People v Sealey
2017 NY Slip Op 33282(U)
September 5, 2017
County Court, Dutchess County
Docket Number: 2017/0730
Judge: Peter M. Forman

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2017/0730

STATE OF NEW YORK: COUNTY OF DUTCHESS
COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

JAIME SEALEY and AMANDA PERROTTA,

Defendants.

DECISION AND ORDER

Sup. Indictment No. 51/2017

William V. Grady,
District Attorney
Angela Lopane, Esq.

Michael D. Litman, 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 OF OMNIBUS MOTION.....	1
AFFIRMATION IN SUPPORT.....	2
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Defendant stands accused by the Grand Jury of the County of Dutchess of one count of Criminal Possession of a Controlled Substance in the Third Degree, a Class B Felony, in violation of §220.16(1) of the Penal Law; one count of Criminal Possession of a Controlled Substance in the Third Degree, a Class B Felony, in violation of §220.16(12) of the Penal Law; one count of Criminal Possession of Marijuana in the Fourth Degree, a Class A Misdemeanor, in violation of §221.15 of the Penal Law; and one count of Bribing a Witness, a Class D Felony, in violation of §215.00 of the Penal Law.

By Omnibus Motion, Defendant seeks various forms of relief, which the Court addresses as follows.

LEGAL SUFFICIENCY OF THE INDICTMENT

With respect to Defendant's motion for inspection of the Grand Jury minutes and dismissal or reduction of the superseding 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 superseding 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)].

Defendant has also moved to dismiss the first count of the superseding indictment on the grounds that the evidence presented to the Grand Jury did not establish that he possessed cocaine with the intent to sell it. However, the evidence presented to the Grand Jury was legally sufficient to support an indictment for possession with the intent to sell. That evidence included the quantity of cocaine that was recovered, the manner in which it was packaged, and the presence of a digital scale and numerous small plastic bags consistent with the packaging and sale of narcotics. [***People v. Byrd***, 152 A.D.3d 984 (3d Dept. 2017); ***People v. Harvey***, 96 A.D.3d 1098, 1100 (2012); ***People v. Barton***, 13 A.D.3d 721, 723 (3d Dept. 2004)]. Therefore, Defendant's motion to dismiss the first count of the superseding indictment on these grounds is denied.

Defendant has also moved to dismiss the second count of the superseding indictment on the grounds that the evidence presented to the Grand Jury did not establish that Defendant knew that the cocaine that was recovered from his vehicle had an aggregate weight exceeding one-half ounce. Specifically, Defendant argues that "Weight is not a 'strict liability element' of a possession charge, there must be an element of mental culpability." [Litman, ¶10].

Under the law as it existed more than twenty years ago, the People were required to prove that Defendant knew the weight of a controlled substance [*see* ***People v. Ryan***, 82 N.Y.2d 497

(1993)]. However, the weight of a controlled substance has been a matter of strict liability since 1995 [*Donnino*, McKinney's Practice Commentaries, CPL §220 [("To the extent the weight of a controlled substance is an element of the crime, there is no present statutory requirement that the defendant know the weight. Knowledge of the nature of the substance possessed or sold is required; knowledge of the weight of that substance is a matter of strict liability. L 1995, c 75, effective June 10, 1995"). See also *Donnino*, McKinney's Practice Commentaries, CPL §15.20 ("Subdivision four of Penal Law §15.20 relates to crimes of criminal possession or sale of a drug premised on the weight of the drug. The statute provides that for such crimes the defendant is not required to know the weight of the drug, thereby making the weight an element of strict liability")].

Here, the evidence presented to the Grand Jury was legally sufficient to establish that Defendant knew that the substance that he possessed was cocaine. Since it is not necessary to prove that Defendant also knew the weight of that substance, the motion to dismiss the second count of the superseding indictment on these grounds is denied. [***People v. Ballard***, 51 A.D.3d 1034, 1035 (2d Dept. 2008) ("the People were not required to prove that [defendant] had knowledge of the weight of the cocaine he possessed... the term 'knowingly' applies only to the possession element of the crime, and not to the weight element). *See also* ***People v. Cintron***, 62 A.D.3d 1157 (3d Dept. 2009); ***People v. Estrella***, 303 A.D.2d 689 (2d Dept. 2003)].

