

People v Walton

2012 NY Slip Op 33958(U)

September 12, 2012

Supreme Court, Kings County

Docket Number: 02459/12

Judge: Martin P. Murphy

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SUPREME COURT OF THE STATE OF NEW YORK
KINGS COUNTY: PART 40

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

Decision and Order

-against-

Indictment 02459/12

SAMUEL WALTON

Gangs' Case

Defendant :

Omnibus Decision

-----X
JUSTICE MARTIN P. MURPHY

The People have designated this matter as a *Gangs Case*.

The defendant is charged with murder in the second degree and two counts of criminal possession of a weapon in the second degree.

It is alleged that at approximately 10:00 P.M. on July 4, 2009 in the vicinity of 160 Rockaway Avenue in Kings County, the *defendant* walked passed *Nakie Rason Hector-Bowser*, the *decedent*, on the sidewalk. Upon passing one another, the *defendant* and *Mr. Hector-Bowser* got into a verbal altercation. The *defendant* then displayed a handgun, pointed it at the *deceased*, and fired several shots, striking the *decedent* several times. The *decedent* was pronounced dead from these gunshot wounds at *Brookdale Hospital* on July 5, 2009

After a review of the *defendant's omnibus* motion papers, filed on or about June 8, 2012 and the People's response, filed on or about July 9, 2012, as well as the official court file and all of the prior court proceedings, the *omnibus motion* is decided as follows :

Bill of Particulars

The *defendant's* motion for a *bill of particulars*, pursuant to CPL 200.95 is GRANTED to the extent of the People's answer as contained in the section entitled "*Bill of Particulars*" as well as the *Voluntary Disclosure Form (VDF)* that has been previously provided to *defendant*.

The *defendant* is granted leave to renew the motion with regard to any item not so provided. Upon renewal of the motion, the *defendant* must (1) specify the particular item(s) of information which the People have not disclosed; (2) demonstrate that such information is relevant and applicable to the case; and (3) specify the provision of law or authority requiring disclosure of the information.

Discovery

1. *Defendant's Demand for Discovery*, pursuant to CPL 240.20, is GRANTED to the extent

that the People are directed to forthwith disclose to the *defendant* and make available for inspection, photographing, copying or testing, the following property:

- A. Any written, recorded or oral statement of the *defendant*, and of a *co-defendant* to be tried jointly, made, other than in the course of the criminal transaction, to a public servant engaged in law enforcement activity or to a person then acting under his direction or in cooperation with him;
- B. Any transcript of testimony relating to the criminal action or proceeding pending against the *defendant*, given by the *defendant*, or by a *co-defendant* to be tried jointly, before any grand jury;
- C. Any written report or document, or portion thereof, concerning a physical or mental examination, or scientific test or experiment, relating to the criminal action or proceeding which was made by, or at the request or direction of a public servant engaged in law enforcement activity, or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the People intend to introduce at trial;
- D. Any photograph or drawing relating to the criminal action or proceeding which was made or completed by a public servant engaged in law enforcement activity, or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the People intend to introduce at trial;
- E. Any photograph, photocopy or other reproduction made by or at the direction of a police officer, peace officer or prosecutor of any property prior to its release pursuant to the provisions of section 450.10 of the penal law, irrespective of whether the People intend to introduce at trial the property, photograph, photocopy or other reproduction.
- F. Any other property obtained from *defendant*; or a *co-defendant* to be tried jointly.
- G. Any tapes or other electronic recordings which the prosecutor intends to introduce at trial, irrespective of whether such recording was made during the course of the criminal transaction;
- H. Anything required to be disclosed, prior to trial, to the *defendant* by the prosecutor, pursuant to the constitution of this state or of the United States;

- I. The approximate date, time and place of the offense charged and of *defendant's* arrest.
- J. In any prosecution under penal law section *156.05* or *156.10*, the time, place and manner of notice given pursuant to subdivision six of section *156.00* of such law.
- K. In any prosecution commenced in a manner set forth in this subdivision alleging a violation of the vehicle and traffic law, in addition to any material required to be disclosed pursuant to this article, any other provision of law, or the constitution of this state or of the United States, any written report or document, or portion thereof, concerning a physical examination, a scientific test or experiment, including the most recent record of inspection, or calibration or repair of machines or instruments utilized to perform such scientific tests or experiments and the certification certificate, if any, held by the operator of the machine or instrument, which tests or examinations were made by or at the request or direction of a public servant engaged in law enforcement activity or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the people intend to introduce at trial.

