

**People v Spasoff**

2015 NY Slip Op 32892(U)

December 15, 2015

County Court, Westchester County

Docket Number: 15-0356

Judge: David F. Everett

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FILED ON  
12/17, 2015  
WESTCHESTER  
COUNTY CLERK

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

CARL SPASOFF,

**FILED**  
**DEC 18 2015**  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER  
Defendant.

Decision and Order  
Indictment No. 15-0356

-----X  
EVERETT, J.

Defendant Carl Spasoff stands accused, under Indictment No. 15-0356, of three counts of burglary in the third degree (Penal Law § 140.20), and three counts of criminal mischief in the third degree (Penal Law § 145.05 [2]). By notice of motion dated November 2, 2015, with accompanying affirmation and memorandum of law, defendant moves for omnibus relief. In response, the People have submitted an affirmation in opposition dated November 16, 2015, with an accompanying memorandum of law.

The People's allegations, as set forth in their bill of particulars, are as follows:

As to counts one and two, the People allege that, on March 11, 2015, at approximately 10:36 p.m., defendant broke into the Village Deli, located at 1023 West Boston Post Road, Mamaroneck, New York, and stole an unspecified sum of United States currency. It is also alleged that defendant caused more than \$250.00 worth of property damage at the deli, including damage caused to a cash register and to glass in the front of the deli.

As to counts three and four, the People allege that, on March 12, 2015, in the early morning hours, defendant broke into The Romantic Depot located at 6 Frontage Street, Elmsford, New York, and stole an unspecified sum of United States currency. It is also alleged that

defendant caused more than \$250.00 worth of property damage in the store, including damage caused to a cash register and to glass in the front of the store.

As to counts five and six, the People allege that, on the morning of March 12, 2015, defendant broke into Scarsdale Wines, located at 455 Central Avenue, Greenburgh, New York, and stole an unspecified sum of United States currency. It is also alleged that defendant caused more than \$250.00 worth of property damage at the store, including damage caused to glass in the front of the store.

Defendant was placed under arrest later that same day, March 12, 2015, at approximately 7:10 p.m., at Elm Avenue, Mount Vernon, New York. On March 13, 2015, defendant was arraigned in the Town of Greenburgh Justice Court on one count of burglary in the third degree and one count of criminal mischief in the third degree. On March 19, 2015, defendant was arraigned in the Mamaroneck Village Court on one count of burglary in the third degree and one count of criminal mischief in the third degree. On March 23, 2015, defendant was arraigned in the Elmsford Village Court on one count of burglary in the third degree and one count of criminal mischief in the third degree.

On September 2, 2015, the People presented evidence of defendant's crimes to a grand jury, which returned a true bill the same day. On September 10, 2015, the People filed an indictment, and on September 17, 2015, defendant was arraigned under Indictment No. 15-0356. On October 1, 2015, the People served consent discovery and a bill of particulars on defendant.

The omnibus motion is decided as follows:

A. MOTION FOR DISCOVERY AND INSPECTION

The defendant's motion for discovery and inspection is granted to the extent provided for

in CPL Article 240. If any items set forth in CPL Article 240 have not been provided to the defendant, pursuant to the consent discovery order and bill of particulars in the instant matter, said items are to be provided forthwith.

Furthermore, should the People, who have a continuing duty to disclose “evidence favorable to an accused” prior to trial (*see Brady v Maryland*, 373 US 83 [1963] and *Giglio v United States*, 405 US 150 [1972]), become aware of any material which is arguably favorable or exculpatory, but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its in camera inspection and determination as to whether such material will be disclosed to defendant. The People are also directed to make available to defendant any prior written or recorded statements of a witness who testifies for the prosecution, consistent with *People v Rosario* (9 NY2d 286 [1961]) and CPL Article 240. To any further extent, the application is denied as it seeks material and/or information beyond the scope of discovery (*see People v Colavito*, 87 NY2d 423 [1996]; *Matter of Brown v Grosso*, 285 AD2d 642 [2d Dept 2001], *lv denied* 97 NY2d 605 [2001]); *Matter of Brown v Appleman*, 241 AD2d 279 [2d Dept 1998]; *Matter of Catterson v Jones*, 229 AD2d 435 [2d Dept 1996]; *Matter of Catterson v Rohl*, 202 AD2d 420 [2d Dept 1994], *lv denied* 83 NY2d 755 [1994]).

B. MOTION TO INSPECT THE GRAND JURY MINUTES AND TO DISMISS AND/OR REDUCE THE INDICTMENT

Defendant moves pursuant to CPL 190.25 (6) and 210.30 (2), to dismiss the indictment, or counts thereof, on the grounds that the evidence before the grand jury was legally insufficient, was improperly presented, and that the grand jury proceeding was defective within the meaning

of the Criminal Procedure Law. On consent of the People, the Court has conducted an in camera review of the minutes of the proceedings before the grand jury.

