

People v Brogno

2023 NY Slip Op 34811(U)

June 5, 2023

Supreme Court, Westchester County

Docket Number: Ind. No. 23-70459-001

Judge: Robert A. Neary

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AND
ENTERED
ON 6-5-2023
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

ANTHONY BROGNO,

Ind. No. 23-70459-001

Defendant.

-----X

NEARY, J.

The defendant, Anthony Brogno, has been charged with the crimes of Murder in the Second Degree, Conspiracy in the Second Degree, Conspiracy in the Fourth Degree, Criminal Possession of a Weapon in the Second Degree (four 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

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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 INSPECT THE GRAND JURY MINUTES AND DISMISS THE INDICTMENT OR CERTAIN COUNTS THEREIN AS NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE

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.

B. MOTION TO SUPPRESS FROM USE AS EVIDENCE AT ANY TRIAL STATEMENTS MADE BY THE DEENDANT TO ANY LAW ENFORCEMENT OFFICIAL AS SUCH STATEMENTS WERE INVOLUNTARY AND WERE TAKEN IN VIOLATION OF DEFENDANT'S FOURTH, FIFTH AND SIXTH AMENDMENT RIGHTS OR IN THE ALTERNATIVE FOR A 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).

C. MOTION TO SUPPRESS FROM USE AS EVIDENCE ANY IDENTIFICATION OF THE DEFENDANT AS BEING UNREASONABLE AND OVERLY SUGGESTIVE AND IN VIOLATION OF THE DEFENDANT'S FOURTH, FIFTH AND SIXTH AMENDMENT RIGHTS OR IN THE ALTERNATIVE FOR A WADE HEARING

This motion is denied. The evidence before the grand jury establishes the subject of the witnesses' familiarity with the defendant. When the People oppose a *Wade* hearing because the parties are known to each other, a court is permitted to consider the Grand Jury testimony. [See *People v. Rodriguez*, 47 AD3d 417, 849 NUS2d 232 (1sr Dept. 2008); *People v. Rumph*, 248 AD2d 142, 670 NYS2d 68 (1st Dept. 1998); *People v. Won*, 208 AD2d 393, 617 NYS2d 161 (1st Dept. 1994)]. In this case, the witnesses' testimony before the Grand Jpury

established that the defendant was very well known to them. The record is clear that the identifying witnesses had a prior familiarity with the defendant, the basis of which would render those witnesses impervious to suggestion with respect to any identification procedure. [See *People v. Rodriguez*, 79 NY2d 445]. The motion to suppress is, therefore, denied.

D. MOTION FOR A SANDOVAL/VENTIMIGLIA HEARING TO DETERMINE THE ADMISSIBILITY OF ANY PRIOR CRIMINAL OR BAD ACTS FOR USE BY THE PEOPLE ON THEIR DIRECT CASE OR DURING THE CROSS EXAMINATION OF THE DEFENDANT

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 RESERVE THE RIGHT TO MAKE 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

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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
June 5, 2023


ROBERT A. NEARY
SUPREME COURT JUSTICE

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