

People v Drayton

2015 NY Slip Op 33024(U)

November 25, 2015

County Court, Westchester County

Docket Number: Indictment No. 15-0863

Judge: David F. Everett

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WESTCHESTER
COUNTY CLERK

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

MONTE DRAYTON,

Decision and Order
Indictment No. 15-0863

TR
FILED
NOV 25 2015
Defendant
JUDITH C. BROWN
COUNTY CLERK
COUNTY OF WESTCHESTER

EVERETT, J.

Defendant Monte Drayton stands accused, under Indictment No. 15-0863, of two counts of criminal sale of a controlled substance in the third degree (Penal Law § 220.39 [1]), two counts of criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]), and two counts of criminal possession of a controlled substance in the seventh degree (Penal Law § 220.03). By notice of motion dated November 10, 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 18, 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, three and five, the People allege that, on April 29, 2015, in the lobby at 269 West First Street in Mount Vernon, New York, defendant sold one rock of crack cocaine to an undercover officer, identified as Westchester County Police Department shield No. 2047. Subsequent laboratory analysis confirmed the rock substance to contain cocaine.

As to counts two, four and six, the People allege that, on May 13, 2015, the same undercover officer, Westchester County Police Department shield No. 2047, called defendant and

arranged to meet in the lobby of 269 West First Street in Mount Vernon, New York for the purpose of purchasing \$40 worth of crack cocaine. They further allege that defendant sold two knotted plastic bags in exchange for \$40 US currency, and that subsequent laboratory analysis confirmed the presence of cocaine in one of the bags.

On August 13, 2015, the People presented evidence of defendant's crimes to a grand jury, which returned a true bill. On September 2, 2015, the People filed a sealed indictment and the Honorable Barbara G. Zambelli issued a warrant for defendant's arrest. According to the bill of particulars, defendant was arrested at the Westchester County Jail on September 4, 2015, at the "normal bus hr." On September 9, 2015, the indictment was unsealed and defendant was arraigned under Indictment No. 15-0863.

Defendant's omnibus motion is resolved as follows:

A. MOTION FOR DISCOVERY AND INSPECTION

On October 1, 2015, the People provided defendant with consent discovery, including copies of the arrest warrant, the forensic laboratory reports, the photograph used as grand jury exhibit no. 3, and a bill of particulars. A review of the bill of particulars reveals limited factual allegations which do not meet the requirements of CPL 200.95, as it lacks "items of factual information which are not recited in the indictment and which pertain to the offense[s] charged and including the substance of each defendant's conduct encompassed by the charge which the People intend to prove at trial on their direct case" (CPL 200.95 [1] [a]). By merely tracking language contained in Penal Law §§ 220.39 (1), 220.16 (1) and 220.03, adding only a date and location, the People have not fulfilled their obligation to provide adequate information regarding the particulars of the alleged criminal activities and arrest at issue (*People v Davis*, 41 NY2d 678,

679-680 [1977]). Accordingly, the People are directed to provide defendant with a bill of particulars that: (1) informs defendant as to the approximate time of each alleged possession and alleged sale of a controlled substance; (2) informs defendant, with respect to counts one, three and five of the indictment, as to the substance of his alleged criminal conduct, including, but not limited to what, if anything, defendant received in exchange for the “1 rock crack cocaine,” and if it was US currency, the amount of currency exchanged; (3) informs defendant, with respect to counts two, four and six, as to the substance of his alleged criminal conduct, including, but not limited to, the date of the alleged transaction and the name or shield number of the person to whom defendant allegedly sold two knotted plastic bags, be it the undercover officer who arranged to meet him in the lobby or some other individual, either affiliated or unaffiliated with the undercover officer; (4) informs defendant as to the approximate time of his arrest, in that the words contained in paragraph 21 of the bill of particulars - - “normal bus hr.” - - are without context, and are, by themselves, inadequate to convey an approximate time; and (5) in all respects, complies with CPL 200.95, within seven (7) days of receipt of this order.

