

People v Knight

2018 NY Slip Op 34147(U)

May 28, 2018

County Court, Westchester County

Docket Number: Indictment No. 19-0154

Judge: George E. Fufidio

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FILED

MAY 28 2019

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

AMENDED
DECISION & ORDER

ANDREW KNIGHT & ROBERT FOSTER,

Indictment No.: 19-0154

FILED

Defendants.

MAY 28 2019

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

-----X
FUFIDIO, J.

Defendant, ANDREW KNIGHT, having been indicted on or about February 12, 2019 for one count of murder in the second degree, one count of manslaughter in the first degree and one count of criminal possession of a weapon in the fourth degree, has filed an omnibus motion which consists of a Notice of Motion, an Affirmation in Support and a Memorandum of Law. 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, this Court disposes of this motion as follows:

A. MOTION FOR DISCOVERY, DISCLOSURE AND INSPECTION
CPL ARTICLE 240

Except where the People have already disclosed or consented to the inspection and discovery of certain evidence, the Defendant's motion for discovery is granted to the extent provided for in CPL 240. If there any further items discoverable pursuant to Criminal Procedure Law Article 240 which have not been provided to defendant pursuant to this Order, they are to be provided forthwith or the People shall seek a protective order explaining to the Court why certain items have not been provided to the Defendant pursuant to CPL 240.

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]). 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 the material must be disclosed to the defendant.

Except to the extent that the 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]).

B. MOTION TO INSPECT, DISMISS AND/OR REDUCE

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 [2nd 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 [2nd 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 [2nd 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]). More specifically, the Defendant, in his motion urges the dismissal of this indictment for three specific instances, the first, that the People failed to present "material" information to the grand jury, second, that the grand jury received inaccurate or misleading information and third, that the video evidence admitted into evidence was improperly authenticated, all of which, he claims, affect the sufficiency of the evidence presented.

Regarding his first contention, the Defendant does not voice what particular "material" evidence he alleges was withheld from the grand jury, nevertheless, the People enjoy wide latitude with respect to how they present their case and what evidence to present, as long as the decision to not present evidence favorable to the defendant does not result in a, "needless or unfounded prosecution" (*People v Valles*, 62 NY2d 36 [1984]; *People v Perry*, 187 AD2d 678 [2nd Dept. 1992]). Here, based on a review of the evidence before the grand jury the Court finds that this is not an unfounded prosecution and is amply supported. Second, with respect to the grand jury hearing misleading or inaccurate evidence, based on the evidence presented, the fact that the Defendant was identified as one of the People in several of the videos presented as evidence, the Court does not find that the grand jury was misled, nor, were they misled at any other point during the presentation. Finally, the Court finds that the videos were properly authenticated, but even if they were not and the Court disregarded them, there remained ample evidence by which to indict the defendant (*People v Huston*, 88 NY2d 400 [1996]).

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]).

C. MOTION TO SUPPRESS PHYSICAL EVIDENCE

Upon the Court's review of the four corners of the search warrant affidavits and orders, the court finds that all of the warrants executed in this case were adequately supported by probable cause to believe that evidence at the location could tend to show that the offense was committed and that the defendant was the one who committed it (*see People v Keves*, 291 AD2d 571 [2d Dept 2002]; *see generally People v Badilla*, 130 AD3d 744 [2d Dept 2015]; *People v Elysee*, 49 AD3d 33 [2d Dept 2007]).

The Court grants the Defendant's motion solely to the extent that *Mapp* and *Dunaway* hearings are directed to be held prior to trial to determine the propriety of any search resulting in the seizure of property from areas in which the Defendant can demonstrate a reasonable expectation of privacy, such as from the warrant executed on his apartment in Ossining, New York and possibly a location in Goldens Bridge, New York (*see, Mapp v Ohio*, 367 US 643 [1961]) and whether any evidence was obtained in violation of the defendant's Fourth Amendment rights (*see, Dunaway v New York*, 442 US 200 [1979]).

However, the Court agrees with the People that the Defendant lacks standing to challenge much of the evidence that was seized in this case, especially as it pertains to evidence at the crime scene and evidence in the victim and co-defendant's phone.

D. MOTION TO SUPPRESS NOTICED STATEMENTS

This branch of the Defendant's motion is dismissed as moot. The People have not given notice to the Defendant of any statements, pursuant to CPL 710.30, that they intend to use against the Defendant. Should they attempt to do so, they must comply with the procedure set forth in CPL 710.30 regarding late notice.

E. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY CPL ARTICLE 710

Regarding the CPL 710.30 identification notice, the Court agrees with the People's argument that these were ratifications where the witnesses were shown video in which they were participants in the events depicted and in which the Defendant is also depicted as a participant and hence outside the ambit of CPL 710.30 (*People v Gee*, 99 NY2d 158 [2002]).

The Defendant's argument that somehow the police asking the dying victim who did this to him is tantamount to an identification procedure, the type contemplated by CPL 710.30 is utterly without merit.

F. MOTION FOR SANDOVAL AND VENTIMIGLIA HEARINGS

The Defendant has moved for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into the Defendant's prior criminal convictions, prior uncharged criminal act, and vicious or immoral conduct (*see, People v Sandoval*, 34 NY2d 371[1974]). The People have consented to, and it is now ordered that immediately prior to trial the court will conduct a *Sandoval* hearing.

At the hearing, the People are required to notify the Defendant of all specific instances of his criminal, prior uncharged criminal acts and vicious or immoral conduct of which they have knowledge and which they intend to use in an attempt to impeach the Defendant's credibility if he elects to testify at

trial (CPL 240.43). The Defendant shall then 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. The Defendant shall be required to identify the basis of his belief that each event or incident may be unduly prejudicial to him should he decide testify as a witness on his own behalf and thereby prevent him from exercising this right (*see, People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

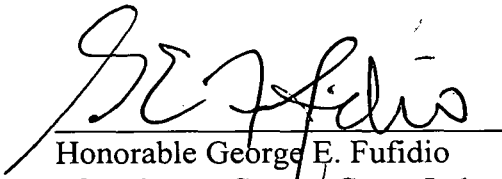
The Defendant's application for a *Ventimiglia* hearing is denied as premature, because the People have not indicated an intention to use any evidence of prior bad act or uncharged crimes of the Defendant in its case in chief (*see, People v Molineaux*, 168 NY2d 264 [1901]; *People v Ventimiglia*, 52 NY2d 350 [1981]). The People have stated that if they do intend to use any *Molineaux* evidence that they will inform the defense and the court of their intention and at that point the Defendant may renew this aspect of his motion.

G. MOTION RESERVING THE RIGHT TO FILE ADDITIONAL MOTIONS

Defendant's motion reserving the right to file additional motions is denied. Should the Defendant file any other motions that were not raised in his *Omnibus* motion, then they will need to be in compliance with CPL 255.20(2).

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

Dated: White Plains, New York
May 28, 2018


Honorable George E. Fufidio
Westchester County Court Judge

To:

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