

**People v Hatton**

2017 NY Slip Op 33020(U)

February 27, 2017

County Court, Westchester County

Docket Number: 165-01098-02

Judge: Anne E. Minihan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

FILED  
AND ENTERED  
ON 2-28 2017  
WESTCHESTER

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER  
Indictment No. 16-01-098-02

JEFFREY STEPHENS and MYOSHIE HATTON,

Defendant.

-----X  
MINIHAN, J.

FEB 28 2017  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Defendant, MYOSHIE HATTON, having been indicted on or about November 3, 2016, with aiding, abetting and acting in concert with her co-defendant the crimes of Criminal Possession of a Controlled Substance in the Fifth Degree (Penal Law § 220.06 [5]); Criminal Possession of a Firearm (Penal Law § 265.01-B [1]); Criminally Using Drug Paraphernalia in the Second Degree (Penal Law § 220.50 [3]) and Unlawful Possession of Marihuana (Penal Law § 221.05 ). The defendant is charged individually with two counts of Criminal Possession of a Weapon in the Fourth Degree (Penal Law § 261.01).

The defendant has filed an omnibus motion consisting of a Notice of Motion and an Affirmation in Support thereof. In response thereto, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Upon consideration of these papers, the stenographic transcript of the grand jury minutes and the Consent Discovery Order entered in this case, this court disposes of this motion as follows:

A. & B.

MOTION to INSPECT, DISMISS and/or REDUCE  
CPL ARTICLE 190

The court grants the defendant's motion to the limited extent that the court has conducted, with the consent of the People, an *in camera* inspection of the stenographic transcription of the grand jury proceedings. Upon such review, the court finds no basis upon which to grant defendant's application to dismiss or reduce the indictment. Defendant's request to dismiss the indictment in the interests of justice is denied.

The indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's commission thereof with sufficient precision as to clearly apprise the defendant of the conduct which is the subject of the indictment (CPL 200.50). The indictment charges each and every element of the crimes, and alleges that the defendant committed the acts which constitute the crimes at a specified place during a specified time period and, therefore, is sufficient on its face (*People v Cohen*, 52 NY2d 584 [1981]; *People v Iannone*, 45 NY2d 589 [1978]).

The grand jury was properly instructed (*see People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]). The evidence presented, if accepted as true, is legally sufficient to establish every element of each offense charged (CPL 210.30[2]). “Courts assessing the sufficiency of the evidence before a grand jury must evaluate whether the evidence, viewed most favorably to the People, if unexplained and uncontradicted--and deferring all questions as to the weight or quality of the evidence--would warrant conviction” (*People v Mills*, 1 NY3d 269, 274-275 [2002]). Legally sufficient evidence means competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant’s commission thereof (CPL 70.10[1]; *see People v Flowers*, 138 AD3d 1138, 1139 [2d Dept 2016]). “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 Jessup*, 90 AD3d 782, 783 [2d Dept 2011]). “The reviewing court’s inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of every element of the charged crimes, and whether the Grand Jury could rationally have drawn the guilty inference. That other, innocent inferences could possibly be drawn from those facts is irrelevant to the sufficiency inquiry as long as the Grand Jury could rationally have drawn the guilty inference” (*People v Bello*, 92 NY2d 523, 526 [1998]).

Additionally, the minutes reveal a quorum of the grand jurors was present during the presentation of evidence, that the Assistant District Attorney properly instructed the grand jury on the law, and only permitted those grand jurors who heard all the evidence to vote the matter.

Based upon the *in camera* review, since this court does not find release of the grand jury minutes or any portion thereof necessary to assist it in making any determinations and as the defendant has not set forth a compelling or particularized need for the production of the grand jury minutes, defendant’s application for a copy of the grand jury minutes is denied (*People v Jang*, 17 AD3d 693 [2d Dept 2005]; CPL 190.25[4][a]).

As to defendant’s argument that the indictment should be dismissed since there is no evidence that she actually or constructively possessed the contraband seized from the apartment since she was not present when it was located nor was she named in the search warrant is denied. Defendant admits that she is a leaseholder of the apartment where the contraband was seized. To support a charge that defendant was in constructive possession of property, the People must show that the defendant exercised “dominion or control” over the property by a sufficient level of control over the area in which the contraband is found or over the person from whom the contraband is seized (*see Penal Law § 10.00[8]*; *People v Francis*, 79 NY2d 925 [1992]; *People v Tirado*, 47 AD2d 193 [1975]). Viewing the evidence in the light most favorable to the People, defendant’s admission that she is a leaseholder of the apartment where the search warrant was executed was sufficient to demonstrate that she occupied the apartment, and was in constructive possession of the drug paraphernalia and weapon recovered by the police (*see People v Robertson*, 48 NY2d 993 [1980]).

