

People v Angevine

2014 NY Slip Op 34038(U)

September 22, 2014

County Court, Broome County

Docket Number: 14-182

Judge: Joseph F. Cawley

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STATE OF NEW YORK
COUNTY COURT : : BROOME COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

Jeffrey J. Angevine and Christopher L. Knapp,

Defendants.

JOSEPH F. CAWLEY, J.

DECISION AND ORDER
Indictment No. 14-182 **FILED**

SEP 23 2014

SUPREME/COUNTY COURT
CLERKS OFFICE

The defendant, **Christopher L. Knapp**, moves pursuant to Section 210.30 of the Criminal Procedure Law for an examination of the stenographic minutes of the grand jury proceeding for the purpose of determining whether the evidence before the grand jury was legally sufficient to support the charge(s) contained in the indictment, and seeks dismissal or reduction of the indictment for the insufficiency of the evidence or for other defects in the grand jury proceedings. (Criminal Procedure Law §210.20).

The People have interposed no objection to the Court's examination of the grand jury minutes and have provided same for Court review. Upon examination thereof, the Court finds that release of the minutes to the defense is not necessary to assist the Court in making its determination on the motion. Accordingly, the defendant's request for release of the grand jury minutes is denied.

In reviewing the legal sufficiency of an indictment, the court must view the evidence in the light most favorable to the People and determine whether the evidence, if unexplained or uncontradicted, would be sufficient to support a guilty verdict after trial. The court's inquiry is limited to assessing whether the facts, if proven, and the logical inferences flowing therefrom, supply proof of each element of the charged crimes. The court is not to weigh the proof or examine its adequacy (People v. Galatro, 84 N.Y.2d 160 (1994)).

Upon examination, the evidence before the grand jury was legally sufficient to establish the commission by the defendant of the offenses charged or lesser included offenses thereof. The legal instructions given were sufficient, fair and accurate. The presentation was legal and proper.

The Court finds no defects in the grand jury proceedings warranting dismissal or reduction. The defendant's motion to dismiss or reduce is denied.

The defendant has requested Ventimiglia and Sandoval hearings. The People do not oppose said request. Ventimiglia and Sandoval hearings will be conducted prior to jury selection.

The defendant has requested that a hearing be conducted to determine the admissibility of statements made by defendant to law enforcement. The People do not oppose a suppression hearing on the matter. The defendant's motion is granted to the extent that a Dunaway/Huntley hearing will be scheduled by the Court.

Defendant seeks severance from that of his co-defendant. The Court notes that his co-defendant, Jeffrey Angevine, has already resolved the charges against him by plea. Defendant's application to sever from his co-defendant is therefore denied.

Defendant also seeks to sever Counts 1-3 from Count 4 of the instant indictment. The People oppose the relief requested. Count One (Burglary in the Third Degree) and Count Two (Grand Larceny in the Fourth Degree) are each alleged to have occurred on or about January 4th through January 5th, 2014. Each charge encompasses the same criminal transaction. Count Three, Criminal Possession of Stolen Property in the Fourth Degree, alleges possession of property stolen between January 4 and January 8, 2014 from the same victim as alleged in the firsts two counts. Count Four (Forgery in the Second Degree) alleges that defendant falsely identified himself and signed a Miranda Warnings report as someone other than *himself*.

Pursuant to CPL 200.20(2)(b) and (c) provide that two offenses are "joinable" when:

"(b) Even though based upon different criminal transactions, such offenses, or the criminal transactions underlying them, are of such nature that either proof of the first offense would be material and admissible as evidence in chief upon a trial of the second, or proof of the second would be material and admissible as evidence in chief upon a trial of the first; or

(c) Even though based upon different criminal transactions, and even though not joinable pursuant to paragraph (b), such offenses are defined by the same or similar statutory provisions and consequently are the same or similar in law".

To effect a severance, the applicant must either demonstrate that the counts were not joinable under the statutory criteria (CPL 200.20(2)), or seek a discretionary severance under CPL 200.20(3). The latter subdivision applies, however, only with respect to counts which are joinable under paragraph (c) of subdivision 2 of the section. A court only has authority to grant severance in a case where joinder of charges was made pursuant to paragraph (c) of subdivision two, *supra*, - i.e., that the offenses are defined by the same or similar statutory provisions.

Evidence of defendant's alleged criminal conduct in Counts One through Three would be material and admissible as part of the prosecution's case in Count Four of this indictment. Severance under these circumstances is not permitted. Defendant's application for severance is denied.

Defendant has also requested a Mapp hearing to determine the admissibility of evidence seized, alleging that defendant's arrest was without probable cause. The People oppose suppression and a hearing, arguing that insufficient allegations have been set forth to warrant the relief requested. Although the allegations of defendant are minimal, in light of this court's order for the conduct of a Dunaway/Huntley hearing, a Mapp hearing is also ordered and will be conducted prior to trial.

The Court notes that the defense has made various discovery demands, as well as a demand for a Bill of Particulars, to which demands the People have responded. If the responses served are deficient in the view of the defense, the defendant may make an appropriate timely motion to compel specific disclosures or to preclude or for other applicable relief.

This constitutes the Decision and Order of the Court.

It is so Ordered.

DATED: September 22, 2014
Binghamton, NY



Hon. Joseph F. Cawley
Broome County Court Judge

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