

**People v Johnson**

2017 NY Slip Op 33186(U)

June 20, 2017

County Court, Dutchess County

Docket Number: 142/2016

Judge: Peter M. Forman

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INDY 27-2017<sup>o</sup>

STATE OF NEW YORK: COUNTY OF DUTCHESS  
COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

KASHIF JOHNSON,

Defendant.

DECISION AND ORDER

Ind. No. 142/2016

William V. Grady,  
District Attorney  
by: Allison J. Stuart, Esq.

Jennifer Burton, Esq.  
Counsel for Defendant

HON. PETER M. FORMAN, County Court Judge

The following papers were read and considered in deciding this motion:

PAPERS NUMBERED

NOTICE OMNIBUS MOTION.....	1
AFFIRMATION IN SUPPORT.....	2
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ANSWERING AFFIRMATION.....	4

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Defendant stands accused by the Grand Jury of the County of Dutchess of four counts of Aggravated Family Offense, a Class E Felony, in violation of §240.75 of the Penal Law.

By Omnibus Motion, Defendant seeks various forms of relief of which this Court will address in order:

GRAND JURY MINUTES AND INDICTMENT

With respect to Defendant's motion for inspection of the Grand Jury minutes and dismissal or reduction of the indictment, the same is granted to the extent that the Court has

reviewed such minutes for the purpose of determining Defendant's motion to dismiss or reduce the charges to a lesser included offense upon the grounds that said inspection would allegedly show that the evidence upon which the indictment was based was legally incompetent, insufficiently corroborated or otherwise inadmissible. [CPL §190.65(1)]. In assessing the legal sufficiency of the evidence presented, it is noted that the applicable standard of review is proof of a *prima facie* case, not proof beyond a reasonable doubt. [*People v. Gordon*, 88 N.Y.2d 92 (1996)].

"In the context of a motion to dismiss an indictment, 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 conviction by a petit jury.'" [*People v. Galatro*, 84 N.Y.2d 160, 163 (1994), quoting *People v. Jennings*, 69 N.Y.2d 103, 114 (1986)]. "The People are required to make out a *prima facie* case that the accused committed the crime charged by presenting legally sufficient evidence establishing all of the elements of the crime." [*Id.* at 164]. "The inquiry of the reviewing court is limited to ascertaining the 'legal sufficiency' of the evidence, and does not include weighing the proof or examining its adequacy at the grand jury stage." [*People v. Jensen*, 86 N.Y.2d 248, 252 (1995)]. CPL §70.10 defines "legally sufficient evidence" as 'competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant's commission thereof.'

Having examined the minutes of the testimony before the Grand Jury of Dutchess County, this Court determines that, viewing this evidence in the light most favorable to the People, the indictment is based upon evidence which is legally sufficient to establish that Defendant committed the offenses as set forth therein and competent and admissible evidence before the Grand Jury provides reasonable cause to believe that Defendant committed those

offenses [CPL §190.65; *People v. Jensen*, 86 NY2d 248 (1995); *People v. Jennings*, 69 N.Y.2d 103 (1986); *People v. Swamp*, 84 N.Y.2d 725(1994); *People v. Haney*, 30 N.Y.2d 328 (1972)].

#### GRAND JURY PROCEEDINGS

“A grand jury proceeding is defective warranting dismissal of the indictment [pursuant to CPL 210.35(5)] only where the proceeding fails to conform with the requirements of CPL article 190 to such degree that the integrity thereof is impaired and prejudice to the defendant may result.” [*People v. Burch*, 108 A.D.3d 679, 680 (2d Dept. 2013). See also *People v. Moffitt*, 20 A.D.3d 687, 688 (3d Dept. 2005)]. “The exceptional remedy of dismissal under CPL 210.35(5) should be limited to those instances where prosecutorial wrongdoing, fraudulent conduct or errors potentially prejudice the ultimate decision reached by the Grand Jury.” [*People v. Miles*, 76 A.D.3d 645, 645 (2 Dept. 2010), quoting *People v. Huston*, 88 N.Y.2d 400, 409 (1996). See also *People v. Reed*, 71 A.D.3d 1167, 1168 (2d Dept. 2010); *People v. Ramirez*, 298 A.D.2d 413 (2d Dept. 2002)].

