

People v Maleno-Crispin
2018 NY Slip Op 33780(U)
April 8, 2018
County Court, Westchester County
Docket Number: 17-1333
Judge: Anne E. Minihan
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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 4-9-2018
WESTCHESTER

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

-against-

FILED ^{TR}

APR 10 2018

DECISION & ORDER
Indictment No. 17-1333

ERIK MALENO-CRISPIN,

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER
Defendant.

-----X
MINIHAN, J.

Defendant, ERIK MALENO-CRISPIN, having been indicted on or about January 3, 2018 for Bail Jumping in the Second Degree (Penal Law § 215.56), has filed an omnibus motion which consists of a Notice of Motion and an Affirmation in Support. In response, the People have 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 entered in this case, the court disposes of this motion as follows:

A.

MOTION to INSPECT and DISMISS
CPL ARTICLE 190

The court grants 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 the indictment.

The single count in the indictment contains a plain and concise factual statement which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and defendant's commission thereof with sufficient precision as to clearly apprise defendant of the conduct which is the subject of the indictment (CPL 200.50). The indictment charges each and every element of the crime, and alleges that defendant committed the acts which constitute the crime at a specified place during a specified time period and, therefore, is sufficient on its face (*People v Cohen*, 52 NY2d 584 [1981]; *People v Iannone*, 45 NY2d 589 [1978]).

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]), offers no sworn factual allegations in support of his argument that the grand jury proceedings were defective (*see* CPL 210.35). 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, if accepted as true, is legally sufficient to establish every element of the offense charged (*see* 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 court does not find release of the grand jury minutes, or any portion thereof, necessary to assist it in making any determinations and 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, C, & D.

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 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]). 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 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 material must be disclosed to defendant.

Defendant’s motion for a further Bill of Particulars is denied. The Bill of Particulars contained in the Consent Discovery Order provided to defendant adequately sets forth the substance of the 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]).

E.

MOTION to PRECLUDE UNNOTICED STATEMENTS

Defendant's motion to preclude the People from introducing evidence at trial not properly noticed pursuant to CPL 710.30 is denied as premature. The People acknowledge the statutory requirements of CPL 710.30.

F.

MOTION to SUPPRESS PHYSICAL EVIDENCE

Defendant moves to suppress any evidence seized by the police as a result of his arrest, arguing that the arrest was unlawful because it was not supported by probable cause and resulted from ineffective assistance of counsel. Defendant's contention is without merit and this branch of the motion is, thus, summarily denied. Prima facie proof of bail jumping in the second degree does not require proof of a culpable mental state (*see People v Harris*, 54 AD2d 739 [1976]). "[C]onclusory allegations of a general constitutional violation or lack of probable cause are of no avail in meeting the statutory requirements for entitlement to a hearing" (*People v Jones*, 95 NY2d 721, 726 [2001]; *see People v France*, 12 NY3d 790 [2009]; CPL 710.60[3][b]).

G.

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 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 motion seeks a hearing pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]), that branch of the motion is denied 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.

H. \

MOTION to CONDUCT PRE-TRIAL HEARINGS
TWENTY DAYS in ADVANCE of TRIAL

Defendant's reliance on *People v Sanders* (31 NY2d 463 [1973]) in requesting that all pre-trial hearings, with the exception of *Sandoval*, be held at least 20 days before trial to allow sufficient time for the transcription of the minutes is misplaced. *Sanders* (31 NY2d at 467) requires that defendant request a copy of a hearing transcript, if needed, before the conclusion of the hearing. *Sanders* does not mandate a 20-day deadline for the court to hold the hearing. This branch of the motion is denied.

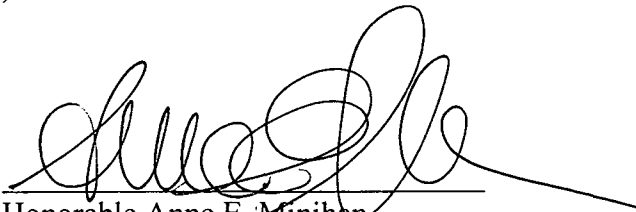
I.

MOTION for TIME to FILE FUTURE MOTIONS

This motion is denied. Any future motion must be brought by way of order to show cause setting forth reasons as to why said motion was not brought in conformity with CPL 255.20.

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

Dated: White Plains, New York
April 8, 2018


Honorable Anne E. Minihan
Acting Justice of the Supreme Court

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