Defendant next argues that the fourth count of the superseding indictment must be dismissed because the evidence presented to the Grand Jury was insufficient to establish that there was a completed bribery. Defendant also argues that there was insufficient evidence to establish that Defendant aided or abetted his co-defendant. Finally, Defendant argues that the fourth count should be dismissed because the People have failed to indicate whether Defendant

or his co-defendant "acted as the principle (sic) agent for the bribery." [Litman, ¶11].

"A person is guilty of bribing a witness when he confers, or offers or agrees to confer, any benefit upon a witness or any person about to be called as a witness in any action or proceeding upon an agreement or understanding that the testimony of such witness will thereby be influenced." [Penal Law §215.00]. "It is the defendant's state of mind that is controlling in determining whether there is an agreement or understanding." [***People v. Souvenir***, 209 A.D.2d 455, 456 (2d Dept. 1994)]. "The results of the agreement or understanding are immaterial. There is no requirement that the benefit actually be conferred." [***id***. at 456 (citations omitted). *See also* ***People v. Harper***, 75 N.Y.2d 313, 317 (1990) ("There is no requirement that the benefit actually be conferred [or] that the testimony actually be influenced.") ***People v. Canale***, 240 A.D.2d 839, 840 (3d Dept. 1997) ("It is the defendant's state of mind that is controlling, and the results of the agreement or understanding are immaterial")].

The fourth count of the indictment "was established by evidence supporting an inference that defendant had 'at least a unilateral perception or belief' that he was making an offer that would result in the victim being influenced not to testify." [***People v. Nevaro***, 139 A.D.3d 525, 526 (1st Dept. 2016), *quoting* ***People v. Bac Tran***, 80 N.Y.2d 170, 178 (1992). *See also* ***People v. Harris***, 117 A.D.3d 847, 853 (2014), *aff'd* 26 N.Y.3d 1 (2015)]. The evidence was also legally sufficient to establish that Defendant and his co-defendant committed this crime while acting-in-concert. Finally, "the People are not required to specify in an indictment whether a defendant is being charged as a principal or as an accomplice. For charging purposes, the distinction between principal and accomplice is academic." [***People v. Guidice***, 83 N.Y.2d 630, 637 (1994). *See also* ***People v. Rivera***, 84 N.Y.2d 766, 769, (1995); ***People v. Dantzler***, 91 A.D.3d 883, 884 (2d Dept. 2012)]. Therefore, Defendant's motion to dismiss the fourth count is denied.

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 remaining counts of 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 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.

Defendant's discovery motion also seeks disclosure of substantial amounts of material that are beyond the scope of CPL §240.20, including without limitation witness and evidence lists. Defendant also requests disclosure of all ***Rosario*** material in the possession of the People, including documents, notes, reports, and statements of witnesses, police officers or informants. The People are under no obligation to disclose these materials at this stage of the proceedings. Therefore, Defendant's motion seeking production of this material is denied, subject to the People's compliance with their obligations under CPL §240.43 and §240.45, and with their continuing obligations under ***Brady v. Maryland*** and its progeny.

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)].

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 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)].

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. [***People v. Huntley***, 15 NY2d 72 (1965)]. Defendant's motion papers also adequately plead a legal basis for suppression as required by CPL §710.60(1). [***People v. Frank***, 65 A.D.3d 461 (1st Dept. 2009); ***People v. Moore***, 186 A.D.2d 591 (2d Dept. 1992); ***People v. Huggins***, 162 A.D.2d 129 (1st Dept. 1990)]. Those allegations do not permit summary determination of the motion as authorized by CPL §710.60(2) or CPL §710.60(3). Accordingly, Defendant's motion to suppress those statements as the product of an unlawful search and seizure is granted to the extent that a hearing on the motion will take place prior to trial. [***Dunaway v. New York***, 422 U.S. 200 (1979); ***People v. Burton***, 6 N.Y.3d 584 (2006)].