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, defendant's motion for discovery and inspection 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 190.30, 190.65 (1), and CPL 210.20, 210.30 (3) and 210.35 (5), for an order dismissing 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 CPL 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, 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 [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 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 FOR SANDOVAL/VENTIMIGLIA 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 together with the other pretrial hearings.

D. 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]).

E. MOTION TO STRIKE SCANDALOUS MATTER

Defendant's motion to strike the words "against the peace and dignity of the People of the State of New York," which are contained in the indictment on the basis that such language is scandalous and/or prejudicial, is denied. These words merely identify defendant's acts as public, rather than private wrongs, and are therefore, not subject to being stricken on grounds of prejudice (*see People v Gill*, 164 AD2d 867, 876 [2d Dept 1990]).

F. MOTION FOR DISCLOSURE OF INFORMANTS

Defendant's motion for disclosure of informants is denied. It is well settled that the purpose of the privilege permitting the government to withhold from disclosure the identity of persons who furnish information concerning violations of the law to law enforcement officers, "is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law enforcement officers and, by preserving their anonymity, encourages them to perform that obligation" (*Roviaro v U.S.*, 353 US 53, 59 [1957]).

Consistent with, and citing to *Roviaro v United States* and to *Gilmore v United States*, (256 F2d 565 [5th Cir 1958]), New York's Court of Appeals also recognized that, in the course of certain criminal prosecutions, there may exist circumstances in which the disclosure of an

informant's identify may, upon a proper showing, be appropriate (*People v Goggins*, 34 NY2d 163 [1974], *cert denied* 419 US 1012 [1974]). In its analysis, the Court of Appeals stated, in relevant part:

“[b]are assertions or conclusory allegations by a defendant that a witness is needed to establish his innocence will not suffice. Instead he must show a basis in fact to establish that his demand does not have an improper motive and is not merely an angling in desperation for possible weaknesses in the prosecution's investigation.

On this point the nature of the informant's role is of some significance. Undoubtedly the strongest case for disclosure is made out when it appears that the informant was an eyewitness or a participant in the alleged crime. But disclosure of the informant's identity may also be appropriate when, by introducing the parties to each other or performing some other preliminary function he may be considered to have been an active participant in setting the stage”

(*id.* at 169-170 [internal quotation marks and citations omitted]).

Here, defendant has failed to make the requisite showing. His arguments lack any particularization as what relevant testimony any such (informant) witness would have on the issue of his innocence or guilt (*id.*; *People v Pena*, 37 NY2d 642 [1975]).

G. MOTION FOR DISCLOSURE OF DEALS AND AGREEMENTS

The motion is granted only to the extent that the People are directed to comply with their continuing duty to disclose the terms of any deal or agreement made between the People and any prosecution witness, including the alleged victim, at the earliest possible date, and is otherwise denied (*see Giglio v United States*, 405 US at 154; *People v Cwikla*, 46 NY2d 434, 441 [1979]

H. MOTION TO STRIKE IDENTIFICATION NOTICE OR IN THE ALTERNATIVE TO SUPPRESS IDENTIFICATION EVIDENCE

The People provided notice, pursuant to CPL 710.30, of three identification procedures

which they intend to use as evidence at trial. While the better practice would be for the People to enumerate and provide specific information relating to each separate identification procedure consistent with CPL 710.30 (1) and *People v White* (73 NY2d 468 [1989]), defendant's motion is granted only to the extent that a hearing shall be held prior to trial to determine whether any of the identification procedures 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 identifications were so improperly suggestive as to taint any in-court identification. In the event any of the identification procedures are 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. To any further extent, defendant's motion is denied.

I. MOTION TO PRECLUDE

Defendant's motion to preclude from evidence any evidence not properly and timely noticed pursuant to CPL 710.30 is denied without prejudice to renew should the People seek to introduce such evidence at time of trial.

J. 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 its other cases and obligations.

This constitutes the decision and order of the Court.

Dated: White Plains, New York
November 25, 2015



HON. DAVID F. EVERETT
COUNTY COURT JUDGE

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