

People v Saunders

2012 NY Slip Op 33854(U)

August 30, 2012

County Court, Westchester County

Docket Number: 12-0433

Judge: James W. Hubert

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WESTCHESTER COUNTY CLERK

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

THE PEOPLE OF THE STATE OF NEW YORK

- against -

MICHAEL SAUNDERS

Defendant.

-----X

Hubert, J.

DECISION & ORDER

Indictment No.:12-0433

The defendant is charged under Westchester County Indictment 12-0433 with Murder in the Second Degree in violation of Penal Law § 125.25, Criminal Possession of a Weapon in the Second Degree in violation of Penal Law § 265.03, Assault in the Second Degree in violation of Penal Law § 120.05, and Reckless Endangerment in the First Degree in violation of Penal Law § 120.25, for allegedly entering the apartment of his former girlfriend, Sabrina Durrah, in the City of White Plains sometime between March 21, 2012 and March 24, 2012, and shooting her to death. She was found dead in her apartment on March 24, 2012, with her infant daughter lying face down at her feet. The infant was suffering from dehydration and hospitalized, but quickly recovered and apparently suffered no other physical injuries. The People state that the defendant is the child's father, and that Ms. Durrah was in the process of filing for child support.

By notice of motion, accompanying affirmation and memorandum of law, all dated June 14, 2012, the defendant now moves for omnibus relief. The People submitted an affidavit and memorandum of law in opposition, and the defendant submitted reply papers. At the Court's request, the parties also submitted supplemental affirmations addressing the sufficiency of the

assault charge that was presented to the grand jury. Upon consideration of all of these papers, as well as the review of the Grand Jury minutes, the defendant's motion is decided as follows:

I. Motion to Inspect the Grand Jury Minutes and to Dismiss or Reduce the Indictment

The application is granted only to the extent that the Court has conducted an *in camera* inspection of the minutes of the Grand Jury proceedings. Upon review of the evidence presented, this Court finds that all counts of the indictment were supported by sufficient evidence and that the Grand Jury was properly instructed. *People v. Calbud*, 49 N.Y.2d 389, 426 N.Y.S.2d 389 (1980); *People v. Valles*, 62 N.Y.2d 36, 476 N.Y.S.2d 50 (1984).

The Court finds that the evidence was sufficient to support a grand jury finding of assault in the second degree under Penal Law § 120.05 (6). The People state that a neighbor reported hearing two gunshots and a baby crying in the vicinity of the deceased's apartment between 8:30 p.m. and 9:00 p.m. on March 21, 2012. The People allege that on that date, surveillance cameras in and around the deceased's building show the defendant outside the building at approximately 8:00 p.m. wearing a sweatshirt with a hood and an old-fashioned hockey style mask on his head. The cameras allegedly show him using the intercom to enter the building, and exiting a short time later. As noted above, the body of the deceased and the infant were not discovered until March 24, 2012. There was no forced entry to the apartment.

As charged by the People, the assault charge stems from the injury suffered by the infant—dehydration—from having been left alone for several days. The People state:

That the full effect of the dehydration occurred over time is irrelevant - the infant's injury was clearly a direct result of the defendant's actions; no superseding intervening cause exists in this case to break the chain of causation between the defendant's actions and the infant's resultant injuries.

A person is guilty of assault in the second degree under Penal Law §120.05 (6) when “[i]n the course of and in furtherance of the commission or attempted commission of a felony [. . .], or of immediate flight therefrom, he, or another participant if there be any, causes physical injury to a person other than one of the participants.”

The Court notes that this subdivision does not specifically require that any physical force be used against the victim, although virtually all of the cases reviewed by this Court involve the use of some physical force against the person who is injured. *See, e.g., In Re Anthony M.*, 63 N.Y.2d 270, 481 N.Y.S.2d 675 (1984)(89 year-old robbery victim who was threatened with a knife, bound and let lying face-down on the living room floor and struck in the face died of a heart attack two days later); *People v. Burnett*, 205 A.D.2d 792, 793, 614 N.Y.S.2d 34 (2d Dep’t 1994), *app. den.* 84 N.Y.2d 866, 618 N.Y.S.2d 12 (1994)(upholding felony murder conviction where 70 year-old victim died of heart attack caused by the stress and fright of attack, where defendant hit her in the face and tied her up during robbery); *People v. Seymour*, 183 A.D.2d 35, 588 N.Y.S.2d 551(1st Dep’t 1992)(defendant convicted of felony murder for the death of a 79-year-old robbery victim who died three months after the crime; victim was tied up during the robbery, suffered a heart attack either during the attack or while he awaited rescue for two days). Thus, in felony murder cases, while death need not be the immediate consequence of the injury sustained by the victim as a result of the defendant’s conduct, the conduct typically involves some use of physical force against the victim.

