

People v Vargas

2015 NY Slip Op 33021(U)

October 14, 2015

County Court, Westchester County

Docket Number: Indictment No. 15-0624-01

Judge: David F. Everett

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED ON
10/15 2015
WESTCHESTER
COUNTY CLERK

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

BRYANT VARGAS and **CHRISTIAN AGUIRRE**,

Omnibus Decision and Order
Indictment No. 15-0624-01

Defendants.

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EVERETT, J.

Defendant Bryant Vargas stands accused, under Indictment No. 15-0624, of one count of grand larceny in the second degree, while aiding, abetting and acting in concert with codefendant Christian Aguirre (Penal Law § 155.40 [1]); one count of criminal possession of stolen property in the second degree, while aiding, abetting and acting in concert with codefendant Christian Aguirre (Penal Law § 165.52); and one count of criminal mischief in the third degree, while aiding, abetting and acting in concert with codefendant Christian Aguirre (Penal Law § 145.05 [2]). By notice of motion dated September 8, 2015, with an accompanying affirmation, defendant moves for omnibus relief. In response, the People submit an affirmation in opposition dated September 28, 2015, with an accompanying memorandum of law.

The allegations, as set forth in the People's bill of particulars, are that on or about March 8, 2015, at approximately 5:22 p.m., in the vicinity of 23 Hatch Terrace, Dobbs Ferry, New York, defendants Vargas and Aguirre, while aiding, abetting and acting in concert with each other, stole property belonging to victim Marcelo Jimenez having a total value in excess of \$50,000. Among the items stolen from Marcelo Jimenez, accomplished by defendants' removal of such items without permission, are collectible coins worth approximately \$90,000.00; a computer briefcase;

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an Apple iPad 2, a scanner, a Gemoro Ultratester 2 Diamond Tester, and \$5,000 USC. It is also alleged that, on the same date, and at the same time and place, defendants Bryant Vargas and Christian Aguirre, while aiding, abetting and acting in concert with each other, with the intent to damage the property of victim Marcelo Jimenez, did so when they broke the rear passenger window of his minivan in order to steal items inside the vehicle. The damages caused by breaking the window exceed \$250.

According to the People, a witness reported the theft to the Dobbs Ferry Police Department. The witness reported observing a male removing bins from the victim's vehicle and placing them into a white Infiniti vehicle bearing a Connecticut license plate.

On May 14, 2015, the Honorable Susan Cacace issued a warrant authorizing a search of premises in College Point Queens, and a warrant authorizing the search and seizure of a 2008 Nissan Maxima, with vehicle identification number (VIN) 1N4BA41E66C823469. Members of the NYPD, assisted by members of the Dobbs Ferry and Harrison Police Departments, executed the warrants, and among the objects seized were several items which had been reported stolen in connection with the Dobbs Ferry larceny.

On or about May 14, 2015, a felony complaint was filed in Dobbs Ferry Village Court and a warrant was issued for defendant Vargas's arrest. On May 20, 2015, defendant Vargas was placed under arrest following a traffic stop in Norwalk, Connecticut, and on May 21, 2015, defendant Vargas waived extradition to New York and was produced in Dobbs Ferry Village Court for arraignment on the felony complaint.

The People presented evidence of defendants Bryant Vargas and Christian Aguirre's criminal conduct, and on or about June 16, 2015, a grand jury voted a true bill, charging each

with three counts of criminal conduct in violation of Penal Law §§ 155.40 (1), 165.52, and 145.05 (2). The People filed a sealed indictment, and on June 25, 2015, defendant Vargas was arraigned under indictment 15-0624-01.

The omnibus motion is decided as follows:

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

Defendant moves for an order dismissing the indictment, or counts thereof, on the grounds that the evidence before the grand jury was legally insufficient to establish the offense charged or any lesser included offense, that the evidence was improperly presented, and that the grand jury proceeding was defective, within the meaning of CPL 190.65, CPL 210.20 (1) (b) and (c), 210.25, 210.30, and 210.35. 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, the defendant’s motion to dismiss or reduce for lack of sufficient evidence is denied.

With respect to the defendant’s claim that the grand jury proceeding was defective within the meaning of CPL 210.20 and 210.35, 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 [1st 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.

In making this determination, the Court does not find that the release of the grand jury minutes or certain portions thereof to the parties was 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, the defendant’s motion for release thereof is denied (*see People v Robinson*, 98 NY2d 755 [2002]).