Pursuant to CPL 190.65 (1), an indictment must be supported by legally sufficient evidence establishing that the defendant committed the offenses charged. Legally sufficient evidence is competent evidence which, if accepted as true, would establish each and every element of the offense charged and the defendant's commission thereof (*People v Jennings*, 69 NY2d 103, 115 [1986]; CPL 70.10 [1]). "In the context of a grand jury proceeding, legal sufficiency means prima facie proof of the crimes charged, not proof beyond a reasonable doubt" (*People v Bello*, 92 NY2d 523, 526 [1998]). In rendering a determination, "[t]he reviewing court's inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of each element of the charged crimes and whether the grand jury could rationally have drawn the inference of guilt" (*People v Ackies*, 79 AD3d 1050, 1056 [2d Dept 2010] [internal citations and quotation marks omitted]).

A review of the minutes reveals that the evidence presented, if accepted as true, would be legally sufficient to establish every element of the offenses charged (*see* CPL 210.30 [2]). Accordingly, defendant's motion to dismiss or reduce for lack of sufficient evidence is denied.

With respect to defendant's claim that the grand jury proceeding was defective within the meaning of CPL 210.35 and CPL 210.35 (5), a review of the minutes supports a finding that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the grand jury on the law, that the requisite number of grand jurors voted to indict and had heard all the "essential and critical evidence" (*see People v Collier*, 72 NY2d 298, 300 [1988]; *People v Julius*, 300 AD2d 167 [1<sup>st</sup> Dept 2002], *lv denied* 99 NY2d

655 [2003]), that the grand jury was properly instructed (*see People v Valles*, 62 NY2d 36 [1984]; *People v Calbud*, 49 NY2d 389 [1980]), and that the proceeding conformed to the requirements of CPL Article 190, in that the integrity of the grand jury proceeding was not impaired and no prejudice to the defendant resulted from the presentation. There is also no cause to dismiss the indictment based on any of the factors enumerated in CPL 210.40.

In making this determination, the Court does not find that release of the grand jury minutes or certain portions thereof to the parties is necessary to assist the Court. In the absence of a showing of a compelling and particularized need for disclosure of the minutes of the grand jury proceeding, defendant's motion for release thereof is denied (*see People v Robinson*, 98 NY2d 755 [2002]).

C. MOTION TO STRIKE IDENTIFICATION NOTICE

Defendant moves to preclude identification evidence with respect to the identification procedures occurring at the Office of the Westchester County District Attorney from a surveillance video on September 1, 2015, at 3:48 p.m., on September 2, 2015, at approximately 9:06 a.m., and on September 2, 2015, at approximately 11:26 a.m., on the ground that the CPL 710.30 notices provided by the People are insufficient in that they fails to indicate: (1) whether the identifications were made from a still taken from a video or the video itself; (2) who was present at the time the identifications were made; and (3) to whom the identifications were made, and should be stricken.

While the People fail to identify the witness or witnesses who made the identification, or to indicate whether the identification was made from a still taken from a video or the video itself, the notice does, at a bare minimum, inform defendant of the evidence intended to be offered,

including the time, place and manner in which the out of court identification was made (*see People v Lopez*, 84 NY2d 425, 428 [1994]; CPL 710.30 [1]). Accordingly, defendant's motion to strike the People's identification notices is denied.

D. MOTION TO SUPPRESS STATEMENT EVIDENCE

The People provided notice, pursuant to CPL 710.30, of their intent to offer nine statements into evidence at time of trial, that being:

- (1) an oral statement made by defendant on March 12, 2015, at 7:00 p.m., at 64 Elm Avenue, Mount Vernon, New York;
- (2) an oral statement made by defendant on March 12, 2015, at 7:10 p.m., during a car ride from 64 Elm Avenue, Mount Vernon, New York to the Greenburgh Police Department Headquarters;
- (3) an oral statement made by defendant reduced to writing on March 12, 2015, at 7:30 p.m., at the Greenburgh Police Department Headquarters to a member of the Greenburgh Police Department;
- (4) an electronically recorded police interview of defendant made on March 12, 2015, between 7:30 p.m. and 11:30 p.m., at the Greenburgh Police Department Headquarters;
- (5) an oral statement by defendant reduced to writing on March 12, 2015, at approximately 7:30 p.m., at the Greenburgh Police Department Headquarters to a member of the Greenburgh Police Department, and described by the People as the handwritten notes made by defendant during his interview with police;
- (6) an oral statement by defendant reduced to writing on a signed "Consent to Search" form on March 12, 2015, at approximately 7:30 p.m., at the Greenburgh Police Department Headquarters to a member of the Greenburgh Police Department;
- (7) an oral statement made by defendant on March 23, 2015, at approximately 9:30 a.m., at the Elmsford Village Court;
- (8) an oral statement made by defendant on April 8, 2015, at approximately 9:30 a.m., at the Elmsford Village Court; and

(9) an oral statement made by defendant on April 22, 2015, at approximately 9:30 a.m., at the Elmsford Village Court.

Defendant seeks suppression of the statements, or in the alternative, for a hearing to determine the admissibility of the extrajudicial statements made by defendant (*see People v Huntley*, 15 NY2d 71 [1965]).

