

People v Peabody

2015 NY Slip Op 32963(U)

February 3, 2015

County Court, Broome County

Docket Number: 14-334

Judge: Joseph F. Cawley

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
COUNTY COURT : : BROOME COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

DECISION AND ORDER

Indictment No. 14-334

Jeffrey M. Peabody

Defendant.

JOSEPH F. CAWLEY, J.

The defendant 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 of the grand jury minutes 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

FILED
FEB - 4 2015
SUPREME/COUNTY COURT
CLERKS OFFICE

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.

Defendant's Notice of Motion seeks an Order suppressing evidence of his refusal to take a chemical test. The Court will schedule a hearing prior to trial to determine whether defendant was given sufficient warning of the effect of his refusal to submit to a breath test, and whether he then persisted in his refusal to take the test. (VTL §1194(2)(f)).

Defendant has requested preclusion of the field sobriety tests, or a hearing to determine their admissibility. As pointed out by defense counsel, the National Highway Traffic Safety Administration has validated the Horizontal Gaze Nystagmus, Heel to Toe, and One leg stand, and further, has sponsored training throughout the country in the performance of standardized field sobriety tests. The results of these tests are based upon the indisputable facts that intoxication affects physical coordination and mental acuity. They are designed to enhance the ability of the officer who administers them to detect unstable responses. Although their evaluation is somewhat subjective, so too are any of the ordinary indicia of intoxication and therefore does not serve to preclude admissibility. The defendant's request to preclude evidence of field sobriety tests is denied.

Defendant has requested that the Court issue an Order precluding the police officer from stating at trial his conclusion that defendant failed the field sobriety tests. The People object, contending there is no basis for the relief sought.

Police departments utilize field sobriety tests to determine whether there is reasonable cause to believe that a person is driving while intoxicated, and such tests are a common part of the arrest procedure (Gerstenzang, *Handling the DWI Case in New York*, §6:1 (2007-2008)). An officer may properly state his opinion as to defendant's performance on the field sobriety tests administered, based

upon his observations, training and experience (*see*, People v. Asher, 16 Misc.3d 89 (App. Term, 9th & 10th Jud. Dists. 2007); *see also*, People v. McGarry, 21 Misc.3d 1104(A) (Nassau Co. Dist.Ct. 2008)).

It is the jury who ultimately determines whether the facts presented establish defendant's intoxication to their satisfaction. Defendant's motion to preclude the officer from stating his opinion as to defendant's performance on the field sobriety tests is denied.

Defendant has requested that the Court preclude the use of the term "field sobriety test" at trial, arguing that the phrase is misleading and unfairly prejudicial. The People oppose, arguing that the term "field sobriety test" accurately and fairly describes the procedures the officers are trained to use when investigating potential DWI related offenses. Defendant may submit authority in writing to the Court supporting his request within ten (10) days of the date of this Decision and Order, together with specific alternative terminology that he suggests should be utilized at trial to minimize the alleged prejudicial effect. The People may then submit their response thereto within seven (7) days of receipt. The Court reserves decision on this motion pending receipt of said submissions.

The defendant has requested suppression of statements allegedly made to law enforcement, and the prosecutor has consented to a *Huntley* hearing to determine their admissibility. The defendant's motion is granted to the extent that a *Dunaway/Huntley* hearing will be scheduled by the Court.

Defendant has sought a hearing pursuant to *Sandoval* and *Ventimiglia*. The People have indicated that they will seek to introduce on their direct case evidence of uncharged criminal conduct, a necessary element of Driving While Intoxicated. After commencement of the trial and prior to the close of the People's case, defendant will be arraigned on the "INFORMATION AS TO PRIOR CONVICTION" which is attached to the instant indictment. If at that time the defendant denies or stands mute as to his identity as the individual charged in the special Information, the People will be permitted to introduce evidence of said conviction on their direct case. If, however, the defendant


admits his identity as the individual previously convicted as charged in the special Information, no such evidence will be permitted (CPL 200.60). Should the People seek to use the prior conviction for other purposes on their direct case, a Ventimiglia hearing will be scheduled prior to jury selection.

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: February 3, 2015
Binghamton, NY



Hon. Joseph F. Cawley
Broome County Court Judge

Appearances: Gerald F. Mollen, Esq.,
Broome County District Attorney
By: Assistant District Attorney Brian Leeds
George Harvey Justice Building, 4th floor
Binghamton, NY 13901

Battisti & Garzo, P.C.
Paul Battisti, Esq.
89 Court Street, 3rd Floor
Binghamton NY 13901