

People v Williams
2018 NY Slip Op 33606(U)
June 8, 2018
County Court, Westchester County
Docket Number: 17-0833
Judge: Anne E. Minihan
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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 6-8-2018
WESTCHESTER

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

-against-

AKIEL WILLIAMS,

Defendant.

-----X
MINIHAN, J.

FILED
JUN 11 2018
TIMOTHY C. IDOMI
COUNTY CLERK
COUNTY OF WESTCHESTER

DECISION & ORDER
Indictment No. 17-0833

Defendant, AKIEL WILLIAMS, by Westchester County Indictment No. 17-0833, is charged with Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03[3]) and has filed this omnibus motion consisting of a Notice of Motion, an Affirmation in Support, and a Memorandum of Law. 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 dated April 3, 2018, the court disposes of this motion as follows:

A.

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

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 grand jury was properly instructed (*see People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]). 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]).

Additionally, 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. 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.

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 to SUPPRESS NOTICED STATEMENTS

Defendant’s motion is granted, on *consent* of the People, to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any of the noticed statements were made involuntarily within the meaning of CPL 60.45 (*see* CPL 710.20(3); CPL 710.60[3][b]; *People v Weaver*, 49 NY2d 1012 [1980]; *see People v Huntley*, 15 NY2d 72 [1965]).

D.

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 conduct 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.

E.

MOTION to SUPPRESS PHYSICAL EVIDENCE

Defendant moves to suppress the weapon seized by the police upon the stop of his vehicle on the basis that the stop was unlawful because the police did not observe him commit a crime. A police stop of a vehicle constitutes a limited seizure of its occupants for federal and state constitutional purposes (*see Delaware v Prouse*, 440 U.S. 648 [1979]). The police may lawfully stop a vehicle upon reasonable suspicion that a violation of the Vehicle and Traffic Law has occurred (*see People v Ingle*, 36 NY2d 413, 414 [1975]; *see also People v Bushey*, 29 NY3d 158, 164 [2017]). There must be "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion" (*Terry v Ohio*, 392 U.S. 1, 21 [1968]). Here, a police officer testified that he paced defendant's vehicle in a 30 MPH zone and concluded that it was traveling "at a high rate of speed", in excess of the speed limit. There was no testimony estimating the defendant's rate of speed, nor testimony as to the officer's experience pacing vehicles to determine the rate of speed, or the accuracy of the officer's speedometer (*compare People v Olsen*, 22 NY2d 230, 232 [1968]). While the police testified that the weapon was discovered in plain view, if the stop was unlawful then the 4th Amendment is implicated and the plain view doctrine does not serve to validate the search (*see People v Smith*, 42 NY2d 961, 962 [1977]). Under the circumstances, the court grants defendant's motion to the extent of ordering a *Dunaway/Mapp* hearing to determine the legality of the stop and the admissibility of the physical evidence obtained from the stop.

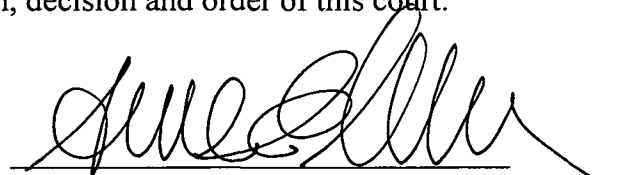
F.

MOTION to CONDUCT PRE-TRIAL HEARINGS
TWO WEEKS in ADVANCE of TRIAL

Defendant's motion to schedule pre-trial hearings two weeks in advance of trial is denied. The hearings will be scheduled at a time that is convenient to the Court, upon due consideration of all of its other cases and obligations.

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

Dated: White Plains, New York
 June 8, 2018


 Honorable Anne E. Minihan
 Acting Justice of the Supreme Court

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