's argument that these two sets of counts were based upon distinct criminal transactions, as proof of the events underlying one set of counts or criminal transaction are of such a nature that they could be material and admissible upon trial of the other set of counts or criminal transaction pursuant to CPL 200.20(2)(b) (*see People v Bonilla*, 127 AD3d 985; *see also People v Singh*, 60 AD3d 875, 876).

In any event, were it necessary for this Court to reach the defendant's argument that joinder of the homicide/weapon counts and the criminal contempt counts within the instant indictment was improper pursuant to CPL 200.20(2)(a), the Court would necessarily reject that argument upon recognition that all of the defendant's actions allegedly undertaken to commit the crimes charged under both sets of counts are inextricably intertwined with one another to the extent that they constitute a single criminal transaction within the meaning of CPL 40.10(2)(a) and (b) as required to establish that the joinder of same within the instant indictment was also proper pursuant to CPL 200.20(2)(a) (*see People v Rogers*, 94 AD3d 1246, 1248; *see also People v Coston*, 55 AD3d 943, 947; *People v Dashaw*, 116 AD3d 1222, 1227).

Accordingly, based upon this Court's determination that the People's joinder of all charged offenses under the instant indictment was proper pursuant to both CPL 200.20(2)(a), as well as CPL 200.20(2)(b), the Court recognizes that it lacks the statutory authority required by CPL 200.20(3) to grant the severance requested by the defendant upon his claim that the severance of the homicide/weapon counts from the criminal contempt counts should be granted in the interest of justice and for good cause shown pursuant to CPL 200.20(3)(b) (*see People v Cornell*, 17 AD3d 1010; *People v Zinaman*, 259 AD2d 327). Based upon the foregoing, the defendant's instant application seeking the severance of Counts 1, 2 and 3, from Counts 4 and 5 of the instant indictment, is summarily denied.

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York  
March 24, 2023



---

Honorable Susan Cacace  
Acting Justice of the Supreme Court

TO:

Honorable Miriam Rocah  
District Attorney of Westchester County  
County Courthouse  
111 Dr. Martin Luther King, Jr., Blvd.  
White Plains, New York 10601  
Attention: A.D.A. John O'Rourke

Office of Clare Degan, Esq.  
The Legal Aid Society  
of Westchester County  
Attorneys for Defendant  
150 Grand Street  
White Plains, New York 10601  
Attn: Lynda Visco, Esq.