

People v Rodriguez

2018 NY Slip Op 33554(U)

August 14, 2018

County Court, Westchester County

Docket Number: 17-0751

Judge: Anne E. Minihan

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.

FILED
AND ENTERED
ON 8-14-2018
WESTCHESTER

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER
Indictment No. 17-0751

SAMUEL RODRIGUEZ,

Defendant.

-----X
MINIHAN, J.

Defendant, by Westchester County Indictment No. 17-0751, is charged with Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03[3]), Criminal Possession of a Weapon in the Third Degree (Penal Law § 265.02[1]), Criminal Possession of a Weapon in the Third Degree (Penal Law § 265.02[3]), Reckless Endangerment in the First Degree (Penal Law § 120.25) and Criminal Mischief in the Fourth Degree (Penal Law § 145.00[1]), and has filed this omnibus motion consisting of a Notice of Motion and an Affirmation in Support. The People filed an Affirmation in Opposition together with a Memorandum of Law.

Upon consideration of these papers, the stenographic transcript of the grand jury minutes and the Consent Discovery Order, the court disposes of this motion as follows:

A. **FILED**
AUG 14 2018

MOTION to INSPECT, and to DISMISS or REDUCE
CPL ARTICLE 190

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The court grants the defendant's motion to the limited extent that the court has conducted, with the consent of the People, an *in camera* inspection of the stenographic transcription of the grand jury proceedings. Upon such review, the court finds no basis upon which to grant defendant's application to dismiss or reduce the indictment.

The evidence presented, if accepted as true, is legally sufficient to establish every element of each offense charged (CPL 210.30[2]). "Courts assessing the sufficiency of the evidence before a grand jury must evaluate whether the evidence, viewed most favorably to the People, if unexplained and uncontradicted--and deferring all questions as to the weight or quality of the evidence--would warrant conviction" (*People v Mills*, 1 NY3d 269, 274-275 [2002]). Legally sufficient evidence means competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant's commission thereof (CPL 70.10[1]; see *People v Flowers*, 138 AD3d 1138, 1139 [2d Dept 2016]). "In the context of a Grand Jury proceeding, legal sufficiency means prima facie proof of the crimes charged, not proof beyond a reasonable doubt" (*People v Jessup*, 90 AD3d 782, 783 [2d Dept 2011]). "The reviewing court's inquiry is limited to whether the facts, if proven, and the inferences that

logically flow from those facts supply proof of every element of the charged crimes, and whether the Grand Jury could rationally have drawn the guilty inference. That other, innocent inferences could possibly be drawn from those facts is irrelevant to the sufficiency inquiry as long as the Grand Jury could rationally have drawn the guilty inference” (*People v Bello*, 92 NY2d 523, 526 [1998]).

The defendant, who bears the burden of refuting with substantial evidence the presumption of regularity which attaches to official court proceedings (*People v Pichardo*, 168 AD2d 577 2d Dept 1990]), has offered no sworn factual allegations, in support of his argument that the grand jury proceedings were defective. The minutes reveal a quorum of the grand jurors was present during the presentation of evidence, that the Assistant District Attorney properly instructed the grand jury on the law, and only permitted those grand jurors who heard all the evidence to vote the matter (*see People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]). Based on the foregoing, the defendant’s challenge to the propriety of the grand jury proceeding and the sufficiency of the evidence presented to the grand jury is baseless.

Upon the *in camera* review, this court does not find that release of the grand jury minutes or any portion thereof is necessary to assist it in making any determinations, and defendant has not set forth a compelling or particularized need for the production of the grand jury minutes. Thus, defendant’s application for a copy of the grand jury minutes is denied (*People v Jang*, 17 AD3d 693 [2d Dept 2005]; CPL 190.25[4][a]).

B.

MOTION for DISCOVERY, DISCLOSURE and INSPECTION
CPL ARTICLE 240

The parties have entered into a stipulation by way of a Consent Discovery Order consenting to the enumerated discovery in this case. Defendant’s motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 240. If there are any further items discoverable pursuant to Criminal Procedure Law Article 240 which have not been provided to defendant pursuant to the Consent Discovery Order, they are to be provided forthwith.

As to defendant’s demand for exculpatory material, the People have a continuing duty to disclose exculpatory material at the earliest possible date upon its discovery (*see Brady v Maryland*, 373 US 83 [1963]; *Giglio v United States*, 405 US 150 [1972]). If the People are, or become aware of, any material which is arguably exculpatory and they are not willing to consent to its disclosure to defendant, they are directed to immediately disclose such material to the Court to permit an *in camera* inspection and determination as to whether such material must be disclosed to defendant.

