

People v Keogh
2016 NY Slip Op 33033(U)
October 19, 2016
Supreme Court, Rockland County
Docket Number: 2016-281
Judge: David S. Zuckerman
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COUNTY COURT: STATE OF NEW YORK
COUNTY OF ROCKLAND

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ROCKLAND COUNTY
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THE PEOPLE OF THE STATE OF NEW YORK



FRANK KEOGH,

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DECISION & ORDER

Ind. No.: 2016-281

ZUCKERMAN, J.

CO-2016-001152

By Indictment No. 2016-281, Defendant is charged with Murder in the Second Degree (Penal Law § 120.25 [1]) and Criminal Possession of a Weapon in the Third Degree (Penal Law § 265.02[1]). It is alleged in the Indictment that, on July 16, 2016, in the County of Rockland, with the intent to cause the death of another person, Defendant caused the death of that other person by means of a dangerous instrument. By Notice of Motion dated September 9, 2016, with accompanying Affirmation in Support, Defendant moves for omnibus relief. The People have submitted an Affirmation in Opposition dated October 4, 2016.

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

Defendant moves pursuant to CPL §§210.20(1)(b) and (c) to dismiss the indictment, or counts thereof, on the grounds that the evidence before the Grand Jury was legally insufficient and that the Grand Jury proceeding was defective within the meaning of CPL §210.35. On consent of the People, the Court has reviewed the

minutes of the proceedings before the Grand Jury.

Pursuant to CPL §190.65(1), an indictment must be supported by legally sufficient evidence which establishes 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 (CPL §70.10[1]); *People v Jennings*, 69 NY2d 103 [1986]). "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 (1998); *People v Ackies*, 79 AD3d 1050 (2nd Dept 2010). 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." *Bello, supra*, quoting *People v Boampong*, 57 AD3d 794 (2nd Dept 2008-- internal quotations 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, 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 grand jurors who voted to indict heard all the "essential and critical evidence" (see *People v Collier*, 72 NY2d 298 [1988]; *People v Julius*, 300 AD2d 167 [1st Dept 2002], lv den 99 NY2d 655 [2003]), and that the Grand Jury was properly instructed (see *People v Calbud*, 49 NY2d 389 [1980] and *People v. Valles*, 62 NY2d 36 [1984]).

In making this determination, the Court does not find that release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court.

2. MOTION TO SUPPRESS STATEMENTS/FOR A HUNTLEY HEARING

Defendant moves, pursuant to CPL §710.20(3), to suppress any noticed statements which the People intend to introduce at trial. The People oppose the motion, asserting that there were no improprieties in the manner in which a statement was gathered from Defendant. The motion to suppress noticed statements is granted to the extent that a *Huntley* hearing is ordered to determine the voluntariness of the noticed statements.

3. MOTION TO SUPPRESS IDENTIFICATION PROCEDURE/FOR A WADE HEARING

Defendant moves, pursuant to CPL §710.20(3), to suppress any identification procedures which the People intend to introduce at trial. The People, in their Affirmation in Opposition, state that

there was no impropriety in the identification procedures. Therefore, Defendant's motion to suppress identification procedures is granted to the extent that a Wade hearing is ordered to determine whether there was any suggestiveness during the identification procedure(s).

4, 5. MOTION TO SUPPRESS TANGIBLE EVIDENCE/FOR A MAPP HEARING

As noted by the People, Defendant alleges evidence was seized without probable cause or his consent. Therefore, Defendant asserts, all evidence seized should be suppressed. The People, in their Affirmation in Opposition, state that there was no impropriety in obtaining the evidence seized from Defendant in the instant matter and that the search was conducted pursuant to several search warrants.

The results of a search conducted pursuant to a facially sufficient search warrant are not subject to a suppression hearing. *People v. Arnau*, 58 NY2d 27 (1982). The Court has reviewed the Affidavits in support of the search warrants and finds it provided the issuing magistrate with ample probable cause to support its issuance. Further, this court reviewed the search order and finds it to be proper in all respects. Therefore, the motion to suppress physical evidence is denied. The court notes that, according to the Voluntary Disclosure Form and People's Affirmations filed in this case, the People have consented to provide defense counsel with access to the search warrants and supporting affidavits.

6, 7. MOTION FOR DISCOVERY AND INSPECTION

Defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 240 and/or provided by the People. If any items set forth in CPL Article 240 have not been provided to Defendant pursuant to the consent discovery order in the instant matter, said items are to be provided forthwith. Further, the bill of particulars set forth in the voluntary disclosure form provided to Defendant has adequately informed her of the substance of her alleged conduct and in all respects complies with CPL §200.95.

The People acknowledge their continuing duty to disclose exculpatory material (see *Brady v Maryland*, 373 US 83 [1963] and *Giglio v United States*, 405 US 150 [1971]) at the earliest possible date. If the People are or become aware of any material which is arguably 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 will be disclosed to the defendant.

To any further extent, including regarding the production of Rosario material at this time, the application is denied as seeking material or information beyond the scope of discovery (see *People v Colavito*, 87 NY2d 423 [1996]; *Matter of Catterson v Jones*, 229 AD2d 435 [2nd Dept 1996]; *Matter of Catterson v Rohl*, 202 AD2d 420

[2nd Dept 1994]; *Matter of Brown v Appelman*, 241 AD2d 279 [2nd Dept 1998]).

8. MOTION FOR SANDOVAL/VENTIMIGLIA/MOLINEUX HEARING

1. *Sandoval* - Granted, solely to the extent that a *Sandoval* hearing 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

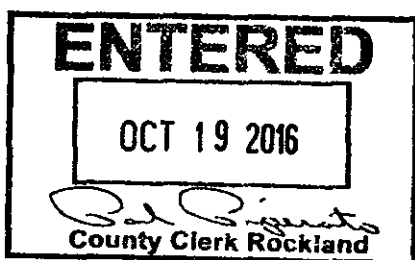
B. Defendant must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf (see, *People v. Malphurs*, 111 A.D.2d 266 [2nd Dept. 1985]).

2. *Ventimiglia/Molineux* - Upon the consent of the People, in the event that the People determine that they will seek to introduce evidence at trial of any prior bad acts of the Defendant, including acts sought in their case in chief such as the prior crime used to elevate Count 1 of the Indictment to a Felony, they shall so notify the Court and defense counsel and a *Ventimiglia/Molineux* hearing (see *People v Ventimiglia*, 52 NY2d 350 [1981]; *People v Molineux*, 168 NY 264 [1901]) shall be held immediately prior to trial to determine whether or not any evidence

of uncharged crimes may be used by the People, including to prove their case in chief. The People are urged to make an appropriate decision in this regard sufficiently in advance of trial to allow any *Ventimiglia/Molineux* hearing to be consolidated and held with the other hearings herein.

All other motions are denied.

Dated: New City, New York
October 11, 2016



HON. DAVID S. ZUCKERMAN, J.C.C.

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