

People v Elwell

2016 NY Slip Op 33044(U)

June 20, 2016

County Court, Rockland County

Docket Number: 2016-122

Judge: David S. Zuckerman

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF ROCKLAND

JUN 24 2016
ROCKLAND COUNTY
CLERK'S OFFICE

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER

JONATHAN ELWELL,

Ind. No.: 2016-122

Defendant.

-----X
ZUCKERMAN, J.

Defendant stands accused under Indictment No. 2016-122 of one count of Assault in the Second Degree (Penal Law §120.05[4]); two counts of Vehicular Assault in the Second Degree (Penal Law §120.03[1]); one count of Leaving the Scene of an Incident Without Reporting (Vehicle and Traffic Law §600[2][a][b]); and two counts of Driving While Intoxicated (Vehicle and Traffic Law §§1192[3]¹). As set forth in the Indictment, it is alleged that, on or about October 14, 2015, the Defendant, in Rockland County, New York, did operate a motor vehicle while he was in an intoxicated condition and with in excess of .08 of one percent of alcohol in his blood; recklessly caused serious physical injury to another with a dangerous instrument; caused serious physical injury to another while in an intoxicated condition and with an excess of .08 of one percent of alcohol in his blood; and left the scene of an incident wherein physical injury was caused another.

By Notice of Motion dated June 2, 2016, with accompanying

¹ This would appear to be a typographical error since the Grand Jury was charged with and apparently voted an true bill on two counts of Driving While Intoxicated under Vehicle and Traffic Law §§1192: one under subdivision two and another under subdivision three.



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Rockland County, NY
Paul Piperato County Clerk
CO-2016-000566

[* 2]

Affirmation, Defendant moves for omnibus relief. In response, the People have submitted an Affirmation in Opposition dated June 16, 2016.

The motion is disposed of as follows:

1, 2. **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]).

3, 4. MOTION TO PRECLUDE STATEMENTS/FOR A HUNTLEY HEARING

Defendant moves to preclude unnoticed statements, and to suppress noticed statements pursuant to CPL §710.20(3). The People, in their Affirmation in Opposition, state that there was no impropriety in obtaining the statements attributable to Defendant in the instant matter. Consequently, 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. The motion to preclude is denied

5. MOTION FOR A MAPP HEARING

As noted by the People, Defendant alleges that evidence was seized from him without probable cause and all evidence seized from him 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. Consequently, the motion to suppress physical evidence is granted to the extent that a *Mapp* hearing is ordered to determine the propriety of the search and seizure herein.

6, 8-9. 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, 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.

10. RESERVATION OF RIGHT TO FILE FUTURE MOTIONS

Denied. Any future motions must set forth reasons as to why

5

said motion was not brought in conformity with CPL §255.20.

**11. 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)² 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

² While Defendant's Notice of Motion fails to mention a Motion to Inspect and Dismiss, and thus fails to constitute a proper motion for such relief (CPLR §2214[a]), his Affirmation sets forth grounds for the relief such that the court, in an exercise of discretion, has inspected the minutes pursuant to CPL §210.20.

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.

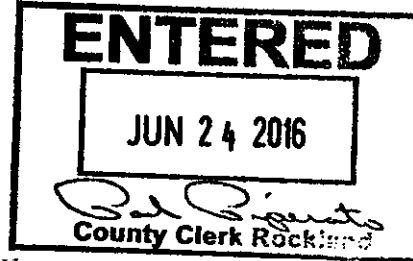
All other motions are denied with leave to renew upon proper proof.

The foregoing constitutes the Decision and Order of the Court.

[7]
Dated: New City, New York
June 20, 2016


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

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