Except to the extent that defendant’s application has been specifically granted herein, it is otherwise denied as seeking material or information beyond the scope of discovery (*see People v Colavito*, 87 NY2d 423 [1996]; *Matter of Brown v Grosso*, 285 AD2d 642 [2d Dept 2001]; *Matter of Brown v Appelman*, 241 AD2d 279 [2d Dept 1998]; *Matter of Catterson v Jones*, 229 AD2d 435 [2d Dept 1996]; *Matter of Catterson v Rohl*, 202 AD2d 420 [2d Dept 1994]).

C.

MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

Defendant moves for a pre-trial hearing to determine whether, at trial, the People may cross-examine him, if he elects to testify, about his prior criminal convictions, and prior uncharged criminal, vicious, or immoral conduct. On the People's *consent*, the motion for a *Sandoval* hearing is granted (*see People v Sandoval*, 34 NY2d 371 [1974]). At the hearing, the People must notify defendant of all specific instances of his criminal, and prior uncharged criminal, vicious or immoral acts of which they have knowledge and which they intend to use to impeach defendant's credibility if he testifies at trial (CPL 240.43). At the hearing, defendant shall bear the burden of identifying any instances of his prior misconduct which he submits the People should not be permitted to use to impeach his credibility. Defendant shall be required to identify the basis of his belief that each event or incident may be unduly prejudicial to his ability to testify as a witness on his own behalf (*see People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266, 269 [2d Dept 1985]).

To the extent that defendant's motion seeks a hearing pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]), that branch of the motion is denied as premature because the People have not indicated an intention to use in their case in chief any evidence of prior bad acts or uncharged crimes by defendant (*see People v Molineux*, 168 NY 264 [1901]). If the People move to introduce such evidence, defendant may renew that branch of the motion.

D.

MOTION for DISCLOSURE of DEALS and AGREEMENTS

The People recognize their continuing duty to disclose the terms of any deal or agreement made between the People and any prosecution witness at the earliest possible date (*see People v Steadman*, 82 NY2d 1 [1993]; *Giglio v United States*, 405 US 150 [1972]; *Brady v Maryland*, 373 US 83 [1963]; *People v Wooley*, 200 AD2d 644 [2d Dept 1994]).

E.

MOTION to SUPPRESS NOTICED STATEMENTS

Defendant fails to support his contention that any statement allegedly made by him should be suppressed as the product of illegal arrest (*see CPL 710.60[3][b]*; *People v Mendoza*, 82 NY2d 415, 428 [1993]; *People v France*, 12 NY3d 790 [2009]). However, defendant's motion to suppress is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by defendant, which have been noticed by the People pursuant to CPL 710.30 (1)(a), were involuntarily made within the meaning of CPL 60.45 (*see CPL 710.20[3]*; CPL 710.60[3][b]; *People v Weaver*, 49 NY2d 1012 [1980]), obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

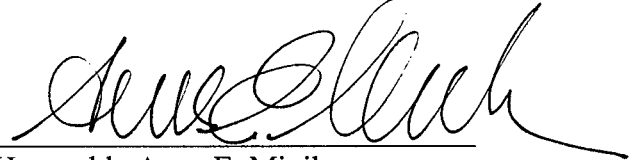
F.

MOTION to SUPPRESS IDENTIFICATION TESTIMONY
CPL 710

Defendant's motion to suppress the testimony of the police witness identifying defendant in a videotape depicting the actual crimes in progress is denied. The police witness himself observed the alleged crimes firsthand and immediately detained defendant. The viewing of the videotape by the police witness does not constitute an identification procedure within the meaning of CPL 710.30 (*see People v Gee*, 99 NY2d 158, 162-163 [2002]).

The foregoing constitutes the opinion, decision and order of this court.

Dated: White Plains, New York
August 14, 2018


Honorable Anne E. Minihan
Acting Justice of the Supreme Court

To: HON. ANTHONY A. SCARPINO, JR.
District Attorney, Westchester County
111 Dr. Martin Luther King, Jr., Boulevard
White Plains, New York 10601

BY: Samuel L. Malebranche, Esq.
Assistant District Attorney

LAW OFFICE OF GEORGE D. NADER III
George D. Nader III, Esq.
Attorney for Defendant Samuel Rodriguez
50 Riverdale Avenue, Suite 1
Yonkers, New York 10701