

People v Paulin

2017 NY Slip Op 33289(U)

June 22, 2017

County Court, Dutchess County

Docket Number: 858/2017

Judge: Peter M. Forman

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STATE OF NEW YORK: COUNTY OF DUTCHESS
COUNTY COURT

858-2017

THE PEOPLE OF THE STATE OF NEW YORK,

DECISION AND ORDER

Ind. No. 58/2017

Plaintiff,

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

- against -

Eric S. Shiller, Esq.
Counsel for Defendant

RAKIM PAULIN a/k/a "RAK",

Defendant.

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DUTCHESS COUNTY
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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
ANSWERING AFFIRMATION.....	3

Defendant stands accused by the Grand Jury of the County of Dutchess of two counts of Criminal Sale of a Controlled Substance in the Third Degree, a Class B Felony, in violation of §220.39(1) of the Penal Law, and two counts 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.

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

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 reviewed the instructions that the People gave 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.

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.

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)].

PRECLUSION OF STATEMENTS

Defendant also moves for an Order of Preclusion as its relates to any statements by Defendant that the People may attempt to introduce at trial, on the grounds that no timely notice of those statements has been provided as required by CPL §710.30. That statute compels the People to provide Defendant with notice of prior statements made by Defendant when: (1) the People intend to offer those statements at trial; and (2) those statements were made to a public servant; and (3) if made involuntarily, those statements would be suppressible upon motion pursuant to CPL §710.20(3). Pursuant to CPL §710.30(2), this notice must be served within fifteen (15) days of arraignment. If the People fail to serve timely notice of a qualifying statement, the Court is ordinarily required to preclude the statement at trial, regardless of whether

[* 5]

the Defendant has been prejudiced by the late notice. [*People v. Lopez*, 84 N.Y.2d 425, 428 (1994)]. However, the Court may permit the People to serve late notice of a qualifying statement for good cause shown, after providing Defendant with a reasonable opportunity to make a suppression motion. [CPL §710.30(2)].

“The purpose of CPL §710.30 is to provide defendant with an opportunity to challenge the admissibility of inculpatory statements made to law enforcement personnel which the People intend to offer at trial.” [*People v. Martinez*, 9 A.D.3d 679, 680 (3d Dept. 2004)]. See also *People v. Lazzaro*, 62 A.D.3d 1035, 1035-36 (3d Dept. 2009)]. However, when a defendant alleges that a CPL §710.30 statement notice was insufficient, no preclusion is necessary if the defendant also moves to suppress that statement. [*Id.* at 680. See also *People v. O’Doherty*, 70 N.Y.2d 479, 483 (1987); *People v. Barton*, 301 A.D.2d 747, 748 (3d Dept. 2003)].

Defendant has waived any claimed deficiency in the CPL §710.30 notice relating to the statements that are the subject of the *Huntley* hearing ordered herein. To the extent that the People seek to offer at trial any statements that Defendant made to law enforcement authorities which are outside the scope of the *Huntley* hearing, Defendant’s motion for preclusion is granted as to only those statements, subject to the limited “good cause shown” exception set forth in CPL §710.30(2). This Order does not preclude the People from using Defendant’s statements solely for purposes of impeachment or rebuttal. [*People v. Rigo*, 273 A.D.2d 258 (2d Dept. 2000)].

SUPPRESSION OF EVIDENCE

Defendant seeks suppression of all evidence that the police obtained on the grounds that this evidence was obtained as a result of an unlawful search and seizure.

It is well settled that suppression hearings “are not automatic or generally available for the asking by boilerplate allegations.” [*People v. Mendoza*, 82 N.Y.2d 415, 422 (1993). See also *People v. Wright*, 54 A.D.3d 695 (2 Dept. 2008); *People v. Dash*, 50 A.D.3d 914, 915 (2d Dept. 2008)]. Defendant’s motion to suppress evidence is denied because it fails to allege grounds constituting a legal basis for that motion, and because it fails to set forth factual allegations sufficient to warrant such a hearing. [CPL §710.60(3); *People v. Cartwright*, 65 A.D.3d 973 (1st Dept. 2009) (suppression hearing not warranted based upon “defendant’s assertion that he was ‘committing no visible crime’ at the time of his confrontation with police”); *People v. France*, 50 A.D.3d 266, 267 (1st Dept. 2008), aff’d 12 N.Y.3d 790 (2009) (“it was not enough for defendant to deny that he had committed the crime and to state that he was doing nothing unlawful at the time of his arrest”); *People v. Doyle*, 273 A.D.2d 69, 69 (1st Dept. 2000) (defendant’s “conclusory assertion that he had not committed a crime was insufficient to warrant a hearing”); *People v. Marte*, 207 A.D.2d 314, 316 (1st Dept. 1994 (“the bare assertion of innocence and the conclusory allegation that evidence has been illegally recovered are insufficient to warrant a hearing”))].