C. & G.

MOTION for DISCOVERY, DISCLOSURE and INSPECTION  
CPL ARTICLE 240

The parties have entered into a stipulation by way of a Consent Discovery Order consenting to the enumerated discovery in this case. Defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 240. If there any further items discoverable pursuant to Criminal Procedure Law Article 240 which have not been provided to defendant pursuant to the Consent Discovery Order, they are to be provided forthwith.

As to the defendant's demand for exculpatory material, the People have acknowledged their continuing duty to disclose exculpatory material at the earliest possible date upon its discovery (*see Brady v Maryland*, 373 US 83 [1963]; *Giglio v United States*, 405 US 150 [1972]). The People have also acknowledged their duty to comply with *People v Rosario*, (9 NY2d 286 [1961]). In the event that the People are or become aware of any material which is arguably exculpatory and they are not willing to consent to its disclosure to the defendant, they are directed to immediately disclose such material to the Court to permit an *in camera* inspection and determination as to whether such must be disclosed to the defendant.

Defendant's motion for a further Bill of Particulars is denied. The Bill of Particulars set forth the Consent Discovery Order provided to the defendant has adequately informed the defendant of the in substance of her alleged conduct and in all respects complies with CPL 200.95.

Except to the extent that the defendant's application has been specifically granted herein, it is otherwise denied as seeking material 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]; *Matter of Brown v Appelman*, 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]).

E.

MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

Defendant has moved for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into the defendant's prior criminal convictions, prior uncharged criminal, vicious or immoral conduct. The People have consented to a *Sandoval* hearing. Accordingly, it is ordered that immediately prior to trial a hearing shall be conducted pursuant to *People v Sandoval* (34 NY2d 371[1974]). At said hearing, the People shall be required to notify the defendant of all specific instances of his criminal, prior uncharged criminal, vicious or immoral conduct of which they have knowledge and which they intend to use in an attempt to impeach the defendant's credibility if he elects to testify at trial (CPL 240.43).

At the hearing, the defendant shall bear the burden of identifying any instances of his prior misconduct that he submits the People should not be permitted to use to impeach his credibility. The defendant shall be required to identify the basis of his belief that each event or incident may be unduly prejudicial to his ability to testify as a witness on his own behalf (see *People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

Defendant's application for a hearing, pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]) is denied since the People have not indicated an intention to use evidence of any prior bad act or uncharged crimes of the defendant during its case in chief (see *People v Molineaux*, 168 NY2d 264 [1991]). If the People move to introduce such evidence, the defendant may renew this aspect of his motion.

F.

#### MOTION to STRIKE ALIBI NOTICE

Defendant's motion to strike the alibi notice is denied. Contrary to the defendant's contentions, it is well-settled that CPL 250.00 is indeed in compliance with the constitutional requirements (see *People v Dawson*, 185 AD2d 854 [2d Dept 1992]; *People v Cruz*, 176 AD2d 751 [2d Dept 1991]; *People v Gill*, 164 AD2d 867 [2d Dept 1990]) and provides equality in the required disclosure (*People v Peterson*, 96 AD2d 871 [2d Dept 1983]; see generally *Wardius v Oregon*, 412 US 470 [1973]).

H.

#### MOTION to SUPPRESS NOTICED STATEMENTS

This branch of the defendant's motion seeking to suppress statements on the grounds that they were unconstitutionally obtained is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL 710.30 (1)(a), were involuntarily made by the defendant within the meaning of CPL 60.45 (see CPL 710.20(3); CPL 710.60[3][b]; *People v Weaver*, 49 NY2d 1012 [1980]), obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (see *Dunaway v New York*, 442 US 200 [1979]).

I. & J.

#### MOTION to SUPPRESS PHYSICAL EVIDENCE

Defendant's motion to suppress evidence on the ground of illegal arrest is not supported with sworn allegations of fact and her request for a hearing based on conclusory statements of illegal seizure and arrest are summarily denied (*People v France*, 12 NY3d 790 [2009]; *People v Jones*, 95 NY2d 721 [2001]; *People v Anderson*, 253 AD2d 636 [1st Dept 1998]; CPL 710.60[3][b]; see also *People v Scully*, 14 NY3d 861 [2010]).

