

People v Hickman

2015 NY Slip Op 32568(U)

September 1, 2015

County Court, Wayne County

Docket Number: 15-36

Judge: Daniel G. Barrett

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At a Term of the County Court held in and for the County of Wayne at the Hall of Justice in the Village of Lyons, New York on the 1st day of September, 2015.

PRESENT: Honorable Daniel G. Barrett
County Court Judge

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

JOSHUA S. HICKMAN,

Defendant

DECISION AND ORDER
REGARDING LATE
FILING OF DEFENDANT'S
CPL 250.10 (2) NOTICE
Ind. No. 15-36

Appearances - People - ADA Christopher Bokelman, Esq.
Defendant - APD - Andrew D. Correia, Esq.

Defendant, by his attorney, filed CPL 250.10(2) Notice, indicating the intent to proffer psychiatric evidence at the trial of the Defendant currently scheduled for October 26, 2015. Said letter provided the name of the retained psychiatrist on behalf of the Defendant and that in fact the psychiatrist would not be available for the trial date.

The People object to the Defendant's CPL 250.10(2) Notice in that it is late and beyond the thirty (30) days of arraignment as required. The People request the Court order a preclusion of the proffering of said psychiatric evidence on behalf of the Defendant for his failure to comply.

Defendant, by his attorney, replies to People's response indicating CPL 250.2 (2) allows for the late filing in the interest of justice and for good cause shown. The Defendant offers that the issue of his mental health was known to the People at the onset of the case and in fact the Defendant had testified at Grand Jury at great lengths about his

mental health history and his mental health issues on the day of the alleged crimes. That further the issue of Defendant's mental health was placed on the record at the preliminary hearing at the Rose Town Court. Mental health records were being gathered in order to retain the psychiatric expert which was done on or about July 9, 2015. The Defendant's request for adjournment of the trial was approximately three months before the trial was to begin and that therefore the People have an adequate opportunity to have the Defendant examined, as set forth in the statute.

The Defendant was arraigned before the Court on April 23, 2015. The Court was aware at the time of the alleged mental health issues of the Defendant. This matter was further discussed at a pre-trial on June 18, 2015 and then again on July 9, 2015. At the conference of July 9, 2015 there was the return of the pre-plea investigation which set forth the Defendant's mental health history and his current treatment at the Canandaigua VA. In addition, attached to the pre-plea investigation was a recent report regarding the Defendant's current treatment and his current medication regimen.

This was next before the Court on July 23, 2015. Defendant's counsel, Andrew Correia, was not present. Although there was a representative from the Public Defender's Office, that particular APD did not have the familiarity of the case Mr. Correia did. In any event at said appearance the People asked for a trial date and that was set by the Court for October 26, 2015 for a jury trial. However, it was noted on the record by APD Heather Maure that this was subject to Mr. Correia's schedule or anything else that she might be unaware of. Mr. Correia then followed up with a letter referred to above dated August 3, 2015.

The Legislature enacted CPL 250.10 to promote procedural fairness and orderliness. The statute is designed to create a format by which psychiatric evidence may be prepared and presented manageably and efficiently, eliminating the element of surprise. With that in mind the Legislature has formulated a procedure that depends upon proper notification, adversarial examination and preclusion when appropriate, People v Almonor, 93 N.Y. 2d 571.

In addition to being timely a notice pursuant to CPL 250.10 must contain enough information to enable the prosecution and the court to discern the general nature of the alleged psychiatric malady and its relationship to a particular proffered defense. Unless the prosecution is so informed, it will not be able to conduct a meaningful psychiatric examination of its own, People v Muller, 72 A.D. 3d 1829.

The decision whether to allow a defendant in the interest of justice and for good cause shown, to serve and file a late Notice of Intent to introduce psychiatric evidence is a discretionary determination to be made by the trial court, although the trial court's discretion is not absolute; exclusion of relevant and probative testimony as a sanction for defendant's failure to comply with statutory notice requirement implicates a defendant's constitutional right to present witnesses in his own defense and the trial court must therefore weigh this right against the resultant prejudice to the state from the belated notice. People v Berk, 88 N.Y. 2d 257.

The courts are sensitive to the unfairness of completely precluding psychiatric testimony due to a late notice which cannot be cured by a short adjournment when the delay is not willful or an attempt to gain a tactical advantage and the prosecution will not be prejudiced, People v Oakes, 168 A.D. 2d 893.

Even if there would have been some prejudice to the People caused by defense counsel's delay in filing the notice, the sanction of preclusion was unduly harsh in comparison. People v Burton, 156 A.D. 2d 945.

The line of cases cited by the People and as determined by the Court's research indicate that the denial of the request to file late notice to proffer psychiatric evidence is normally denied in cases where there is complete surprise regarding a psychiatric defense and/or that said proffer of psychiatric testimony on behalf of the defendant is either on the eve of trial or during trial.

In this case there is no prejudice to the People in that the People were aware of the Defendant's mental health issues at the time of the preliminary hearing, during Defendant's testimony at Grand Jury and as discussed in the pre-trial conferences in court as well as set forth in the pre-plea investigation.

The letter by Mr. Correia dated August 3, 2015 filing the late 250.10(2) Notice and requesting an adjournment was approximately three months before trial. This case is not in any way unduly delayed in that the arraignment of the Defendant was just on April 23, 2015. In addition the People have plenty of time to examine the Defendant before trial and if in fact a written report is done on the Defendant that report must be shared by the Defendant with the People.

On the record we find no legitimate claim on the part of the People of any resulting prejudice from the delay since it was clearly evident, given the totality of the facts and circumstances herein, that the Defendant's sanity and his ability to form the requisite intent will be a significant factor at trial, People v Gracius, 6 A.D. 3d 222. A careful review of the record reveals that the People have failed to advance any claim or prejudice from the delay, contending solely that CPL 250.10(2) Notice was beyond the requisite 30 day time period. In addition there is nothing that suggests that the Defendant sought a strategic advantage in filing a late notice of intent or that the psychiatric defense is not viable, People v Allen, 29 Misc. 3d 1231.

Therefore the Court will allow the late notice on the conditions set forth below. The trial date of October 26, 2015 is hereby cancelled. This is before the Court on September 3, 2015. At that time Court and counsel will discuss an appropriate time line and the schedule any appropriate matters.

Therefore it is the Court's Decision and Order as follows:

1. The Defendant must provide the People with an amended/supplemental CPL 250.10 Notice which contains enough information to enable the prosecution and the Court to discern the general nature of the alleged psychiatric malady and its relationship to a particular, proffered defense no later than thirty (30) days of the date of this Decision;
2. The Defendant must submit to a timely examination by a psychiatrist or licensed psychologist designated by the People, presumably within sixty (60) days from the People's receipt of Defendant's amended/supplemental CPL 250.10 Notice.

Failure of the Defendant to comply with either of these conditions in a timely manner will result in preclusion of psychiatric evidence at trial. Accordingly, the People's Motion to Preclude is denied, subject to Defendant's strict compliance with the conditions proposed by the Court.

This constitutes the Decision and Order of the Court.

Dated: September 1, 2015
Lyons, New York



Daniel G. Barrett
County Court Judge