

**People v Gilzeane**

2013 NY Slip Op 34064(U)

May 7, 2013

Supreme Court, Westchester County

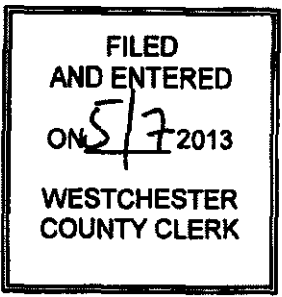
Docket Number: 12-1284

Judge: Barry E. Warhit

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER



-----X

THE PEOPLE OF THE STATE OF NEW YORK

-against-

**DECISION & ORDER**

KADIAN GILZEANE,

Indictment No.: 12-1284

Defendant.

-----X

WARHIT, J.

Defendant, KADIAN GILZEANA, having been indicted for, on or about August 3, 2012 having committed the crime of Murder in the second degree, has filed an omnibus motion consisting of a Notice of Motion. The People have filed An Affirmation in Opposition thereto. Upon consideration of all papers filed, as well as upon review of a stenographic transcript of the grand jury minutes and the Consent Discovery Order, the motion is disposed of as follows:

I. **MOTION TO INSPECT, DISMISS AND REDUCE**

Defendant's has been granted to the extent that this court conducted an in camera inspection of the stenographic transcription of the grand jury proceedings. Upon such review, the court finds no basis upon which to grant defendant's application to dismiss the indictment or reduce any offense charged therein. The evidence presented, if accepted as true, is legally sufficient to establish every element of each offense charged (see, CPL § 210.30[2]). The standard before the Grand Jury

is not proof beyond a reasonable doubt, but merely reasonable cause to believe the crime was committed. The evidence presented to the grand jury, accepted as true, is legally sufficient to meet this diminished burden of proof and to establish every element of the offense of murder in the second degree.

Additionally, the minutes reveal a quorum of the grand jurors was present during the presentation of evidence, that the Assistant District Attorney properly instructed the Grand Jury on the law and only permitted those grand jurors who heard all the evidence to vote the matter (see, People v. Calbud, 49 NY2d 389; and see, People v. Valles, 62 NY2d 36).

Based upon this court's in camera review, there does not appear any basis to, at this time, release the Grand Jury minutes or any portion thereof. This court does not require such release to make any legal determinations and the defendant has not set forth a compelling or particularized need for the production of the grand jury minutes

## II. DEMAND FOR DISCOVERY

This branch of the defendant's motion, for Discovery, Disclosure and Inspection is granted to the extent provided for by New York State Criminal Procedure Law (CPL) Article 240. As such, if the People have not already done so, they shall provide the items delineated in Article 240 and any additional items through the Consent Discovery Order they agreed to disclose.

The People have acknowledged their continuing duty to disclose exculpatory material at the earliest possible date (see, Brady v. Maryland, 373 US 83, 83 S. Ct. 1194, 10 LE2d 215 and Giglio v. United States, 405 US 150, 92 S.Ct. 763, 31 LE2d

104). If the People become aware of any material, which is arguably exculpatory which they are not willing to consent to disclose immediately, the People are directed to bring this material before the court promptly for in camera inspection and a judicial determination concerning whether disclosure is required.

In all other respects, the defendant's application for discovery and inspection is denied as it seeks material and information beyond the scope of discovery (see, People v. Colavito, 87 NY2d 423; Matter v. Brown v. Grosso, 285 AD2d 642, lv. denied, 97 NY2d 605, 737 NYS2d 52; Matter of Brown v. Appelman, 241 AD2d 279; Matter of Catterson v. Jones, 229 AD2d 435; Matter of Catterson v. Rohl, 202 AD2d 420, lv. denied, 83 NY2d 755).

### III. MOTION FOR EXCULPATORY MATERIAL

See, Point II, infra.

