

**People v Byrd**

2018 NY Slip Op 33713(U)

October 22, 2018

County Court, Westchester County

Docket Number: 17-0956-01

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

FILED  
AND ENTERED  
ON 10-22-2018  
WESTCHESTER

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

-against-

MARCUS BYRD,

Defendant.

-----X  
MINIHAN, J.

DECISION & ORDER  
Ind No.: 17-0956-01

**FILED** 

OCT 23 2018

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Defendant, by Westchester County Indictment No. 17-0956-01, is charged with Aggravated Driving While Intoxicated-Child in Vehicle (Vehicle and Traffic Law § 1192 [2][a][b][2 counts]); Driving While Intoxicated (Vehicle and Traffic Law § 1192 [2]); Driving While Intoxicated, as a E Felony (Vehicle and Traffic Law § 1192 [3]); Driving While Ability Impaired (Vehicle and Traffic Law § 1192 [4-a]); and Criminal Mischief in the fourth degree (Penal Law § 145.00 [3][2 counts]).

Defendant has filed an omnibus motion on September 7, 2018 consisting of a Notice of Motion and an Affirmation in Support. In response thereto, the People have filed an Affirmation in Opposition together with a Memorandum of Law replying to both motions. Defendant has not filed a reply.

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

A.

MOTION to INSPECT and to DISMISS and/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 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, and 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]).

The evidence presented to the grand jury, 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]).

Based upon the *in camera* review, since this court does not find release of the grand jury minutes or any portion thereof necessary to assist it in making any determinations and as the defendant has not set forth a compelling or particularized need for the production of the grand jury minutes, 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 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 the defendant’s demand for exculpatory material, the People have acknowledged their 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]). The People have also acknowledged their duty to comply with *People v Rosario* (9 NY2d 286 [1961]). In the event that the People are or become aware of any material which is arguably exculpatory and they are not willing to consent to its disclosure to the defendant, they

are directed to immediately disclose such material to the Court to permit an *in camera* inspection and determination as to whether such must be disclosed to the defendant.

As to the defendant's demand for scientific related discovery, the People have acknowledged their continuing duty to disclose any written report or document concerning a physical or mental examination or test that the People intend to introduce, or the person who created them, at trial pursuant to CPL 240.20(1)(c).

Defendant's motion for a further Bill of Particulars is denied. The Bill of Particulars set forth in the Consent Discovery Order provided to the defendant has adequately informed the defendant of the substance of his alleged conduct and in all respects complies with CPL 200.95.

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 STRIKE STATEMENT NOTICES

This motion is denied. Said notice is in conformity with the statutory requirements of CPL 710.30.

D.

MOTION to SUPPRESS NOTICED STATEMENTS

The People noticed pursuant to CPL 710.30(1)(a) three statements allegedly made by defendant, who moves to suppress them as unconstitutionally obtained. This branch of defendant's motion is granted, on consent, to the extent that a *Huntley* hearing shall be held prior to trial to determine whether the statements were involuntarily made by defendant 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]).

E.

MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

Defendant moves for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into defendant's prior criminal convictions, prior uncharged criminal, vicious or immoral conduct. On the People's consent, the court directs that

a pre-trial hearing be conducted pursuant to *People v Sandoval* (34 NY2d 371 [1974]). At said hearing, the People shall be required to notify defendant of all specific instances of his criminal, prior uncharged criminal, vicious or immoral conduct of which they have knowledge and which they intend to use in an attempt to impeach defendant's credibility if he elects to testify at trial (CPL 240.43).

At the hearing, defendant shall bear the burden of identifying any instances of his prior misconduct that 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 [2d Dept 1985]).

To the extent that defendant's application is for a hearing pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]), it is denied since the People have not indicated an intention to use evidence of any prior bad act or uncharged crimes of defendant during its case in chief (*see People v Molineaux*, 168 NY2d 264 [1991]). If the People move to introduce such evidence, defendant may renew this aspect of his motion.

F.

#### MOTION to SUPPRESS EVIDENCE

Defendant moves to suppress any evidence obtained as a result of the arrest, and obtained as a result of the field sobriety tests and the chemical tests as well as the process/storage of his urine and blood.

This branch of the defendant's motion is granted solely to the extent of conducting a *Mapp* hearing prior to trial to determine the propriety of any search resulting in the seizure of evidence (*see Mapp v Ohio*, 367 US 643 [1961]) including the results of the field sobriety tests and the chemical tests to determine, *inter alia*, whether the defendant consented to the tests (*People v Gore*, 117 AD3d 845 [2d Dept 2014]) and/or that they were administered in accord with VTL §1194 (2)(a) (*see People v Atkins*, 85 NY2d 1007, 1008 [1995]). The hearing will also address whether any evidence was obtained in violation of the defendant's Sixth Amendment right to counsel (*People v Washington*, 23 NY3d 228, 231 [2014]) and the hearing will also address whether any evidence was obtained in violation of the defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

G.

#### MOTION to CONDUCT PRE-TRIAL HEARINGS 20 DAYS BEFORE TRIAL

The defendant's motion to schedule pre-trial hearings 20 days prior to 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.

H.

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]).


I.

MOTION for PRODUCTION of INFORMANTS

Defendant's motion for a *Darden/Goggins* hearing is denied since he has failed to demonstrate what relevant testimony any such witness would have on the issue of his innocence or guilt (*see People v Goggins*, 34 NY2d 163 [1974]; *People v Rivera*, 98 AD3d 529 [2d Dept 2012]). Notwithstanding, there appears to be no need for a *Darden* hearing since the probable cause to arrest the defendant was based upon the police officer's own observations, and not based upon information provided by an unknown civilian confidential informant.

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

Dated: White Plains, New York  
October 22, 2018



Honorable Anne E. Minihan  
Acting Supreme Court Justice

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

CLARE J. DEGNAN, ESQ.  
The Legal Aid Society of Westchester County  
150 Grand Street, Suite 100  
White Plains, New York 10601  
By: Joanna Karlitz, Esq.  
Associate Counsel