

People v Maddox

2019 NY Slip Op 33959(U)

January 19, 2019

County Court, Westchester County

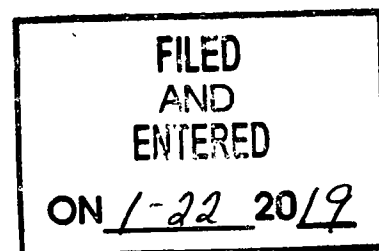
Docket Number: 17-1094

Judge: Anne E. Minihan

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT OF THE STATE OF NEW YORK
 COUNTY OF WESTCHESTER



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

- against -

Decision & Order

FILED

Indictment No.
 17-1094

JAN 23 2019

TIMOTHY C. IDONI
 COUNTY CLERK
 COUNTY OF WESTCHESTER

CENDARI MADDOX,

Defendant.

-----X
 Minihan, J.

By order to show cause, defendant, Cendari Maddox, is seeking leave to renew and/or reargue so much of this court's decision and order dated February 15, 2018 as denied that branch of his omnibus motion which sought dismissal of the indictment on the ground that the evidence presented to the grand jury was impaired, defective, and legally insufficient. The court grants the motion to renew and reargue, and denies the underlying motion.

Defendant was indicted on November 16, 2017 for Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03 [3]). On October 15, 2018, this court decided his omnibus motion to inspect the minutes of the grand jury and to dismiss the indictment, *inter alia*, and ordered a *Mapp/Dunaway/Huntley* hearing. The defendant contends that after he received certain portions of the minutes during pre-trial hearings, a review of the minutes demonstrated that the People allowed the admission of the defendant's prior criminal record to come into evidence during the grand jury proceedings in violation of CPL 210.30 [2]; 220.60, and 190.30. By affirmation in opposition, the People acknowledge that the criminal history was introduced, and claim that the court properly denied the motion to dismiss the indictment since the grand jury proceedings were not impaired requiring dismissal of the indictment. As such, the People argue that there are no new facts or misapprehension of law for this court to reconsider, and that this motion should be denied. The defendant did not submit a reply.

As a procedural matter, the motion is defective as defendant has failed to furnish a complete set of the papers relied upon in making the original motion, including this court's decision and order dated February 15, 2018, as required by CPLR 2214 (c) (*see Biscone v JetBlue Airways Corp.*, 103 AD3d 158 [2d Dept 2012]). The defendant has also failed to comply with CPLR 2221 which requires that an application which seeks to affect a prior order be denominated as either a motion for leave to reargue (CPLR 2221[d]) or as a motion for leave to renew (CPLR 2221[e]). If the motion is brought as a combined motion for leave to reargue and renew, CPLR

2221(f) requires that the movant separately identify and support each item of relief sought in order that the court could decide each part of the application as if it had been separately made (CPLR 2221[f]).

Notwithstanding the procedural flaws, defendant's motion to renew and/or reargue is granted, and upon reconsideration, it is denied on the merits. A motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion" (CPLR 2221[d] [2]; see *Ahmed v Pannone*, 116 AD3d 802, 805 [2d Dept 2014]; *Matter of Anthony J. Carter, DDS, P.C. v Carter*, 81 AD3d 819, 820 [2d Dept 2011]). "While the determination to grant leave to reargue a motion lies within the sound discretion of the court, a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided, or to present arguments different from those originally presented" (*Matter of Anthony J. Carter, DDS, P.C. v Carter*, 81 AD3d at 820 [2d Dept 2011]). On the other hand a motion for leave to renew must be based upon new or additional facts which, although in existence at the time of the original motion, were not made known to the party seeking renewal (see *Morrison v Rosenberg*, 278 AD2d 392 [2d Dept 2000]).

Defendant's claim that this court overlooked or misapprehended the facts or the law; or that additional new facts *-only to the defendant-* warrant a dismissal of the indictment is without merit. Criminal Procedure Law 210.20 (2) states an indictment is defective if "the evidence before the grand jury was not legally sufficient to establish the offense charged ..." (CPL 210.20[2]). Criminal Procedure Law 190.65(1) provides that the grand jury may indict a person for an offense when: "(a) the evidence before it is legally sufficient to establish that such person committed such offense ... and (b) competent and admissible evidence before it provides reasonable cause to believe that such person committed the offense" (CPL 190.65[1]). "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]); *People v Jennings*, 69 NY2d 103 [1986]). "Reasonable cause to believe that a person has committed an offense exists when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight and persuasiveness as to convince a person of ordinary intelligence, judgement and experience that it is reasonably likely that such offense was committed and that such person committed it" (CPL 70.10 [2]).