B. MOTION TO SUPPRESS IDENTIFICATION EVIDENCE

Defendant Vargas's motion is granted to the extent that a hearing shall be held prior to trial to determine whether or not any of the two identification procedures noticed by the People pursuant to CPL 710.30, were unduly suggestive or merely confirmatory (*see United States v Wade*, 388 US 218 [1967]; *People v Wharton*, 74 NY2d 921 [1989]). If, after consideration of the evidence presented during the hearing the Court finds that any of the procedures were not confirmatory, then the hearing will be expanded to determine the propriety of such identification. Specifically, the Court shall determine whether any of the identification procedures utilized were so improperly suggestive as to taint any in-court identification. In the event one or both of the noticed identification procedure is found to be unduly suggestive, the Court shall go on to consider whether the People have proved, by clear and convincing evidence, that an independent source exists for such witness's proposed in-court identification.

C. MOTION TO SUPPRESS PHYSICAL EVIDENCE

Defendant Vargas moves for suppression, or in the alternative, for a hearing, pursuant to *Dunaway v New York* (442 US 200 [1979]) and *Mapp v Ohio* (367 US 643 [1961]), to determine whether there was sufficient probable cause for his arrest and for the seizure of evidence.

Defendant challenges the predicate for the traffic stop and the purported probable cause that subjected him and his vehicle to a search and seizure. He argues that it was improper to execute the New York warrant in Connecticut, rendering it a warrantless search of his vehicle, and that the factual allegations supporting the warrant, namely that he participated in a burglary in the Town of Harrison, New York on January 7, 2014, are false because he was in Columbia on that date.

The People oppose the motion, but state that, if a hearing is ordered by the Court, it should be limited to the propriety of the recovery of physical evidence following his arrest in Connecticut (People's aff in opp at 17).

Defendant Vargas's motion to suppress physical evidence is granted only as to that limited issue, and is otherwise denied.

In this matter, a total of 10 search warrants were issued between March 16, 2015 and May 20, 2015, those being: (1) a warrant dated March 16, 2015, authorizing the use of GPS tracking devices on three separate automobiles; (2) four warrants dated April 14, 2015, authorizing the use of GPS tracking devices on four separate automobiles; (3) two warrants dated April 14, 2015, directing T-Mobile/Metro PCS disclose certain information and records pertaining to two different cellular telephone assigned numbers for the period of March 1, 2015 through April 8, 2015; (3) one warrant dated May 14, 2015, authorizing the search and seizure of a certain automobile; (4) one warrant dated May 14, 2015, authorizing the search of a particular apartment in Queens County, New York; and (5) one warrant dated May 20, 2015, directing T-Mobile/Metro PCS disclose certain information and records pertaining to two different cellular telephone assigned numbers for the period of March 1, 2015 through May 15, 2015.

It is well settled that there is a presumption of validity with respect to affidavits in support of a search warrant (*Franks v Delaware*, 438 US 154, 171[1978]), and that the use of warrants is the preferred method for conducting a search and seizure. Accordingly, defendant Vargas's motion is granted to the limited extent that a *Mapp* hearing shall be held prior to trial as to the propriety of the recovery of physical evidence following the defendant's arrest in Connecticut on May 20, 2015, and is in all other respects denied.

D. MOTION FOR A PREDICATE FELONY DETERMINATION

Defendant Vargas's motion for a predicate felony determination is denied without prejudice to renew should the People file a predicate felony statement indicating their intent to use a prior out-of-state conviction and factual information contained therein (CPL 440.20).

E. SANDOVAL/VENTIMIGLIA/MOLINEAUX HEARING

1. *Sandoval* - 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 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. The 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 are currently unaware of any specific 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 this 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 any *Ventimiglia* hearing to be consolidated and held with the other hearings herein.

3. *Molineaux*- the People's papers do not indicate whether they intend to introduce evidence at trial of defendant's participation in another similar crime. Accordingly, the request for a hearing, pursuant to *People v Molineaux* (168 NY 264 [1901]), is denied at this 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 *Molineaux* hearing shall be held immediately prior to trial to determine whether evidence of defendant Vargas's participation in another similar crime 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 *Molineaux* hearing to be consolidated and held with the other hearings herein.

F. MOTION FOR DISCLOSURE OF BRADY MATERIAL

Defendant Vargas's motion for disclosure of Brady material is granted as follows: (1) the People are directed to comply with their 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]); and (2) should the People 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.

G. MOTION TO CONDUCT PRETRIAL HEARINGS PRIOR TO TRIAL

Defendant Vargas's motion to schedule pretrial 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.

This constitutes the decision and order of the Court.

Dated: White Plains, New York
October 14, 2015



HON. DAVID F. EVERETT, J.C.C.

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