2. The prosecutor shall make a diligent, good faith effort to ascertain the existence of demanded property and to cause such property to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control; provided, that the prosecutor shall not be required to obtain by *subpoena duces tecum* demanded material which the *defendant* may thereby obtain.

3. *Defendant's* motion to compel discovery pursuant to *CPL 240.40* is at present premature, since *defendant* has concurrently served the People with a *demand for discovery* pursuant to *CPL 240.20*.

Following the People's compliance with *defendant's demand*, the *defendant* is granted leave to renew his motion with regard to any item of discovery he believes he is entitled to and has not been provided. At that time, the *defendant* must (1) specify the particular item(s) of discovery which the People have not disclosed, (2) demonstrate that such item or information is relevant and applicable to the case, and (3) specify the provision of law or authority requiring its disclosure.

Huntley Hearing

Defendant seeks to preclude any and all statement evidence for of which he indicates he was provided notice, pursuant to *CPL 710.30 (1) (a)*. *Defendant* maintains that any statements made by him were involuntarily made in violation of his constitutional rights.

The People indicate that they do not intend to offer any statements that may have been made by *defendant* following his arrest on their direct case.

Accordingly, a hearing pursuant to *People v Huntley*, 15 NY2d 72 [1965] . is *DENIED* by this court as unnecessary.

**Motion to Inspect Grand Jury Minutes and
Dismiss the Indictment**

The *defendant's* motion to inspect the grand jury minutes is *Granted*. The court has reviewed the minutes *in camera* and issued a decision, dated *September 12, 2012*. Upon inspection, the motion to dismiss the indictment or reduce a charged offense in the indictment is *DENIED*. The minutes reveal that a quorum of the grand jurors was present during the presentation of evidence and at that time the Assistant District Attorney properly instructed the Grand Jury on the law. The instructions were not defective as a matter of law and the evidence before the Grand Jury was sufficient to support each and every count in the indictment.

The People's Brady Obligation

The People have acknowledged their continuing obligation to provide exculpatory information to the *defendant*. *Brady v Maryland*, 373 US 83 [1963].

Witnesses' Statements

As to any prior statements of the People's witnesses, it is ordered that they be provided to *defendant* to the extent and at the time prescribed by law pursuant to *CPL 240.44 (1)* and *240.45 (1) (a)* . *People v Rosario*, 9 NY2d 286 [1961].

Sandoval/Prior, Uncharged Acts

Pursuant to *CPL 240 43*, immediately prior to the commencement of jury selection, the prosecutor is directed to notify *defendant* of all specific instances of any prior uncharged criminal, vicious or immoral conduct of which the prosecutor intends to use at trial for purposes of impeaching the *defendant's* credibility. A *Sandoval* hearing is *GRANTED* and referred to the trial court. *People v Sandoval*, 34 NY2d 371[1974] .

Motion to Preclude Identification Testimony

The People have previously given notice of their intent to introduce identification evidence of the *defendant*. *Defendant* has moved pursuant to *CPL 710.20 (6)*, to preclude the People from introducing into evidence at trial potential testimony regarding an observation of the *defendant* either at the time or place of the alleged commission of the offense or upon some other occasion as suggestive. In the alternative, *defendant* requests a hearing pursuant to *Wade v United States*,

388 US 218 [1967].

The People in their response indicate they will consent to a *Wade/Rodriguez* hearing.

Accordingly, this court *GRANTS* a *Wade/Rodriguez* hearing to determine the admissibility of any identification evidence. Should the hearing court determine that the identification procedures utilized by the authorities were unduly suggestive or tainted, any decision as to whether there should be an independent source hearing is left to the sound discretion of the hearing court.

Suppression of Physical Evidence

The People have indicated that they do not intend to offer in their direct case at trial any physical evidence seized from the *defendant* in this case. Accordingly, a hearing pursuant to *Mapp v Ohio*, 367 US 643 [1961] is *DENIED* as unnecessary.

Reciprocal Discovery

The People's motion for reciprocal discovery is *GRANTED* as to the material specified in *CPL 240.30* as is the People's request for a demand of alibi notice pursuant to *CPL 250.20*.

Reservation of Further Motions

Further motions may be made pursuant to *CPL 255.20* upon good cause shown.

The foregoing constitutes the decision and order of the court.

Dated: Brooklyn, New York
September 12, 2012



MARTIN P. MURPHY, J. S. C.