### IV. MOTION TO STRIKE STATEMENT NOTICES

The defendant has moved for suppression of the noticed statements as well as for a pre-trial Huntley hearing. The People timely served notice of the defendant's statements by annexing separate notices to the indictment. The first such notice alleges that at 1:00 p.m. on or about August 3, 2012, while at the Mount Vernon Hospital, the defendant made an oral statement to a member of the Mount Vernon Police Department that she had given birth in her bathroom that morning, wrapped the infant in plastic bags and placed the infant beneath the sink. The People provided notice that, also on August 3, 2012, approximately five minutes later while at the same

location, the defendant made a similar oral statement, which also included that she had cut the umbilical cord with scissors. Finally, the People further provided notice of a third, electronically recorded statement made at approximately 3:40 p.m. on or about August 3, 2012, during which she made similar statements.

This court finds these notices fully conform to the statutory requirements of CPL §710.30 in that they provide the defendant with ample facts upon which to seek a pre-trial hearing and prepare for same.

#### V. MOTION TO SUPPRESS STATEMENTS

Defendant has moved for suppression of the above indicated statements or, in the alternative, for a pre-trial Huntley hearing. The defendant's application is granted to the extent that the court shall hold a pre-trial hearing to determine whether or not any of the noticed statements is the product of impermissible custodial interrogation and whether any of the statements were elicited from the defendant in violation of her Constitutional rights (see, PL 60.45; and see, People v. Huntley, 15 NY2d 72).

#### VI. MOTION TO SUPPRESS TANGIBLE PROPERTY

The defendant seeks suppression of any physical evidence recovered from her person at the time of her arrest. To the extent any such property was recovered, it is hereby ordered that a Mapp hearing shall be held to determine whether such property, was recovered pursuant to a lawful search incident to arrest (see generally, Mapp v. Ohio, 367 US 643).

Defendant has also sought suppression of property recovered pursuant to execution of the search warrant. Defendant's application in this regard is denied in its entirety (see, Point XIV, supra). The defendant is mistaken in her claim that she is unaware of the property recovered pursuant to the search warrant. The People annexed a written inventory, in the form of a Search Warrant Return, concerning those items law enforcement recovered upon execution of a search warrant of the defendant's residence to the Consent Discovery Order.

VII. MOTION TO UNSEAL SEARCH WARRANT AFFIDAVIT

The Search Warrant Application in the within matter was not sealed upon issuance. Moreover, the People previously provided same to counsel as an exhibit annexed to the Consent Discovery Order.

VIII. MOTION FOR PRODUCTION OF INFORMANT

This motion is denied. The defendant herein has moved for disclosure of the identity of informants without stating a basis to believe any informant is or was involved in this case and, more importantly, what relevant testimony any such witness would be expected to give on the issue of the defendant's innocence or guilt (see, People v. Goggins, 34 NY2d 163 cert. denied 419 US 1012; People v. Pena, 37 NY2d 642).

IX. MOTION FOR DISCLOSURE OF DEALS AND AGREEMENTS

The People recognize their continuing duty to disclose the terms of any deal or agreement made between the People and any prosecution witness at the earliest

possible date. (see, Brady v. Maryland, 373 US 83; Giglio v. United States, 405 US 150; People v. Steadman, 82 NY2d 1; People v. Wooley, 200 AD2d 644, appeal denied 83 NY2d 878).

X. MOTION FOR SANDOVAL AND VENTIMIGLIA HEARINGS

Defendant has moved for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into the defendant's prior criminal convictions, prior uncharged criminal, vicious or immoral conduct. The People have consented to such hearing.

Accordingly, it is ordered that immediately prior to trial a hearing shall be conducted pursuant to People v. Sandoval (34 NY2d 371, 357 NYS2d 849). At said hearing, the People shall be required to notify the defendant of all specific instances of her criminal, prior uncharged criminal, vicious or immoral conduct of which they have knowledge and which they intend to use in an attempt to impeach the defendant's credibility if she elects to testify at trial (CPL § 240.43).

At the hearing, the defendant shall bear the burden of identifying any instances of her prior misconduct that he submits the People should not be permitted to use to impeach her credibility. The defendant shall be required to identify the basis of her belief that each event or incident may be unduly prejudicial to her ability to testify as a witness on her own behalf (see, People v. Matthews, 68 NY2d 118, 506 NYS2d 149; People v. Malphurs, 111 AD2d 266, 489 NYS2d 102, lv. denied 66 NY2d 616, 494 NYS2d 1039, 483 NE2d 243).

