

**People v Gibbs**

2023 NY Slip Op 34927(U)

October 4, 2023

Supreme Court, Westchester County

Docket Number: Ind. No. 23-71812-001

Judge: Robert A. Neary

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**FILED  
AND  
ENTERED  
ON 10-4-2023  
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

LEROY GIBBS and JEREMIAH HUGHES,

Ind. No. 23-71812-001

Defendants.

-----X

NEARY, J.

The defendant, Leroy Gibbs, has been charged with the crimes of Attempted Murder in the Second Degree, Assault in the First Degree, Criminal Possession of a Weapon in the Second Degree (two counts) and Assault in the Second Degree. The defendant has made an omnibus motion which consists of a Notice of Motion and an Affirmation in support thereof. In response, the People have filed an Affirmation in Opposition together with a Memorandum of

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

MOTION TO INSPECT THE GRAND JURY MINUTES AND TO DISMISS THE  
INDICTMENT PURSUANT TO CPL 210.30(1) AND (2)

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.

MOTION TO SUPPRESS ALL PRE-TRIAL STATEMENTS MADE BY THE DEFENDANT TO A PUBLIC SERVANT OR IN THE ALTERNATIVE FOR A HUNTLEY HEARING PURSUANT TO CPL ARTICLE 710

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).

MOTION TO SUPPRESS ANY AND ALL PRE-TRIAL IDENTIFICATIONS OF THE DEFENDANT MADE BY A WITNESS OR IN THE ALTERNATIVE FOR A WADE HEARING PURSUANT TO CPL ARTICLE 710

This motion is denied. The evidence before the Grand Jury establishes that the noticed identifications were not, in fact, the type of procedures which are subject to suppression. The viewing of video footage and still photographs of the crime and arrest in progress were merely confirmatory and did not involve any type of selection process. Suggestiveness is not an issue in such situations. [See *People v. Gee*, 99 NY2d 158; *People v. Moreno*, 148 AD3d 827; *People v. Deverow*, 153 AD3d 550].

MOTION TO SEVER THE TRIAL OF THE DEFENDANT FROM THE TRIAL OF  
DEFENDANT JEREMIAH HUGHES

The defendant moves for a severance from his co-defendant. The defendant was properly joined in the same indictment. [See CPL §200.40(1)]. The Court may, however, for good cause shown order that defendant be tried separately. Good cause includes a showing that defendant would be “unduly prejudiced by a joint trial.” [See CPL §200.40(1)]. Further, where the proof against all defendants is supplied by the same evidence, “only the most cogent reasons warrant a severance.” [See *People v. Bornholdt*, 33 NY2d 75, 87, *cert. denied* 416 US 95 and *People v. Kevin Watts*, 159 AD2d 740]. And, “. . . a strong public policy favors joinder, because it expedites the judicial process, reduces court congestion, and avoids the necessity of recalling witnesses. . . .” [*People v. Mahboubian*, 74 NY2d 174, 183].

This Court must determine the admissibility and possibility of the redaction of the co-defendant's statements and whether the co-defendant will be testifying at defendant's trial.

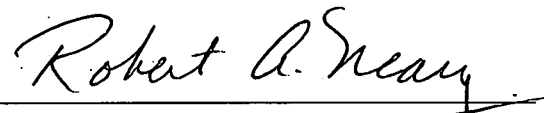
According, the defendant's motion for a severance is denied as premature, with leave to renew upon a determination of the admissibility of co-defendant's alleged statements, and upon a showing that a joint trial will result in unfair prejudice to him and substantially impair his defense.

MOTION FOR A SANDOVAL/VENTIMIGLIA HEARING TO DETERMINE THE  
ADMISSIBILITY AT TRIAL FOR ANY PURPOSE OF ANY ALLEGED CRIMINAL,  
VICIOUS, IMMORAL OR BAD ACT 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)].

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

Dated: White Plains, New York  
October 4, 2023

  
ROBERT A. NEARY  
SUPREME COURT JUSTICE

*People v. Leroy Gibbs*  
Indictment No. 23-71812-001

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