

People v Berry

2016 NY Slip Op 33232(U)

April 18, 2016

County Court, Westchester County

Docket Number: Ind. No. 2015-0557

Judge: Rolf M. Thorsen

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COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED ON <u>4/19</u> , 2016 WESTCHESTER COUNTY CLERK

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

ROBERT BERRY,

APR 19 2016
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant.

DECISION & ORDER

Ind. No. 2015-0557

THORSEN, J.

By Indictment No. 2015-0557, a Westchester County Grand Jury charged defendant with one count each of Burglary in the Third Degree (P.L. §140.20) and Grand Larceny in the Second Degree (P.L. §155.40 [1]). Defendant has moved for various relief. The Court has considered the following papers on the motion:

1. Notice of Motion, Affirmation and Memorandum of Law; and
2. People's Affidavit in Opposition and Memorandum of Law.

The various branches of defendant's motion are decided as hereinafter set forth:

Motion to Inspect Grand Jury Minutes/Dismiss Indictment

Defendant moves to have this Court review the Grand Jury minutes to determine the legal sufficiency of the evidence and legal instructions and to determine whether the grand jury

proceeding was defective.¹ The People consent to an *in camera* review of the minutes. Defendant's motion, in that respect, is hereby granted.

The Court, having reviewed the Grand Jury minutes, *in camera*, hereby denies defendant's motion to dismiss the indictment. On a motion to dismiss an indictment under Criminal Procedure Law Section 210.20(1)(b), the evidence before the Grand Jury is examined for legal sufficiency. See, C.P.L. §190.65(a). Legally sufficient evidence is "competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant's commission thereof." C.P.L. §70.10(1); see, People v. Deegan, 69 N.Y.2d 976, 978-979 (1987). The sufficiency of the People's presentation is properly determined by inquiring whether the evidence, viewed in the light most favorable to the People, if unexplained and uncontradicted, would warrant a guilty verdict after trial. See, People v. Jennings, 69 N.Y.2d 103, 114 (1986); People v. Galatro, 84 N.Y.2d 160 (1994); People v. Smaragdas, 27 A.D.3d 769 (2d Dept.), app. den., 7 N.Y.3d 763 (2006). The reviewing court's inquiry is limited to determining whether the facts, if proven, and the logical inferences flowing therefrom, supply proof of each element of the crimes charged. People v. Deegan, 69 N.Y.2d at 979. That other innocent inferences could

¹ Although the relief sought in defendant's Notice of Motion was limited to inspection of the grand jury minutes on legal sufficiency grounds, the People nevertheless responded to all of the grounds defendant raised in his Memorandum of Law. Thus, the Court will address all grounds as well.

possibly be drawn from the facts is irrelevant on this pleading stage inquiry, as long as the Grand Jury could rationally have drawn the guilty inference. Id. See also, People v. Bello, 92 N.Y.2d 523, 525-526 (1998). Under that standard of review, all questions as to the quality or weight of the proof should be deferred. People v. Jennings, 69 N.Y.2d at 115; See also, People v. Galatro, 84 N.Y.2d at 164.

The Court fully examined the stenographic minutes of the Grand Jury proceeding and denies dismissal of the indictment or reduction of any of the counts therein. The Court concludes that the evidence was legally sufficient to establish the offenses charged. Moreover, the Grand Jury was adequately instructed on the law with respect to the crimes charged in those counts and the attendant legal concepts. See, People v. Calbud, Inc., 49 N.Y.2d 389 (1980); People v. Hillaire, 270 A.D.2d 359 (2d Dept. 2000).

Based on the foregoing, defendant's motion to receive a copy of the Grand Jury minutes is denied. "There is no authority in the Criminal Procedure Law for the court to direct the People to provide a copy of the Grand Jury minutes to the defendant at this stage of the proceedings once the court has found that legally sufficient evidence was adduced before the Grand Jury." Matter of Brown v. Rotker, 215 A.D.2d 378 (2d Dept. 1995).

