

**People v Hayes**

2017 NY Slip Op 33298(U)

October 20, 2017

Supreme Court, Orange County

Docket Number: 2017-488

Judge: Craig Stephen Brown

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
COUNTY COURT : ORANGE COUNTY

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

-against-

RALPHIE HAYES,

Defendant.

-----X  
CRAIG STEPHEN BROWN, J.C.C.

DECISION & ORDER

Ind. No. 2017-488  
Index No. 4981/2017

Defendant RALPHIE HAYES moves for the following relief:

1. In Camera Inspection of Grand Jury Minutes and Dismissal and/or Reduction of Indictment;
2. Demand for Bill of Particulars;
3. Demand for Discovery Pursuant to C.P.L. 240.20;
4. Demand for Disclosure pursuant to *Brady v. Maryland*.
5. An Order under provisions of Article 710.30 of the Criminal Procedure Law suppressing any oral or written confessions and/or statements of the defendant, either inculpatory or exculpatory, upon the grounds that the alleged confessions and/or statements either oral or written are inadmissible as a matter of law as they were taken in contravention of the defendant's constitutional guarantees and rights;
6. For an Order Prohibiting the Use of Defendant's Prior Crimes or Bad Acts pursuant to Sandoval;
7. Demand for Ventigmilia Hearing;
8. Demand for Disclosure Pursuant to Geaslen;
9. For an Order precluding testimony concerning the identification of defendant due to People's failure to timely serve 710.30 notice;
10. For an Order Releasing the Defendant on his Own Recognizance;
11. For an Order Granting Leave to File Additional Motions; and

12. For an Order dismissing the charge of Criminal Possession of a Weapon in the Third Degree and the Superseding Indictment.

The following papers were read:

Notice of Motion -Affirmation of Matthew D. Witherow, Esq. - Affidavit of Service	1 - 3
Neal E. Eriksen, Esq.'s Affirmation in Response - Affidavit of Service	4 - 5
Grand Jury Minutes - Indictment - Voluntary Disclosure Form	6 - 8
Notice of Motion for Speedy Trial - Affidavit of Ralphie Hayes - Affidavit of Service	9 - 11
Neal E. Eriksen, Esq's Affirmation in Response	12
Ralphie Hayes' Affirmation in Response - Affidavit of Service - Annexed Exhibits	13 - 15

Upon the foregoing papers it is hereby ORDERED that the defendant's motions are decided as follows:

#### **MOTION TO INSPECT GRAND JURY MINUTES**

The motion is granted to the extent that the Court has reviewed the minutes of the Grand Jury and finds that the Indictment is based upon legally sufficient evidence and that the Grand Jury was properly instructed with respect to the applicable law.

#### **MOTION FOR A BILL OF PARTICULARS (PARAGRAPH 16)**

The request for information as set forth in paragraphs numbered "16(C)" and "16(H)" in the defendant's counsel's affirmation is denied on the basis that it was previously provided in the Voluntary Disclosure Form. The remaining requests for information are not required to be provided within a bill of particulars (See, *CPL §200.95.*)

[\* 5]

### **MOTION FOR DISCOVERY (PARAGRAPH 17)**

The defendant's motion for discovery is granted to the extent that the People are directed to provide (unless already provided), within ten (10) days from the date of this Order, the information sought in paragraphs numbered "17(B)", "17(E)" (if any), and "17(F)" of defendant's counsel's affirmation.

The request for information set forth in paragraphs numbered "17(A)", "17(G)", and "17(I)" of defendant's counsel's affirmation is denied on the basis that it was previously provided in the Voluntary Disclosure Form.

The request for information set forth in paragraphs "17(C)", "17(D)", and "17(H)" is denied based upon the District Attorney's representation that no such information is presently known. However, the People are reminded of their continuing obligation pursuant to CPL §240.60 to disclose such information.

The request for information set forth in paragraph "17(J)" of defendant's counsel's affirmation is denied as this is not a prosecution under Section 156.05 or 156.10 of the Penal Law.

### **MOTION PURSUANT TO *BRADY V. MARYLAND***

Defendant's motion is granted to the extent that it is hereby ordered that the District Attorney provide defendant with any and all documents and materials as required under *Brady v. Maryland*.