Nor has defendant set forth any facts to suggest that she had a legitimate expectation of privacy related to the search of the car where she was merely an occupant. The defendant has failed to demonstrate that she owned, leased or borrowed the vehicle to confer standing to contest the search of the automobile (*People v Ramirez-Portoreal*, 88 NY2d 99 [1996]). Consequently, the defendant is without standing to move to suppress any items seized from it (*see People v Hawkins*, 262 AD2d 423 [2d Dept 1999]).

With respect to the property seized from the apartment pursuant to a search warrant, the motion to suppress is denied. The Court has reviewed the affidavit in support of the search warrant for the apartment and her co-defendant's person and finds that it did provide the signing magistrate with probable cause to believe that evidence could be located at the location described in the warrant. The People are directed to disclose the warrant and the supporting affidavit subject to redactions to defendant if not already done so but no later than Friday March 3, 2017 or to move for a protective order. The People may submit the proposed redacted version to be reviewed by this court *in camera* no later than 2 days prior to its release. Should the People move for a protective order, an *in camera* inquiry will be conducted prior to trial pursuant to *People v Seychel*, 136 Misc2d 310 [Sup. Ct. NY Co. 1987] as reaffirmed by the Court of Appeals in *People v Castillo*, 80 NY2d 578 [1992]).

Notwithstanding the above, this branch of the defendant's motion is granted solely to the extent of conducting a *Mapp* hearing prior to trial to determine the propriety of any search resulting in the seizure of property from defendant's person including the buccal swab (*see Mapp v Ohio*, 367 US 643[1961]). The hearing will also address whether any evidence was obtained in violation of the defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

K.

#### MOTION for a SEVERANCE

The defendant moves for a severance from her co-defendant given the statements allegedly made by her co-defendant which she claims will unduly prejudice her if they are tried jointly.

The defendant was properly joined in the same indictment (CPL 200.40[1]). All charges in the incident arise out of the same criminal transaction and are related in time and location with both sets of offenses relying on the same evidence. The court may, however, for good cause shown order that defendant be tried separately. Good cause includes a showing that defendant would be "unduly prejudiced by a joint trial" (CPL §200.40[1]). Further, where the proof against all defendants is supplied by the same evidence, "only the most cogent reasons warrant a severance" (*People v Bornholdt*, 33 NY2d 75, 87 [1973]; *People v Kevin Watts*, 159 AD2d 740 [2d Dept 1990]) and, "... a strong public policy favors joinder, because it expedites the judicial process, reduces court congestion, and avoids the necessity of recalling witnesses. . ." (*People v Mahboubian*, 74 NY2d 174, 183 [1989]).

Defendant's motion to sever on the ground that there would potentially be prejudice arising from a *Sandoval* ruling is denied as premature, with leave to renew after a *Sandoval* ruling, and upon a showing that a joint trial will result in unfair prejudice to her and substantially impair her defense. This court must determine whether the co-defendant's statement is admissible and if so, if it is possible to redact the co-

defendant's statement and whether the co-defendant will be testifying at trial. Accordingly, the defendant's motion for a severance is denied as premature, with leave to renew upon a determination of the admissibility of co-defendant's alleged statements, and upon a showing that a joint trial will result in unfair prejudice to her and substantially impair her defense. Notably, a limiting instruction at trial would properly direct the jury to separately consider the proof as to each crime charged, thereby eliminating any prejudice to the defendant (see *People v Veeny*, 215 AD2d 605 [2d Dept 1995]).

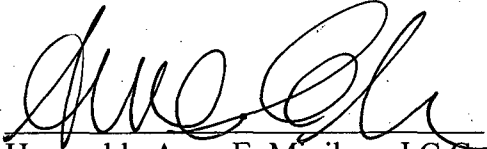
L.

MOTION for LEAVE to FILE FUTURE MOTIONS

This motion is denied. Should defendant intend to bring further motions for omnibus relief, he must do so by order to show cause setting forth reasons as to why his motion was not and could not have been brought in conformity with CPL 255.20.

The foregoing constitutes the opinion, decision and order of this court.

Dated: White Plains, New York  
February 27, 2017

  
Honorable Anne E. Minihan, J.C.C.

HON. ANTHONY A. SCARPINO, JR.  
District Attorney, Westchester County  
111 Dr. Martin Luther King, Jr. Boulevard  
White Plains, New York 10601  
BY: Susan L. Pollet  
Assistant District Attorney  
Maria I. Wager, Esq.  
Assistant District Attorney

JAYSON A. BRUSTMAN, ESQ.  
*Attorney for Defendant Hatton*  
399 Knollwood Road  
Suite 301  
White Plains, New York 10603