

People v Lindsey

2017 NY Slip Op 33187(U)

August 28, 2017

County Court, Dutchess County

Docket Number: 68/2017

Judge: Peter M. Forman

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.

DUTCHESS COUNTY
CLERK'S OFFICE

STATE OF NEW YORK: COUNTY OF DUTCHESS
COUNTY COURT

2017 SEP 18 AM 11:35

THE PEOPLE OF THE STATE OF NEW YORK,

DECISION AND ORDER
Ind. No. 68/2017

Plaintiff,

William V. Grady,
District Attorney
By: David A. Kunca, Esq.

- against -

Kevin A. Prue, Esq.
Counsel for Defendant

FERNANDO LINDSEY,

Defendant.

HON. PETER M. FORMAN, County Court Judge

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

PAPERS NUMBERED

NOTICE OF OMNIBUS MOTION.....	1
AFFIRMATION IN SUPPORT.....	2
EXHIBITS.....	3-4
ANSWERING AFFIRMATION.....	5
REPLY.....	6

Defendant stands accused by the Grand Jury of the County of Dutchess of one count of Attempted Promoting Prison Contraband in the First Degree, a Class E Felony, in violation of §§ 110.00/205.25 of the Penal Law; one count of Attempted Criminal Sale of a Controlled Substance in the Fifth Degree, a Class E Felony, in violation of §§ 110.00/220.31 of the Penal Law; one count of Attempted Criminal Possession of a Controlled Substance in the Fifth Degree, a Class E Felony, in violation of §§ 110.00/220.06(1) of the Penal Law; one count of Tampering with Physical Evidence, a Class E Felony, in violation of § 215.40(2) of the Penal Law; and one

[* 2]

count of Conspiracy in the Fifth Degree, a Class A Misdemeanor, in violation of §105.05(1) of the Penal Law.

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

SUFFICIENCY OF THE 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 offense as set forth therein and competent and admissible evidence before the Grand Jury provides reasonable cause to believe that Defendant committed that offense [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 remaining counts of the indictment is denied.

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. This obligation includes any “evidence of a material nature favorable to the defense which, if disclosed, could effect the ultimate decision on a suppression motion.” [People v. Williams, 7 N.Y.3d 15, 19 (2006), quoting People v. Geaslen, 54 N.Y.2d 510 (1981)].

SUPPRESSION OF STATEMENTS

Defendant’s motion to suppress statements alleged to have been made by Defendant as contained in the CPL §710.30 notice served by the People is granted solely to the extent that a Huntley hearing will be held prior to trial. [CPL§710.60[4]; People v. Huntley, 15 NY2d 72 (1965)]. Defendant’s motion to suppress the alleged statements on the grounds that he was arrested unlawfully and without probable cause is denied. Defendant has failed to set forth factual allegations sufficient to warrant such a hearing. [CPL §710.60(4). People v. Mendoza, 82 NY2d 415 (1993); People v. Wright, 54 AD3d 695, 863 N.Y.S.2d 253 (2 Dept. 2008)].¹

¹ Defendant’s reply papers include an allegation that Defendant was under video surveillance at the Dutchess County Jail for the one week period following his alleged ingestion of a balloon containing controlled substances. Defendant’s reply papers also allege that no evidence of the balloon, the controlled substance, or any container holding the controlled substance was recovered from Defendant’s fecal matter during this period of time.

As a preliminary matter, Defendant has failed to demonstrate that these facts were not available at the time the original omnibus motion papers were filed. Therefore, they are not properly before this court on Defendant’s reply.

In any event, whether any evidence was ultimately recovered from Defendant’s fecal matter is irrelevant to the question of whether Defendant had been detained unlawfully when he made the statements attributed to him in the People’s CPL §710.30 notice. Therefore, Defendant’s motion to suppress these statements on the grounds that he was arrested unlawfully and without probable cause is denied.

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 to supply Defendant with notice of 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

Leave to file additional motions beyond the statutory 45-day time limit will only be granted upon an application that meets the requirements of CPL §255.20(3).

So Ordered.

Dated: Poughkeepsie, NY
August 28 2017



PETER M. FORMAN
COUNTY COURT JUDGE

TO: WILLIAM V. GRADY, ESQ.
Dutchess County District Attorney
David A. Kunca, Esq.
236 Main Street
Poughkeepsie, New York 12601

THOMAS ANGELL, ESQ.
Dutchess County Public Defender
Kevin A. Prue, Esq.
22 Market Street
Poughkeepsie, New York 12601