

SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK
CRIMINAL TERM, PART K-10, QUEENS COUNTY
125-01 QUEENS BOULEVARD, KEW GARDENS, NEW YORK 11415

Present : Hon. Richard L. Buchter
Justice

-----X
THE PEOPLE OF THE STATE OF NEW YORK Ind. No.:1625-01

-Against- Motion: In Limine

WILLIAM CARRIERI, Defendant Submitted:
Hearing:

-----X
The following papers numbered 1 to
submitted in this motion.

A.D.A. Joseph Brogan
For the Motion

David Cohen, Esq.
Opposed

Papers
Numbered

Notice of Motion and Affidavits/affirmations: _____
Answering and Reply Affidavits/affirmations: _____
Exhibits: _____
Minutes: _____

The People's motion in limine seeking, inter alia, to introduce the plea allocutions of the co-defendants at trial is denied as per the attached decision.

Kew Gardens, New York
Dated: April 15, 2004

RICHARD L. BUCHTER, J.S.C.

MEMORANDUM

SUPREME COURT, QUEENS COUNTY
CRIMINAL TERM, PART K-10

THE PEOPLE OF THE STATE OF NEW YORK

-Against-

WILLIAM CARRIERI,

Defendant.

By: Hon. Richard L. Buchter

Dated: April 15, 2004

Ind. No. 1625-01

In *Crawford v. Washington*, ____ US ____, 124 S.Ct. 1354, decided on March 8, 2004, the United States Supreme Court held that the Confrontation Clause of the Federal Constitution was directed at the use of ex parte examination of witnesses against a defendant in a criminal trial. In a lengthy and historical analysis, the Supreme Court held that the Sixth Amendment Confrontation Clause bars the use of “testimonial” hearsay statements unless the declarant is unavailable and the defendant was afforded a prior opportunity for cross-examination. The term “testimonial”, as used in this decision, “applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial, and to police interrogations.” *Crawford, supra*. See also *People v. Moscat*, 2004 N.Y. Misc. Lexis 231.

In this motion in limine, the People seek inter alia to introduce as evidence-in-chief at trial the redacted plea allocutions of the co-defendants, which allocution predated *Crawford*, on the ground that the plea allocutions are admissible at trial under the recognized exception to the hearsay rule as Declarations against Penal Interest. The issue presented is what impact the recent United States Supreme Court decision in *Crawford* has on the use of such plea minutes and whether *Crawford* must be applied retroactively under these circumstances.

Initially, with regard to the question of retroactivity, a decision of the United States Supreme Court is given retroactive effect in criminal cases when it affects the

fact or truth finding process itself, i.e., the determination of guilt or innocence, and, as such, is Constitutional in nature, Brown v. Louisiana, 447 US 323; People v. Morales, 37 NY2d 262, cf. People v. Martello 93 NY2d 645. Herein, the use of the plea minutes as sought by the People is such an instance. Even though the alleged incident itself and the allocutions sought to be admitted at trial predate the decision of the Supreme Court in *Crawford*, this court must apply the *Crawford* rule relative to the question of their introduction as evidence-in-chief at trial. Clearly, to hold otherwise would deprive the defendant of his Constitutional guarantee to the right of confrontation at trial under the Sixth Amendment in light of *Crawford's* view of the Confrontation Clause.

In conclusion, based upon the analysis of *Crawford* and the facts of the instant matter, this court holds that the proposed use by the People of the plea minutes of the co-defendants is testimonial in nature. Therefore, the use of the minutes as proposed by the People, without the co-defendants being called as witnesses, would be violative of the Confrontation Clause. Accordingly, the plea minutes may not be used against defendant Carrieri at trial even though they may well be an exception to the hearsay rule as a Declaration against Penal Interest.

Accordingly, the People are precluded from offering the plea minutes of the co-defendants as evidence in chief at trial as violative of the Confrontation Clause.

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

The clerk of the court is directed to serve a copy of the memorandum and order on the attorney for the defendant and on the district attorney.

Kew Gardens, New York
Dated: April 15, 2004

RICHARD L. BUCHTER, J.S.C.