Similarly, under § 120.05 (6), the ultimate harm need not be intended by the defendant. However, it must be proven “that the ultimate harm is something which should have been foreseen as being reasonably related to the acts of the accused.” *People v. Kibbe*, 35 N.Y.2d 407,

412, 362 N.Y.S.2d 848 (1974). Here, the People allege that the defendant allegedly abandoned a helpless infant in circumstances where the child suffered a gradual injury, and there was no break in the causal relationship. *See People v. Stewart*, 40 N.Y.2d 692 (1976)(victim died one month after being stabbed due to cardiac arrest during surgery; court reduced conviction of manslaughter to assault where evidence showed that evidence of negligent medical treatment was sufficient to break causal relationship).

The People's theory is that the child suffered a gradual, progressing injury after the defendant intentionally shot to death Ms. Durrah and fled the scene. Although there is no proof here that the defendant had any physical contact with the infant, or that the infant began suffering from dehydration at the moment of the murder or the defendant's immediate flight therefrom, the Court does not believe that the language of the statute should be construed so narrowly.

At least one court has specifically upheld a murder conviction where the defendant had no physical contact with the victim. In *People v. Lapan*, 289 A.D.2d 698, 734 N.Y.S.2d 648 (3d Dep't 2001), *app. den.* 97 N.Y.2d 756, 742 N.Y.S.2d 617 (2002), burglars tied the 91-year-old victim's bedroom door closed so she could not get out during the course of the burglary. She was found collapsed on the floor outside of her bedroom the following morning, and subsequently died from a cerebral hemorrhage. The Third Department sustained the murder conviction, although there was no evidence of any physical contact with the victim. Absent any controlling case law to the contrary, the Court therefore finds the assault charge to be sufficient.

The Court has considered the other contentions raised by the defendant, including those with respect to the findings made by the New York State Office of Children and Family Services, and finds his arguments to lack merit.

There was no other infirmity which would warrant a dismissal of the instant indictment. Nor does the Court find any facts warranting the release of any portion of the minutes of the Grand Jury proceedings to the defense. CPL § 210.30 (3). Accordingly, this branch of defendant's motion seeking dismissal of the indictment is denied.

II. Motion to Suppress Identification Testimony

The People consent to a *Rodriguez* hearing, stating that the persons who identified the defendant each knew him. Thus, the defendant's application is granted to the extent that a hearing shall be held prior to trial to determine whether any witness had sufficient familiarity with the defendant such that his identification was merely confirmatory. *People v. Rodriguez*, 79 N.Y.2d 445, 583 N.Y.S.2d 814 (1992). If, after consideration of the evidence presented during that hearing, the Court finds that the procedure was not confirmatory, then the hearing will be expanded to determine the propriety of the identification. *United States v. Wade*, 388 U.S. 218, 87 S. Ct. 1926, 18 L.Ed. 2d 1149 (1967). In the event that the identification is found to be unduly suggestive, the Court shall then consider whether the People can prove by clear and convincing evidence that an independent source exists for such witness' proposed in-court identification.

III. Motion to Suppress Statements

This branch of defendant's motion is granted to the extent that a hearing shall be held pursuant to *People v. Huntley*, 15 N.Y.2d 72, 255 N.Y.S.2d 838 (1965) and *Dunaway v. New*

York, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979) to determine whether any statements allegedly made by the defendant that were noticed by the People pursuant to CPL § 710.30 (1) (a) were involuntarily made within the meaning of CPL § 60.45, or whether they must be suppressed as the fruit of any unlawful police conduct or violation of the defendant's rights.

IV. Motion to Suppress Physical Evidence

To the extent that the defendant challenges any property recovered from his person as a result of his arrest, his motion is granted solely to the extent that a hearing shall be held pursuant to *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961) and *Dunaway v. New York*, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), to determine whether there was probable cause for the defendant's arrest and whether evidence obtained from his person as a result of the arrest should be suppressed as the product of an unlawful seizure or other violation of the defendant's rights.