The motion is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any of the statements allegedly made by defendant which have been noticed by the People, pursuant to CPL 710.30 (1), were involuntarily made within the meaning of CPL 60.45 (*see* CPL 710.20 [3]; CPL 710.60 [3] [b]; *People v Weaver*, 49 NY2d 1012 [1980]), and/or were obtained in violation of his Fourth and/or Sixth Amendment rights (*Dunaway v New York*, 442 US 200 [1979]).

E. MOTION TO SUPPRESS PHYSICAL EVIDENCE

Defendant moves for suppression of all physical evidence found on his person or in the residence at 64 Elm Street, Apartment 1B, Mount Vernon, New York, or in the vehicle (a black Honda Civic) used by him at or about the time of his alleged criminal activities on the grounds that the initial seizure of his person and the ensuing searches were illegal.

In support of his motion, defendant asserts that the police entered and searched 64 Elm Street, Apartment 1B, without probable cause to believe a criminal offense had occurred, and without a search warrant, exigent circumstances or consent. He further asserts that any purported consent was the product of threats to take away his pets and to seal the apartment, thereby preventing his girlfriend from returning home. With respect to the signed consent form, defendant contends that he did not consent to a search of the black Honda Civic vehicle,

explaining that he only agreed to sign the form on the assurance by police that it did not pertain to the vehicle. The supposed assurances notwithstanding, the police, without a warrant, then towed and inventoried the vehicle.

Defendant insists that the manner in which the police entered the apartment and obtained his consent to conduct a search of the apartment - - through the use of enticements, trickery and coercive tactics - - requires suppression of the seized evidence. In the alternative, defendant moves for a hearing to make the necessary determinations (*see Mapp v Ohio*, 367 US 643 [1961]; *Dunaway v New York*, *supra*).

The People dispute defendant's claims of coercion and assertions that his consents to search were not voluntary. The People also question whether defendant has standing to contest the search of the vehicle, as he is not the registered owner of the vehicle, and they raise issues pertaining to the automobile exception to the search warrant requirement and the seizure of evidence found in plain view.

Accordingly, defendant's motion is granted to the extent that a combined *Dunaway/Mapp* hearing shall be held prior to trial to determine whether any of the physical evidence was recovered as a consequence of unlawful police conduct, as claimed by defendant, in order to determine its admissibility at trial.

F. MOTION FOR SANDOVAL/VENTIMIGLIA HEARING

1. *Sandoval* - Upon the People's consent, the defendant's motion is granted solely to the extent that a hearing, pursuant to *People v Sandoval* (34 NY2d 371, 374, 376-377 [1974]), shall be held immediately prior to trial at which time:

- a. The People must notify the defendant of all specific instances of the defendant's prior

uncharged criminal, vicious or immoral conduct of which the People have knowledge and which the People intend to use at trial for purposes of impeaching the credibility of the defendant (*see* 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 (*see People v Malphurs*, 111 AD2d 266 [2d Dept 1985], *lv denied* 66 NY2d 616).

2. *Ventimiglia* - The People's papers appear to indicate that they have no evidence at the present time of any prior bad acts of the defendant which they intend to introduce at trial. Accordingly, the request for a hearing, pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]), is denied at the current time. In the event that the People subsequently determine that they will seek to introduce such evidence, they shall so notify the Court and defense counsel, and a *Ventimiglia* hearing shall be held 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 (*id.*). The People are urged to make an appropriate decision in this regard sufficiently in advance of trial to allow a *Ventimiglia* hearing to be consolidated and held with the other hearings herein.

G. MOTION TO STRIKE PREJUDICIAL AND/OR SCANDALOUS LANGUAGE

Defendant's motion for an order, pursuant to CPLR 3024 (b), striking from the indictment the words "and against the peace and dignity of the People of the State of New York," on the ground that such words are scandalous and prejudicial, is denied. As this "language concluding the indictment merely identifies the defendant's acts as public, rather than private, wrongs" (*People v Gill*, 164 AD2d 867, 867 [2d Dept 1990] *appeal denied* 76 NY2d 893

[1990]), it does not fall within the category of “scandalous or prejudicial matter unnecessarily inserted into a pleading” (CPLR 3024 [b]).

H. MOTION TO STRIKE ALIBI DEMAND AND BILL OF PARTICULARS OF ALIBI

This motion is denied. It is well settled that an alibi notice statute is valid so long as it provides for reciprocal disclosure (*see Williams v Florida*, 399 US 78 [1970]; *People v Copicotto*, 50 NY2d 222 [1980]). Contrary to the defendant’s contentions, New York’s notice statute, set forth in CPL 250.20, is in full compliance with constitutional requirements as it provides for reciprocal disclosure of alibi rebuttal evidence (*see People v Rodriguez*, 3 NY3d 462, 467 [2004]).

I. MOTION TO CONDUCT PRETRIAL HEARINGS PRIOR TO TRIAL

Defendant’s motion to schedule pre-trial hearings prior to trial is granted to the extent that such hearings will be scheduled at a time that is convenient to the Court, upon due consideration of all of its other cases and obligations.

Dated: White Plains, New York  
December 15, 2015

  
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