

People v Sealey

2017 NY Slip Op 33283(U)

September 5, 2017

County Court, Dutchess County

Docket Number: 51/2017

Judge: Peter M. Forman

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STATE OF NEW YORK: COUNTY OF DUTCHESS
COUNTY COURT

2017 SEP 18 AM 11: 52

THE PEOPLE OF THE STATE OF NEW YORK,

DECISION AND ORDER

Plaintiff,

Sup. Indictment No. 51/2017

- against -

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

JAIME SEALEY and AMANDA PERROTTA,

Michelle Kagan, Esq.
Counsel for Defendant

Defendants.

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
EXHIBIT.....	3
NOTICE OF CROSS-MOTION.....	4
ANSWERING AFFIRMATION	5 ¹

Defendant Amanda Perrotta and her co-defendant, Jaime Sealey, stand accused by the Grand Jury of the County of Dutchess of one count of Bribing a Witness, a Class D Felony, in violation of §215.00 of the Penal Law. That charge appears in the fourth count of the superseding indictment.

Sealey also stands accused 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

¹ By memo dated August 22, 2017, defense counsel requested oral argument as to the motion to dismiss the fourth count of the superseding indictment. The Court denied that request.

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Criminal Possession of a Controlled Substance in the Third Degree, a Class B Felony, in violation of §220.16(12) of the Penal Law; and one count of Criminal Possession of Marijuana in the Fourth Degree, a Class A Misdemeanor, in violation of §221.15 of the Penal Law. Those charges appear in counts one, two and three of the superseding indictment. Defendant has not been charged with any of those crimes.

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 also moves to dismiss the fourth count of the superseding indictment on the grounds that the evidence presented to the Grand Jury was legally insufficient to establish that defendants actually conferred a benefit on the witness. Defendant also argues that there was insufficient evidence to establish that defendants and the witness actually reached an agreement and understanding that the witness would sign a false inculpatory affidavit in exchange for a specific sum of money.

“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

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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 she was making an offer that would result in the witness signing a false inculpatory affidavit. [*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)]. 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.

The People's motion for reciprocal discovery is granted to the extent that Defendant is directed to make available to the People any and all property and information required to be disclosed pursuant to CPL 240.30.

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)].

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SUPPRESSION OF STATEMENTS

Defendant's motion to suppress the statements identified in the CPL §710.30 notice served by the People is granted to the extent that a Huntley hearing will be held prior to trial. [CPL§710.60[4]; People v. Huntley, 15 N.Y.2d 72 (1965)]. Defendant's motion to suppress the alleged statements on the grounds that she 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 N.Y.2d 415 (1993); People v. Wright, 54 A.D.3d 695, 863 N.Y.S.2d 253 (2 Dept. 2008)].

SEVERANCE

Pursuant to CPL §200.40(1), two defendants may only be joined in one indictment under certain limited circumstances. Specifically, two defendants may only be jointly charged in a single indictment where: (a) both defendants are jointly charged in every count of the indictment; (b) all counts are based upon a common scheme or plan; (c) all counts are based upon the same criminal transaction as that term is defined in CPL §40.10(2); or (d) the indictment includes a count charging both defendants with enterprise corruption, all remaining counts in the indictment constitute acts in furtherance of that enterprise corruption, and both defendants could have been joined in each count of the indictment under the standards provided in (a)-(c) above.

The evidence presented to the Grand Jury fails to satisfy any of these criteria. It is self-evident that the defendants have not been jointly charged in every count of the superseding indictment. It is also clear that all of the offenses charged in the superseding indictment are not based upon the same criminal transaction as that term is defined in New York's double jeopardy

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statute. Finally, the indictment does not include an enterprise corruption count, and the evidence presented to the Grand Jury failed to establish that the bribery and drug possession counts of the indictment were conducted as part of a common scheme or plan.

Accordingly, Defendant's motion to sever her trial from that of her co-defendant, Jaime Sealey, is granted [CPL §200.40].

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
COUNTY COURT JUDGE

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