SUPPRESSION OF EVIDENCE

Defendant seeks suppression of all physical evidence obtained as a result of any search and seizure that has been conducted by law enforcement authorities or their agents. Defendant's motion papers adequately plead a legal basis for suppression as required by CPL §710.60(1). [***People v. Frank***, 65 A.D.3d 461 (1st Dept. 2009); ***People v. Moore***, 186 A.D.2d 591 (2d Dept. 1992); ***People v. Huggins***, 162 A.D.2d 129 (1st Dept. 1990)]. Those allegations do not permit summary determination of the motion as authorized by CPL §710.60(2) or CPL §710.60(3). Accordingly, Defendant's motion to suppress physical evidence as the product of an unlawful search and seizure is granted to the extent that a hearing on the motion will take place prior to trial. [***Dunaway v. New York***, 422 U.S. 200 (1979); ***People v. Burton***, 6 N.Y.3d 584 (2006)].

SEVERANCE

Defendant has moved to sever the fourth count of the superseding indictment from the others counts of the superseding indictment for purposes of trial. Defendant seeks this relief on the grounds that proof of the offense charged in the fourth count would not be admissible as evidence at the trial of the offenses charged in the other counts. Defendant also seeks this relief on the grounds that the jury would not be able to separately consider the proof as to each crime charged. Finally, Defendant seeks this relief on the grounds that "he may need to testify in his own defense in relation to the bring a witness charge, however, the addition of the other counts of the indictment create a need to refrain from testifying in relation to the possession counts." [Litman, ¶26].

Pursuant to CPL §200.20(2)(b), two offenses may be joined in the same indictment when, even though they are based upon different criminal transactions, they are of a nature that proof of

one would be material and admissible at the trial of another. Here, evidence of the offenses charged in the first three counts of the superseding indictment is clearly material and admissible at the trial of the fourth count. Therefore, because these offenses were properly joined in one indictment pursuant to CPL §200.20(2)(b) from the outset, the Court lacks the statutory authority to sever them. [***People v. Kirksey***, 107 AD3d 825, 825 (2d Dept. 2013); ***People v. Salton***, 74 AD3d 997, 998 (2d Dept. 2010); ***People v. Dayton***, 66 AD3d 797, 797 (2d Dept. 2009); ***People v. Salnave***, 41 AD3d 872, 873 (2d Dept. 2007)].

Defendant's motion to sever is also denied because there has been no showing that there is substantially more proof of one crime than the other, or that there is a substantial likelihood that the jury will be unable to consider the proof of each crime separately. [***People v. Covington***, 130 AD3d 409 (1st Dept. 2015); ***People v. Cox***, 129 AD3d 1210, 1214 (3d Dept. 2015); ***People v. Barnett***, 125 AD3d 878, 879 (2d Dept. 2015)]. Finally, Defendant's motion to sever the fourth count on the grounds that he may need to testify is denied because he has failed to make "a convincing showing that he had both important testimony to give concerning some counts and a genuine need to refrain from testifying on the others." [***People v. Reyes***, 60 A.D.3d 873, 874 (2d Dept. 2009). *See also* ***People v. Squires***, 171 A.D.2d 893, 894 (2d Dept. 1991) ("Given the vague, speculative, conclusory, and unsupported character of his claims that he had important testimony to give as to one crime, but needed to remain silent on the others, the trial court properly denied his motion"); ***People v. Jenkins***, 146 A.D.2d 804, 805 (2d Dept. 1989) (trial court properly denied defendant's motion to sever bribery and witness tampering charges from rape charges, where "defendant's conclusory assertions in support of his motion to sever were insufficient to satisfy the statutory requirement that he make a 'convincing showing' that he has a 'genuine need to refrain from testifying' with respect to one of the indictments")].

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.

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
September 5, 2017

Peter M. Forman
PETER M. FORMAN
COUNTY COURT JUDGE

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

Michael D. Litman, Esq.
Attorney for Defendant Jaime Sealey
75 South Broadway
Suite 403
White Plains, NY 10601