"[J]udicial review of evidentiary sufficiency is limited to a determination of whether the bare competent evidence establishes the elements of the offense ... and a court has no authority to examine whether the presentation was adequate to establish reasonable cause, because that determination is exclusively the province of the grand jury" (Preiser, Practice Commentaries, McKinney's Cons Laws of NY, Book 11A, CPL 190.60). In significant contrast to trial, where the prosecution must prove a defendant's guilt beyond a reasonable doubt, in the grand jury, the People are merely required to present a *prima facie* case (*People v Bello*, 92 NY2d 523 [1988]; *People v Ackies*, 79 AD3d 1050 [2d Dept 2010]). While the People "enjoy wide discretion in presenting their case" to a grand jury (*People v Lancaster*, 69 NY2d 20, 25 [1986], *cert denied* 480 US 922 [1987]), they must, in presenting their case, abide by the rules of evidence for criminal proceedings (CPL 190.30[1]; *People v Mitchell*, 82 NY2d 509 [1993]). Prosecutorial discretion is further limited by the "duty not only to secure indictments but also to see that justice

is done” (*People v Lancaster*, 69 NY2d at 26). In that regard, a prosecutor presenting a case to a grand jury “owes a duty of fair dealing to the accused” (*People v Pelchat*, 62 NY2d 97, 105 [1984]).

The defendant 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]). The statutory dismissal test is very high and does not turn on mere flaw rather an indictment should be dismissed where the grand jury proceeding is defective such that it “fails to conform to the requirements of [CPL 190] to such degree that the integrity thereof is impaired and prejudice to the defendant may result” (*People v Baptiste*, 160 AD3d 976 [2d Dept 2018]; see CPL 210.20[1][c] and 210.35[5]). Dismissal of an indictment pursuant to CPL 210.35(5) “is a drastic, exceptional remedy and should thus be limited to those instances where prosecutorial wrongdoing, fraudulent conduct or errors potentially prejudice the ultimate decision reached by the [g]rand [j]ury” (*People v Moffitt*, 20 AD3d 687, 688 [3d Dept 2005], *lv denied* 5 NY3d 854 [2005]; *People v Huston*, 88 NY2d 400, 409 [1996]). “Even where inadmissible evidence is presented to a grand jury, such will be deemed fatal only when the remaining evidence is insufficient to sustain the indictment” (*People v Mujahid*, 45 AD3d 1184, 1185 [3d Dept 2007], *lv denied* 10 NY3d 814 [2008]; *People v Huston*, 88 NY2d at 409; *People v Kidwell*, 88 AD3d 1060, 1061 [3d Dept 2011]). Further, the introduction of inadmissible evidence before the grand jury does not, standing alone, vitiate the proceedings or provide grounds for dismissing the indictment so long as there is sufficient competent evidence to support the finding of the indictment (*People v Moffitt*, 20 AD3d 687, 688 [3d Dept 2005], *lv denied* 5 NY3d 854 [2005]).

Principally, the defendant argues that part of the court’s decision denying the omnibus motion to dismiss for defective and/or legally insufficient proceedings was error since the proceedings were impaired when the grand jurors heard evidence related to the defendant’s criminal history. However, a review of the minutes -- at the time the omnibus motion was made and now-- reveal that after the prosecutor charged the grand jury on the elements of the crime of criminal possession of a weapon in the second degree, and after City of Yonkers Detective Daniel Medina testified about the recovery of a gun, questions were posed by the grand jurors about whether the defendant had a license for the gun. The prosecutor re-called Detective Medina to the stand and the following exchange transpired:

Prosecutor: Detective, when you spoke to Cendari Maddox on September 12, 2017, did he inform you that he had a permit for the firearm that was required at that location?

Detective: No, he did not.

Prosecutor: Are you aware as to whether or not he had a permit for that gun?

Detective: I’m not aware if he had a permit. I’m aware that he has a criminal record of which would prevent him from obtaining a permit and should he have had the permit, his criminal history would make it so that he couldn’t possess those weapons.