Defendant's application for a hearing, pursuant to People v. Ventimiglia, is

denied since the People have not indicated an intention to use evidence of any prior bad act or uncharged crimes of the defendant during its case in chief (52 NY2d 350; and see, People v. Molineaux, 168 NY2d 264, 61 NE 286). If the People move to introduce such evidence, the defendant shall have the opportunity to renew this aspect of his motion.

XI. MOTION TO STRIKE ALIBI DEMAND

This aspect of Defendant's motion is denied. Contrary to Defendant's assertions, it is well-settled that CPL § 250.00 is in accord with constitutional requirements (see, People v. Dawson, 185 AD2d 854, appeal denied 80 NY2d 974; and see, People v. Cruz, 176 AD2d 751, appeal denied 79 NY2d 855; see also, People v. Gill, 164 AD2d 867, appeal denied 76 NY2d 893; and see, People v. Peterson, 96 AD2d 871). Moreover, CPL § 250.00 provides equality in the required disclosure (see People v. Peterson, 90 AD2d 871; see generally, Wardius v. Oregon, 412 US 470).

XII. MOTION FOR A FURTHER BILL OF PARTICULARS

A Bill of Particulars was served by the People in connection with the Consent Discovery Order entered in this case. The previously served Bill of Particulars served to adequately advise the defendant as to the date, time and place of her alleged criminal conduct and the substance of such alleged conduct. This court finds that, in all respects, the previously served Bill of Particulars complies with CPL § 200.95 and

accordingly, denies the defendant's application to strike the Bill of Particulars as served or provide a supplement thereto.

**XIII. MOTION TO STRIKE ALLEGEDLY PREJUDICIAL LANGUAGE**

This branch of Defendant's motion is denied. The language concluding the indictment merely identifies the defendant's acts as public, rather than private wrongs and such language should not be stricken as prejudicial (People v. Winters, 194 AD2d 703, lv. denied 82 NY2d 761; see, People v. Gill, 164 AD2d 867, appeal denied, 76 NY2d 893; People v. Garcia, 170 Misc.2d 543) The defendant's remaining contentions are without merit and his application is accordingly denied.

**XIV. MOTION TO UNSEAL/EXAMINE/CONTROVERT SEARCH WARRANT AND FOR SUPPRESSION OF TANGIBLE PROPERTY RECOVERED**

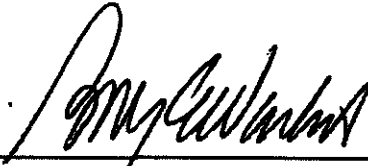
The defendant's application to unseal and examine the search warrant and any application submitted in support thereof is denied as moot (see, point VII, supra).

With respect to the defendant's application to suppress any property seized pursuant to the search warrant, said motion is denied (see, Point VI, infra. This court has reviewed the application/affidavit in support of the search warrant and finds it provided the signing magistrate (Blackwood, J. Mt. Vernon City Court) with probable cause to believe that evidence could be located at the location described in the warrant. Further, this court has reviewed the Order and Search Warrant Return and finds each to be proper in all respects. To the extent the

defendant so requests, the hearing court will conduct a hearing to determine whether the items described in the return are within the scope of the warrant and are intended to be offered as evidence at trial.

The foregoing constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York  
May 7, 2013



---

Honorable Barry E. Warhit  
Westchester County Court

HON. JANET DiFIORE  
District Attorney, Westchester County  
111 Dr. Martin Luther King, Jr. Boulevard  
White Plains, New York 10601  
BY: V. Rayshawn Woodley  
Assistant District Attorney

LAW OFFICES OF JOHN F. RYAN, ESQ.  
Legal Aid Society of Westchester County  
One North Broadway, 9<sup>th</sup> floor  
White Plains, New York 10603  
BY: David Rich, Esq.