

People v Gibbs

2023 NY Slip Op 34928(U)

October 4, 2023

Supreme Court, Westchester County

Docket Number: Ind. No. 23-71812-002

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. 23-71812-002

Defendants.

-----X

NEARY, J.

The defendant, Jeremiah Hughes, 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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COUNTY OF WESTCHES.

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 TO DISMISS AND/OR REDUCE THE INDICTMENT 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.

B. MOTION TO DISMISS 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].

C. and D. MOTION FOR DISCOVERY AND INSPECTION PURSUANT TO CPL ARTICLE 210 and MOTION FOR EXCULPATORY EVIDENCE

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].

E. MOTION TO SUPPRESS PRIOR ARRESTS, ADJUDICATIONS, CONVICTIONS, IMMORAL AND/OR VICIOUS ACTS AND HABITS

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)].

F. MOTION TO STRIKE ALIBI DEMAND

This motion is denied. Contrary to the defendant's contentions, it is well-settled that CPL §250.00 is indeed in compliance with the constitutional requirements (see *People v. Dawson*, 185 AD2d 854, 587 NYS2d 358, *appeal denied* 80 NY2d 974, 591 NYS2d 143, 605 NE2d 879; *People v. Cruz*, 176 AD2d 751, 574 NYS2d 1006, *appeal denied* 79 NY2d 855, 580 NYS2d 727, 588 NE2d 762; *People v. Gill*, 164 AD2d 867, 599 NYS2d 376, *appeal denied* 76 NY2d 893, 561 NYS2d 555, 562 NE2d 880; *People v. Peterson*, 96 AD2d 871, 578 NYS2d 358) and provides equality in the required disclosure (see *People v. Peterson*, 90 AD2d 871, 578 NYS2d 358; see generally *Wardius v. Oregon*, 412 US 470, 93 S Ct. 2208, 37 LE2d 82).

G. MOTION FOR A FURTHER BILL OF PARTICULARS PURSUANT TO CPL ARTICLE 710

The defendant's motion for a court ordered Bill of Particulars is denied. In light of the timing of the application and the extensive information that has been provided through discovery and motion practice, the Court finds that a Bill of Particulars is unnecessary as the defendant has been adequately apprised of the nature of the charges against him.

H. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY

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].

I. MOTION TO SUPPRESS PHYSICAL EVIDENCE

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].

J. MOTION TO SUPPRESS STATEMENTS 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).

K. MOTION TO SEVER OFFENSES PURSUANT TO CPL SECTION 200.20(2)(B)

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.

L. MOTION TO RESERVE RIGHT TO MAKE ADDITIONAL 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

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 4, 2023


ROBERT A. NEARY
SUPREME COURT JUSTICE

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