Prosecutor: During the search warrant execution at 8 Stewart Place was a permit located for that firearm?

Detective: No.

Prosecutor: Are there any other questions?

The Clerk: Can we ask what the criminal record is?

Prosecutor: You can't ask that. In fact, I'm going to ask you to disregard it in terms of your deliberation on this count. It is prejudicial to the defendant. So, it shouldn't enter into your consideration with respect to whether or not to accuse him of possessing the gun. But it is relevant to the question of whether or not legitimately possessed it.

The Clerk: He can't legally possess a gun.

The Foreperson: Based on that (criminal) record, factually speaking, it would not be possible for him to have legitimate ownership of that firearm?

Prosecutor: Can you answer that, Detective?

Detective: Yes.

A Juror: Can we ask what the purpose of the search warrant was?

Prosecutor: No, because it is not relevant for your consideration.

A Juror: We are just focusing on the fact there was a gun on the property that he claims was hi[s].

A Juror: That would not have been found without a search warrant.

Prosecutor: Right.

The Foreperson: I'm good now. Everyone else good? That was the pice of information I needed.

The Clerk: What was the question of control?

The Foreperson: It is not relevant anymore.

Prosecutor: Thank you, Detective. (Tr. 34-36)

Although the Detective's statement revealed that the defendant had a criminal history, he did not identify any of the details about the defendant's criminal history as to the type of crime(s) or the date of the crime(s). Importantly, the prosecutor quickly gave a curative instruction to avoid prejudice to the defendant. In fact, she clearly advised them not to consider his history and the grand jurors are presumed to have followed the prosecutor's curative instructions, dispelling any prejudice to the defendant (*People v Walton*, 70 AD3d 871 [2d Dept 2010]). A complete review of the minutes demonstrates that the grand jury heard evidence that upon execution of a search warrant, police recovered a loaded gun which was discarded out of a window where defendant admitted was his gun during an interview with the Yonkers Police detectives. A complete review of the minutes demonstrates that the indictment is supported by legally sufficient evidence that established that every element of the offense charged was committed and that the defendant committed the alleged crime (CPL 190.65[1]; CPL 70.10 [1]).

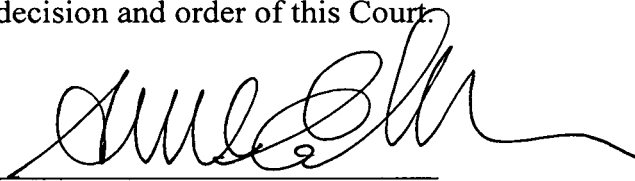
Defendant's contention that the prosecutor's instruction was improper because she did not instruct the grand jury that it may consider the testimony for the limited purpose of elevating the crime to a felony, is without merit. Defendant was charged with the crime of criminal possession of a *loaded* weapon under Penal Law § 265.03(3), not for possessing a weapon under Penal Law § 265.02 (1)-- *which later charge allows a prior conviction to be admitted to support the felony charge of Penal Law § 265.02*. The defendant has failed to demonstrate that the grand jury process was impaired nor has he shown that it failed to conform to the requirements of CPL Article 190 to such a degree that the integrity was compromised and, in view of the sufficiency of the independent, admissible proof which supported the indictment, together with the curative instruction, no prejudice to the defendant could have resulted (*People v Baptiste*, 160 AD3d 976 [2d Dept 2018]; *People v Kappen*, 142 AD3d 1106 [2d Dept 2016]; *People v Walton*, 70 AD3d 871 [2d Dept 2010]; *People v Ramirez*, 298 AD2d 413 [2d Dept 2002]).

Although the defendant received relevant portions of the minutes, based upon the *in camera* review, this court does not find release of the complete set of grand jury minutes 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 complete copy of the grand jury minutes is denied (*People v Jang*, 17 AD3d 693 [2d Dept 2005]; CPL 190.25[4][a]).

Based on the foregoing, it is ORDERED that the motion to renew and/or reargue is granted, and that, upon renewal and reargument, those branches of the underlying motion which were for dismissal of the indictment and release of the minutes are denied and the court adheres to its initial determination.

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

Dated: White Plains, New York
January 17, 2019



Honorable Anne E. Minihan
Acting Supreme Court Justice

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