### **MOTION TO SUPPRESS STATEMENTS**

The defendant's motion to suppress statements is denied as a hearing has already been held pursuant to CPL §710.60(4) before the Hon. Robert H. Freehill, J.C.C. Said hearing was held on November 3, 2016 and, by Decision dated December 2, 2016, the defendant's statements

[\* 4]

were held to be admissible at trial.

#### **MOTION FOR A SANDOVAL HEARING**

The motion is granted to the extent that a hearing is hereby ordered which will be held immediately prior to trial to determine which, if any, bad acts or convictions may be used as impeachment in the event that the defendant elects to testify at trial. The Court further orders the District Attorney to provide defendant's attorney with a true copy of defendant's DCJS Summary Case History and to disclose to defendant's attorney any and all acts about which it intends to use as impeachment. The above information must be provided to defendant's attorney at least three days, excluding Saturdays, Sundays and holidays, prior to the commencement of jury selection.

#### **MOTION PURSUANT TO VENTIMIGLIA**

Defendant's motion for relief pursuant to *People v Ventimiglia*, 52 NY2d 350, is denied with leave to renew in the event that the District Attorney seeks to introduce evidence at trial of defendant's prior bad acts or convictions.

#### **MOTION PURSUANT TO GEASLEN**

Granted to the extent that the District Attorney is ordered to provide to defendant's attorney, within ten (10) days from the date of this Order, any information required to be disclosed pursuant to *People v Geaslen*.

#### **MOTION TO PRECLUDE AND SUPPRESS IDENTIFICATION**

Defendant's motion to preclude identification on the ground that a CPL§710.30 notice of identification procedure was not timely served under the earlier indictment (#2016-250) is denied. Defendant was served with a notice of identification procedure on May 5, 2016 when he was arraigned on Indictment #2016-250. In addition, defendant was served again with a notice of identification procedure on July 6, 2017 when he was arraigned on Indictment #2017-488.

Accordingly, the defendant's motion for preclusion must be denied. Further, defendant's motion to suppress identification testimony on the ground that the show-up procedure was unduly suggestive is denied. The entire incident which provides the basis for all of the charges included in the indictment was video recorded. The defendant testified before the Grand Jury and identified himself as the individual in the video. It is well settled that "[w]hen a defendant's identity is not in issue, 'suggestiveness is not a concern' and there is no need for a hearing" (*People v. Dominguez*, 207 AD2d 715 [1<sup>st</sup> Dept., 1994], *lv denied*, 84 NY2d 907 [1994] citing *People v. Rodriguez*, 79 NY2d 445, 449, quoting *People v. Gissendanner*, 48 NY2d 543, 552).

**MOTION FOR DISMISSAL OF CRIMINAL POSSESSION OF  
A WEAPON IN THE THIRD DEGREE AND SUPERSEDING  
INDICTMENT**

The defendant's motion for dismissal is denied. Contrary to defendant's claim, Indictment No. 2017-488 is a superseding indictment, not an amendment to the original indictment. Thus, defendant's arguments regarding an amendment of an indictment are misplaced. Further, pursuant to CPL 30.30(1)(a), the People have six months to state their readiness for trial. A review of the uncontroverted record reveals that no more than 21 days are chargeable to the People for the entire period between the filing of the felony complaint against the defendant and the present. Accordingly, the criminal action against the defendant, including the charge of Criminal Possession of a Weapon in the Third Degree and all of the charges set forth in the superseding indictment, is timely. (*See, People v. Sinistaj*, 67 N.Y.2d 236 [1986]; *People v. Sant*, 120 A.D.3d 517 [2<sup>nd</sup> Dept., 2014]).

**MOTION FOR DEFENDANT'S RELEASE ON HIS  
OWN RECOGNIZANCE**

The defendant's motion for release on his own recognizance is denied. In addition, defendant's motion in the alternative for a bail reduction to \$1,000 cash or \$5,000 bond is denied.

**MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS**

Defendant's motion for leave to file additional motions is granted only to the extent set forth in CPL §255.20(3).

**ADJOURNED DATE**

This matter is scheduled for a hearing to be held on October 26, 2017 at 9:15 A.M. The defendant, the defendant's counsel, and District Attorney are directed to be present.

The aforesaid constitutes the Decision and Order of the Court.

Dated: October 20, 2017  
Goshen, New York

ENTER



HON. CRAIG STEPHEN BROWN  
COUNTY COURT JUDGE

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