Lastly, the Court finds that there were no other defects in the grand jury proceeding warranting dismissal of the indictment.

Motion to Suppress Statements

Defendant moves, pursuant to Criminal Procedure Law Section 710.30(1)(a), to suppress statements defendant made to a public servant on the ground that such statements were involuntarily made and on the ground that such statements were obtained in violation of defendant's Fourth, Fifth and Sixth Amendment rights. The People oppose the relief sought but recognize that a hearing should be held prior to trial with respect to the issue of voluntariness.

Defendant's motion is thus granted to the extent that a Huntley hearing will be held prior to trial.

With respect to defendant's motion to suppress on Fourth Amendment grounds, defendant's motion is summarily denied. Defendant has failed to set forth sworn allegations of fact to support his conclusory assertion that his statements were obtained in violation of his Fourth Amendment rights. See, C.P.L. §710.60(3)(b).

Motion to Suppress Identification Evidence

Defendant also moves to suppress testimony regarding three observations of defendant by a witness. The People contend that the identification procedures "were merely confirmatory." People's Affidavit at p. 15. Pursuant to C.P.L. §710.60(3)(b) and (4), defendant's motion is granted to the extent that a Wade hearing will be held prior to trial for the purpose of determining whether

the identification procedures were police-arranged, were confirmatory and/or were unduly suggestive.

With respect to defendant's motion to suppress identification evidence on Fourth Amendment grounds, defendant's motion is summarily denied. Defendant has failed to set forth sworn allegations of fact to support his conclusory assertion that the identification evidence was obtained in violation of his Fourth Amendment rights. See, C.P.L. §710.60(3)(b).

Motion for a Sandoval/Ventimiglia Hearing

Defendant moves for an Order directing that a hearing be held to determine the extent to which evidence regarding defendant's past immoral, criminal or vicious acts shall be used at trial. See, People v. Sandoval, 34 N.Y.2d 371 (1974). Defendant's motion is granted and a hearing will be held prior to trial to determine the admissibility of any prior criminal or bad acts which the People seek to use in the cross-examination of the defendant.² Pursuant to Criminal Procedure Law Section 240.43, the People shall notify defense counsel of all specific instances of defendant's prior uncharged criminal, vicious or immoral conduct of which the prosecutor has knowledge and which the prosecutor intends to use at trial for purposes of impeaching the credibility of defendant. The Court requests that the People provide defendant with such

² In their Affidavit in Opposition, the People consent to the issuance of an order granting a Sandoval hearing.

notification as expeditiously as possible so that pre-trial issues such as this one can be addressed by the trial court.

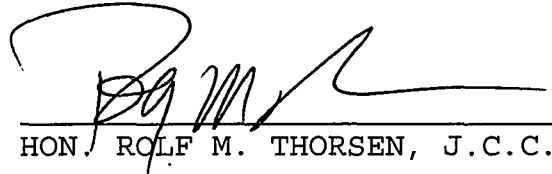
Defendant's motion for a Ventimiglia hearing is denied at this time. It is well-settled that the burden is on the People to obtain a ruling from the Court prior to offering evidence on their direct case of specific instances of defendant's prior uncharged conduct. See, People v. Ventimiglia, 52 N.Y.2d 350 (1981). Thus, should the People seek to introduce such evidence, the People are required to file with the Court and serve a copy on defendant, a written application setting forth the specific acts they seek to introduce, as well as the basis for which they seek to admit such evidence pursuant to People v. Molineux, 168 N.Y. 264 (1901), and its progeny.

Any other relief requested by defendant and not specifically addressed herein is denied.

The foregoing constitutes the Decision and Order of this Court.

E N T E R

Dated: April 18, 2016
White Plains, New York



HON. ROLF M. THORSEN, J.C.C.

TO: Russell B. Smith, Esq.
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