The defendant also moves to suppress the evidence recovered pursuant to five search warrants executed in this case on the grounds that the warrants were not supported by probable cause. Specifically, the defendant argues that "the alleged presence of Mr. Saunders at the building in which the victims apartment was located, is insufficient to provide probable cause that he committed murder or the other crimes alleged." The Court notes that it is unclear from the motion papers whether any evidence was recovered from the defendant's car or storage unit. In any event, to the extent that the defendant challenges each of the issuing Judges' determinations that probable cause existed for the search, the Court finds this contention to be without merit. Upon review of the search warrant materials, the Court is satisfied that there was

probable cause to issue the warrants in this case and that the requirements for issuing such warrants were met. *See People v. Nieves*, 36 N.Y.2d 396, 369 N.Y.S.2d 50 (1975).

IV. Motion for a Bill of Particulars

This branch of defendant's motion is denied, without prejudice to renew, as the People have already served a bill of particulars pursuant to, and simultaneously with, the consent order in this case. The bill of particulars provided to the defendant was sufficient to adequately inform him of the substance of his alleged conduct and to enable him to prepare and conduct a defense. *See CPL § 200.95; People v. Watt*, 84 N.Y.2d 948, 620 N.Y.S.2d 817 (1994); *People v. Byrnes*, 126 A.D.2d 735, 511 N.Y.S.2d 322 (2d Dep't 1987).

V. Motion for Discovery and Inspection Pursuant to CPL § 240.20

Defendant's demand for disclosure of items or information pursuant to the provisions of CPL § 240.20(1) (a) through (i) is granted to the limited extent that the People are ordered to provide defendant with those materials and information which is required to be disclosed to him pursuant to CPL §§ 240.44 and 240.45. To the extent that portions of defendant's motion seek items or information beyond the scope of discovery, without showing that such items are material to the preparation of his defense, those requests are denied. CPL § 240.40(1)(a).

Defendant's request for the production of exculpatory material or impeachment material within the meaning of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.E.2d 215 (1963) and *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.E.2d 104 (1972) within the People's possession is granted. The People have acknowledged and are reminded of their continuing obligation to disclose to the defense any exculpatory evidence and impeachment material at the

earliest possible date. To the extent that any doubt exists as to whether certain materials must be disclosed to the defense, the People are directed to submit such materials to the Court for *in camera* inspection to determine whether they contain exculpatory or impeachment information subject to disclosure.

VI. **Motion for a Sandoval/Ventimiglia Hearing**

Defendant's request for a *Sandoval* hearing is granted and shall be conducted immediately prior to trial. At that time, (a) the People must notify the defendant of all specific instances any of the defendant's prior uncharged criminal, vicious or immoral conduct of which the People have knowledge and intend to use at trial for purposes of impeaching the credibility of the defendant pursuant to CPL § 240.43; and (b) defendant must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf. *People v. Matthews*, 68 N.Y.2d 118, 506 N.Y.S.2d 149 (1986); *People v. Malphurs*, 111 A.D.2d 266, 489 N.Y.S.2d 102 (2d Dep't 1985).

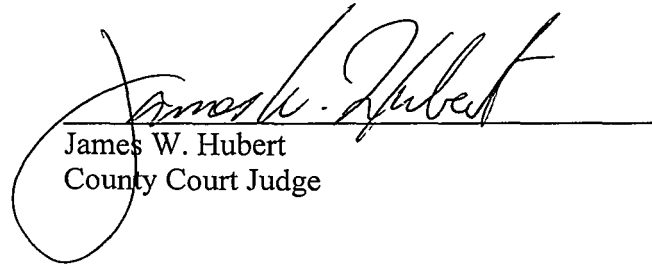
Defendant's request for a *Ventimiglia* hearing is denied at this time. If the People subsequently determine that they will seek to introduce, at trial, evidence of any prior bad acts that the defendant may have committed, they must notify the Court and defense counsel, and a *Ventimiglia* hearing shall be conducted immediately prior to trial to determine whether or not any evidence of uncharged crimes may be used by the People to prove their case in chief. The People are urged to make an appropriate decision in this regard sufficiently in advance of trial to allow any *Ventimiglia* hearing to be consolidated and held with the other hearings ordered herein.

VII. Motion to Reserve Rights to Make Additional Motions

The defendant's request for permission to make additional pretrial motions is denied without prejudice. Additional motions will only be considered upon good cause shown pursuant to CPL § 255.20 (3).

The foregoing constitutes the Decision and Order of the Court.

Dated: White Plains, New York
August 30, 2012



James W. Hubert
County Court Judge

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