

People v Thebodeau
2019 NY Slip Op 30428(U)
February 27, 2019
County Court, Columbia County
Docket Number: 054-18
Judge: Richard M. Koweek
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STATE OF NEW YORK
COUNTY COURT : COUNTY OF COLUMBIA

THE PEOPLE OF THE STATE OF NEW YORK,

SCI No. 054-18

-against-

DECISION AND ORDER

JEFFREY THEBODEAU,

Defendant.

Before this Court is a Motion by the People to amend an existing Superior Court Information (SCI) that is currently scheduled for trial on March 11, 2019. The Motion is opposed by the Defendant who seeks to have the SCI dismissed. For the reasons that follow, the Motion is denied and the SCI is dismissed.

BACKGROUND

The Defendant waived indictment and consented to be prosecuted by a Superior Court Information, before this Court, on July 2, 2018, in the presence of his counsel.

The case was scheduled for trial on March 11, 2019. Some two weeks prior to trial, the People seek to amend the SCI to add more specifics with regard to the time and place where it is alleged Defendant committed the acts of Criminal Contempt in the First

Degree, Menacing in the Third Degree and Unlawful Imprisonment in the Second Degree. All actions by the Defendant are alleged to have occurred on November 19 or 20, 2017, in the Town of Kinderhook, Columbia County, New York.

The Motion is opposed by the Defendant. He contends that the Waiver of Indictment process is irretrievably flawed, because the SCI upon which he was arraigned and which formed the basis for his decision to waive prosecution by indictment, was jurisdictionally defective. He cites as authority the case of People v. Busch-Scardino, 156 A.D.3d 1314, (3d Dept. 2018) and CPL 195.20.

DISCUSSION

CPL 195.20 provides, in relevant part:

A waiver of indictment shall be evidenced by a written instrument, which shall contain the name of the court in which it is executed, the title of the action, and the name, date and approximate time and place of each offense to be charged in the superior court information to be filed by the district attorney pursuant to section 195.40. The offenses named may include any offense for which the defendant was held for action of the grand jury and any offense or offenses properly joinable therewith pursuant to sections 200.20 and 200.40.”

Recent cases have held that strict attention to all aspects of this waiver must be

adhered to and that all statutorily prescribed aspects of the indictment-waiver process are of equal jurisdictional significance. People v. Bush-Scardino, 166 A.D.3d 1315-1316, supra; People v. Colon-Colon, 2019 WL 491077 A.D.4th Dept. 2/08/19; 2019 Slip Op 013039.

The SCI upon which the Defendant was arraigned contained the following allegations:

COUNT ONE:...accuse the...defendant, JEFFREY A. THEBODEAU, with the commission of the crime of CRIMINAL CONTEMPT IN THE FIRST DEGREE IN VIOLATION OF §215.51(b)(vi)...a class E Felony, in that the defendant, on or about November 20, 2017, in the County of Columbia, State of New York, did, in violation of a duly served order of protection, or such order of which the defendant has actual knowledge because he or she was present in court when such order was issued, or an order protection issued by a court of competent jurisdiction in this or another state...by physical menace, intentionally place or attempted to place a person for whose protection such order was issued in reasonable fear of death, imminent serious physical injury or physical injury, to wit: on the aforesaid date and at the aforesaid place, the defendant, in violation of an Order of Protection issued by Judge Lisa Mills of the Town of Kinderhook Court on November 19, 2017, and which order was personally served on the defendant on November 19, 2017, by physical menace, intentionally placed the person for whose protection such order was issued in reasonable fear of physical injury.

COUNT TWO:...accuse the above-named defendant...with the commission of the crime of MENACING IN THE THIRD DEGREE, in violation of Section 120.15 of the Penal Law of the State of New York, in that the defendant, on or about November 20, 2017, in the County of Columbia and State of New York, did, by physical menace,

intentionally place or attempt to place another person in fear of death, imminent serious physical injury or physical injury, to wit: on the aforesaid date and at the aforesaid place, the defendant, by physical menace, intentionally placed another person in fear of physical injury.

