

People v White

2018 NY Slip Op 33926(U)

September 12, 2018

County Court, Westchester County

Docket Number: 18-00373-02

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 9-13-2018
WESTCHESTER

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

-against-

DECISION & ORDER
Indictment No.: 18-00373-02

TASJAWN WHITE, PIERRE MENSAH,
and PHILLIP SPEARMAN,

FILED 

Defendants.

SEP 18 2018

-----X
MINIHAN, J.

HUGHLEY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, PIERRE MENSAH, having been charged by Westchester County Indictment No. 18-00373-02 with aiding, abetting and acting in concert with codefendant Tasjawn White, with Murder in the Second Degree (Penal Law § 125.25[01]), Murder in the Second Degree (Penal Law § 125.25[03]), Attempted Murder in the Second Degree (Penal Law § § 110, 125.25[01]) (two counts), Attempted Murder in the Second Degree (Penal Law § § 110, 125.25[03]) (two counts), Assault in the First Degree (Penal Law § 120.10[01]), Attempted Assault in the First Degree (Penal Law § § 110, 120.10[01]), Attempted Robbery in the First Degree (Penal Law § § 110, 160.15[02]), Attempted Robbery in the First Degree (Penal Law § § 110, 160.15[01]), Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03[1][b]) (two counts), Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03[03]) (two counts), Robbery in the First Degree (Penal Law § 160.15[02]), Robbery in the First Degree (Penal Law § 160.15[04]), Grand Larceny in the Fourth Degree (Penal Law § 155.30[05]), Grand Larceny in the Fourth Degree (Penal Law § 155.30[04]), and Criminal Possession of Stolen Property in the Fourth Degree (Penal Law § 165.45[02]).

The same indictment charges codefendant Phillip Spearman, individually, with Criminal Possession of a Weapon in the Third Degree (Penal Law § 265.02[01]), Criminal Possession of a Firearm (Penal Law § 265.01[b]), Hindering Prosecution in the Second Degree (Penal Law § 205.60) (two counts), Tampering with Physical Evidence (Penal Law § 215.40[02]) (two counts), and Criminal Possession of Stolen Property in the Fourth Degree (Penal Law § 165.45[02]). The same indictment charges codefendant Tasjawn White, individually, with Murder in the First Degree (Penal Law § 125.27).

Defendant Mensah has filed an omnibus motion consisting of a Notice of Motion and an Affirmation in Support, with exhibits. In response thereto, the People have filed an Affirmation in Opposition together with a Memorandum of Law, with exhibits. 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 (*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]).

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 (*see People v Jang*, 17 AD3d 693 [2d Dept 2005]; CPL 190.25[4][a]).

B.

MOTION to SUPPRESS NOTICED STATEMENTS

This branch of the defendant's motion seeking to suppress statements on the grounds that they were unconstitutionally obtained is denied since there are no CPL 710.30 notices annexed to the indictment and the People contend that there are no statements made by the defendant.

C.

MOTION to SUPPRESS PHYSICAL EVIDENCE

Defendant's motion to suppress any physical evidence seized is granted to the extent that a *Mapp/Dunaway* hearing shall be held prior to trial to determine whether any evidence, not obtained pursuant to the search warrant, was seized in violation of defendant's Fourth Amendment rights (*see Mapp v Ohio*, 367 US 643 [1961]; *Dunaway v. New York*, 442 US 200).

D.

MOTION to PRECLUDE IDENTIFICATION TESTIMONY
CPL 710

Defendant's motion to dismiss the noticed identifications of him is granted to the limited extent that a hearing shall be held prior to trial to determine whether the identifying witness had a sufficient prior familiarity with defendant as to render the witness impervious to police suggestion (*see People v Rodriguez*, 79 NY 2d 445 [1992]). If the court finds that there was not a sufficient prior familiarity with defendant on the part of the witness, the court will then consider whether or not the noticed identification was unduly suggestive (*United States v Wade*, 388 US 218 [1967]). Specifically, the court shall determine whether the identification was so improperly suggestive as to taint any in-court identification. If the identification is found to be unduly suggestive, the court shall then go on to consider whether the People have proven by clear and convincing evidence that an independent source exists for such witness' proposed in-court identification.

E.

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 acknowledge 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]). To that point, 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]). 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 must be disclosed to defendant.

As to defendant's demand for scientific related discovery, the People acknowledge 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 request for a Bill of Particulars has been rendered academic, as the People furnished a Bill of Particulars in connection with the Consent Discovery Order. The Court notes that the Bill of Particulars adequately informs 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]).

F.

MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

Defendant has, in effect, moved for a pre-trial *Sandoval* hearing, by requesting that the People notify defendant of all alleged instances of defendant's prior uncharged criminal, vicious or immoral conduct which the People intend to use at trial. The Court directs that a *Sandoval* hearing be held before trial (see *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). Also 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]).

Defendant's application for a hearing pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]), is denied as premature since the People have not indicated an intention to use evidence of any prior bad act or uncharged crimes of the defendant during its case in chief (*see People v Molineaux*, 168 NY 264 [1901]). If the People move to introduce such evidence, defendant may renew this aspect of his motion.

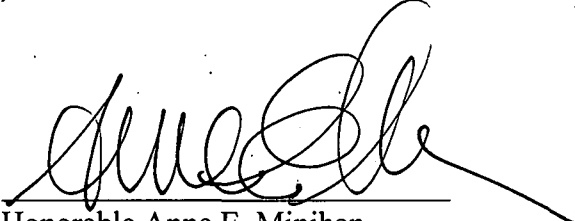
G.

MOTION for LEAVE to FILE FUTURE MOTIONS

This motion is denied. Should defendant intend to bring further motions for omnibus relief, he must do so by order to show cause setting forth reasons as to why his motion was not and could not have been brought in conformity with CPL 255.20.

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

Dated: White Plains, New York
September 2, 2018



Honorable Anne E. Minihan
Acting Supreme Court Justice

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