Defendant also seeks a hearing to determine the existence and identity of the confidential informant in this case [*People v. Darden*, 34 N.Y.2d 177 (1974)]. That application is denied. The confidential informant testified before the Grand Jury. Therefore, there is no need to conduct a hearing. [*People v. Brown*, 101 A.D.3d 1627, 1627-28 (4th Dept. 2012); *People v. Kimes*, 37 A.D.3d 1, 15 (1st Dept. 2006)].

SUPPRESSION OF IDENTIFICATION

Defendant moves to suppress evidence from any eyewitness who has previously identified Defendant in an out-of-court identification procedure arranged by law enforcement

authorities, on the grounds that such identification procedure was unduly suggestive. The People oppose the motion on the grounds that the witness and the Defendant know each other well enough that there is no risk of a misidentification based upon this identification procedure.

No suppression hearing is required when a court reaches the “conclusion that, as a matter of law, the witness is so familiar with the defendant that there is little or no risk that police suggestion could lead to a misidentification... In effect, it is a ruling that however suggestive or unfair the identification procedure might be, there is virtually no possibility that the witness could misidentify the defendant.” [*People v. Rodriguez*, 79 NY2d 445, 450 (1992)]. The Grand Jury minutes demonstrate that the witness and Defendant have known each other for a long time. Therefore, Defendant’s motion for a *Wade* hearing is summarily denied because there is virtually no possibility that the witness could misidentify Defendant. [*People v. Rodriguez*, 47 A.D.3d 417 (1st Dept. 2008) (trial court properly relied on Grand Jury minutes confirming People’s allegation that defendant was sufficiently known to victim to warrant denial of motion to suppress identification without a hearing); *People v. Rumph*, 248 A.D.2d 142 (1st Dept. 1998) (the court properly denied the motion to suppress identification without a hearing based upon the Grand Jury transcript, which confirmed the facts represented in the People’s opposition papers)].

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

[* 8]

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)].

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.

AUDIBILITY HEARING

Defendant has requested a hearing to determine the quality and admissibility of any audio or video tape recording that the People intend to introduce at trial. However, Defendant has not made any allegation that those tapes are inaudible. Accordingly, Defendant's motion is denied, without prejudice to renewal.

PROMPT ARRAIGNMENT

The sealed indictment was filed and a superior court warrant of arrest was signed on April 11, 2017. The arrest warrant was executed on April 12, 2017, after Defendant was arrested on other, unrelated charges in the City of Beacon. Defendant was arraigned on the indictment on April 17, 2017.

Defendant now moves to dismiss the indictment on the grounds that he was not timely arraigned. In the alternative, Defendant seeks an order authorizing his release.

CPL §210.10(3) states that a defendant must be arraigned on an indictment without unnecessary delay. That statute also states that the arraignment should be conducted on the date that the warrant is executed or, if the superior court is not in session, on the next business day.

A violation of the prompt arraignment rule is not grounds for dismissal of the indictment. [People v. Martin, 132 AD3d 909, 910 (2d Dept. 2015)]. Rather, Defendant's remedy during the five-day period of delay would have been to seek an Order releasing him pending his anticipated arraignment on the indictment. [id.]. Even if Defendant had been released pending arraignment, the Court would have had the authority, and obligation, to make a bail determination at the actual arraignment. Therefore, although the five-day period between April 12 and April 17 is chargeable to the People for speedy trial purposes, Defendant's motion is denied.

So Ordered.

Dated: Poughkeepsie, NY
June 22, 2017



PETER M. FORMAN
COUNTY COURT JUDGE

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