This Court finds nothing that would render this indictment defective. Accordingly, Defendant’s motion to dismiss the indictment on the grounds that the Grand Jury proceedings were defective is denied.

#### GRAND JURY INSTRUCTIONS AND MINUTES

This Court has also reviewed the instructions given by the Assistant District Attorney to the Grand Jury and finds that the same satisfy the applicable standards [*People v. Calbud, Inc.*, 49 NY2d 389(1980)]. Accordingly, Defendant’s motion to dismiss or reduce the indictment is denied.

[\* 4]

Defendant's motion to be provided with a copy of the Grand Jury minutes is denied in the exercise of discretion. Defendant's motion to be provided with a copy of the legal instructions given to the Grand Jury is also denied in the exercise of discretion.

#### DISCOVERY

Defendant's motion for discovery is granted solely to the extent that the District Attorney is directed to make available to Defendant's attorney any and all property and information required to be disclosed pursuant to CPL 240.20.

#### BRADY AND IMPEACHING MATERIAL

Defendant's motion to be provided with all Brady and impeaching material is granted to the extent that the People shall provide Defendant with any evidence in their possession or control which is favorable to him as provided in Brady v. Maryland, 373 US 83 (1963) and United States v. Bagley, 473 US 667 (1985). The People are reminded of their continuing obligation pursuant to Brady with respect to the delivery of any materials now in their possession and/or control or which may hereafter come into their possession and/or control or which may tend to exculpate Defendant or which is otherwise favorable to Defendant.

Defendant's motion for production of exculpatory information also includes a request for information regarding any cooperation agreements that any witnesses have entered into, or may enter into, with the District Attorney's Office. Any cooperation agreement relating to the testimony that a witness will provide at Defendant's trial is Brady material. [People v. Steadman, 82 N.Y.2d 1 (1993)]. Therefore, in the event that any such agreement exists or is entered into during the pendency of this matter, the People shall disclose the full terms of that

[\*5]

agreement to Defendant sufficiently in advance of the cooperating witness' testimony so as to provide Defendant with a meaningful opportunity to use the allegedly exculpatory material to cross-examine the cooperating witness. [*People v. Leavy*, 290 A.D.2d 516 (2d Dept. 2002)].

#### SANDOVAL

The Court grants Defendant's motion for a Sandoval hearing to the extent that a hearing is ordered which will be held immediately prior to trial to determine which, if any, bad acts or convictions may be used as impeachment in the event that the Defendant elects to testify at trial. See People v. Sandoval, 34 NY2d 371 (1974). The District Attorney has provided Defendant's attorney with a true copy of Defendant's Division of Criminal Justice Services Summary Case History. The Court orders the District Attorney to disclose to Defendant's attorney any and all acts upon which it intends to impeach Defendant, including without limitation all prior instances of Defendant's alleged prior uncharged criminal, vicious or immoral conduct that the People intend to use at trial for the purposes of impeaching Defendant's credibility. [CPL §240.43].

#### VENTIMIGLIA

Defendant has requested that the People supply Defendant with all specific instances of prior uncharged conduct which the People will seek to offer against Defendant at trial upon its direct case.

The People have not made any application to offer evidence of any specific instances of uncharged crimes which they intend to offer in their direct case pursuant to People v Ventimiglia, 52 N.Y.2d 350 (1981). If the People intend to make an application pursuant to People v Ventimiglia, they should do so prior to the Sandoval hearing ordered herein.

PRE-TRIAL HEARING TRANSCRIPTS

Defendant's request that any pre-trial hearings be conducted at least seven (7) days prior to trial to allow sufficient time for the production of hearing transcripts is denied. All pre-trial hearings will be scheduled at the convenience of the Court and the parties herein. Transcripts will be provided to the defense prior to the commencement of trial testimony.

LEAVE TO FILE ADDITIONAL MOTIONS

Defendant's request for leave to file additional motions is granted to the extent that Defendant may file any motion that Defendant deems fit within the forty-five (45) day time limit. Subsequent to the forty-five (45) day time limit, Defendant may make further motions only upon a showing of good cause.

So Ordered.

Dated: Poughkeepsie, NY  
June 20, 2017

  
\_\_\_\_\_  
PETER M. FORMAN  
COUNTY COURT JUDGE

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