COUNT THREE:...accuse the...defendant...with the commission of the crime of UNLAWFUL IMPRISONMENT IN THE SECOND DEGREE, in violation of Section 135.05 of the Penal Law of the State of New York, in that the defendant, on or about November 20, 2017, in the County of Columbia, State of New York, did restrain another person, to wit: on the aforesaid date and at the aforesaid place, the defendant restrained another person.

Notably absent from all three counts is any reference to any “time and place” as required by CPL 195.20, a defect the People seek to correct by this Motion.

The question presented is whether they may do so.

The two cases mentioned above, together with the case of People v. Catnott, 92 A.D.3d 977 (3d Dept. 2012) clearly say they may not. In Catnott, the defendant waived indictment with respect to additional charges connected with an indictment charging him with Criminal Possession of a Controlled Substance in the Fifth Degree, waived his right to appeal and pleaded guilty to an SCI charging him with Criminal Possession of a Controlled Substance in the Third Degree. Pursuant to a plea agreement, the indictment was dismissed and defendant was sentenced to 3½ years in prison and 2 years post release supervision. Defendant appealed, notwithstanding his waiver and the Third Department

found merit with his argument that the waiver was invalid. “The record does not reflect that the defendant’s written waiver complies with CPL 190.20, as is strictly and unequivocally required (see People v. Donnelly, 23 A.D.3d 921, 921-922, 804 N.Y.S. 2d 259 [2005]).” Id. at 978.

In Bush-Scardino, the defendant also plead guilty to an SCI charging her with Aggravated Criminal Contempt and waived indictment. At the time of plea, she reaffirmed her waiver of indictment and waived her right to appeal. She thereafter appealed and argued the parties must strictly comply with the statutory requirements to waive indictment or the waiver is invalid and the SCI is jurisdictionally defective. The Third Department agreed.

The Court took pains to distinguish between the statutory requirements affecting indictments with regard to specificity (CPL 200.50[6]) and those governing Superior Court Information (CPL 195.20). While the former permit an allegation that an “offense occurred on or about a specified date or within a range of time”...such lack of specificity is...“insufficient to meet CPL 195.20’s additional ‘approximate time’ requirement for a waiver of indictment...” Id. at 1316.

It concluded that since ...“the waiver of indictment does not contain all of the

statutorily-required information (see CPL 195.20) that waiver is invalid and the related SCI is jurisdictionally defective.” Id.

Finally and most recently, the Fourth Department held much the same in People v. Colon-Colon, supra. It vacated a waiver of indictment, plea and sentence for attempted Rape in the Second Degree. It held:

Because “an infringement of defendant’s right to be prosecuted only by indictment implicates the jurisdiction of the court..., the Court of Appeals has repeatedly stressed that the “[f]ailure to adhere to the statutory procedure for waiving an indictment” is a “jurisdictional [defect] affecting ‘the organization of the court or the mode of proceedings prescribed by law’ ” (citations omitted). Id. at p 4 of decision as printed.

The consequences of failing to comply with the relevant constitutional and statutory requirements are severe and unforgiving.” Quoting with approval from People v. Padilla, 42 Misc.3d 1221[A] (Rockland County 2014), it said “any defect in the waiver of indictment procedure is a jurisdictional defect and will result in the reversal of a conviction and vacatur[] of a guilty plea.” Id.


Finally, it held “...[C]ompliance with the literal terms of CPL 195.20 and its companion provisions is the sine qua non of the voluntariness of an indictment waiver (see generally People v Trueluck, 88 N.Y.2d 546, 549 (remaining citations omitted))” Id. at page 5.

It quoted with approval from language in People v. Busch-Scardino, supra,¹ that all statutorily-prescribed aspects of the indictment waiver process are of equal jurisdictional significance.

Thus, the question raised, whether the People may seek to amend a jurisdictionally defective instrument, is answered in the negative. Accordingly, the People's Motion to Amend SCI No. 054-18 is denied. The Defendant's Motion to Dismiss the same is granted.

This is the Decision and Order of this Court.

DATED: February 27, 2019
Hudson, New York



RICHARD M. KOWEECK
County Court Judge

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Papers Considered:

1. Order to Show Cause executed on February 20, 2019; Affirmation of James A. Carlucci, Esq., Assistant District Attorney, undated, together with Exhibit "A"
2. Affirmation in Opposition of Ian L. Crimmins, Esq., dated February 20, 2019