

People v Smith

2019 NY Slip Op 33974(U)

November 12, 2019

County Court, Westchester County

Docket Number: 17-1172

Judge: David S. Zuckerman

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**TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER**

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER

MAURICE SMITH,

Ind. No.: 17-1172

Defendant.

-----X

ZUCKERMAN, J.

Defendant stands accused under Indictment No. 17-1172 of one count of Burglary in the Second Degree (Penal Law §140.25[2]). As set forth in the Indictment, it is alleged that, on or about August 4, 2017, Defendant, in Westchester County, New York, while aiding or abetting and acting in concert with another, entered or remained unlawfully in a dwelling with the intent to commit a crime therein. By Notice of Motion dated October 1, 2019, with accompanying Affirmation, Defendant moves for omnibus relief. In response, the People have submitted an Affirmation in Opposition dated October 8, 2019.

The motion is disposed of as follows:

A. DISCOVERY AND INSPECTION

Discovery is granted to the extent provided for in Criminal Procedure Law Article 240 and/or provided by the People. If any items set forth in CPL Article 240 have not been provided to Defendant pursuant to the consent discovery order in the instant matter, said items are to be provided forthwith. Further, the bill of particulars set forth in the voluntary disclosure form provided

to Defendant has adequately informed her of the substance of her alleged conduct and in all respects complies with CPL §200.95.

The People acknowledge their continuing duty to disclose exculpatory material (see *Brady v Maryland*, 373 US 83 [1963] and *Giglio v United States*, 405 US 150 [1971]) at the earliest possible date. If the People are or become aware of any material which is arguably exculpatory but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

To any further extent, including regarding the production of Rosario material at this time, discovery is denied as such material or information is beyond the scope of discovery (see *People v Colavito*, 87 NY2d 423 [1996]; *Matter of Catterson v Jones*, 229 AD2d 435 [2nd Dept 1996]; *Matter of Catterson v Rohl*, 202 AD2d 420 [2nd Dept 1994]; *Matter of Brown v Appelman*, 241 AD2d 279 [2nd Dept 1998]).

**B. MOTION TO INSPECT THE GRAND JURY MINUTES
AND TO DISMISS AND/OR REDUCE THE INDICTMENT**

Defendant moves pursuant to CPL §§210.20(1)(b) and (c) to dismiss the indictment, or counts thereof, on the grounds that the evidence before the Grand Jury was legally insufficient and that the Grand Jury proceeding was defective within the meaning of CPL §210.35. On consent of the People, the Court has reviewed the minutes of the proceedings before the Grand Jury.

Pursuant to CPL §190.65(1), an indictment must be supported by legally sufficient evidence which establishes that the defendant committed the offenses charged. Legally sufficient evidence is competent evidence which, if accepted as true, would establish each and every element of the offense charged and the defendant's commission thereof (CPL §70.10[1]); *People v Jennings*, 69 NY2d 103 [1986]). "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 Bello*, 92 NY2d 523 (1998); *People v Ackies*, 79 AD3d 1050 (2nd Dept 2010). In rendering a determination, "[t]he reviewing court's inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of each element of the charged crimes and whether the grand jury could rationally have drawn the inference of guilt." *Bello, supra*, quoting *People v Boampong*, 57 AD3d 794 (2nd Dept 2008-- internal quotations omitted).

A review of the minutes reveals that the evidence presented, if accepted as true, would be legally sufficient to establish every element of the offenses charged (see CPL §210.30[2]). Accordingly, Defendant's motion to dismiss or reduce for lack of sufficient evidence is denied.

With respect to Defendant's claim that the Grand Jury proceeding was defective within the meaning of CPL §210.35, a review of the minutes supports a finding that a quorum of the grand jurors was present during the presentation of evidence and at the

time the district attorney instructed the Grand Jury on the law, that the grand jurors who voted to indict heard all the "essential and critical evidence" (see *People v Collier*, 72 NY2d 298 [1988]; *People v Julius*, 300 AD2d 167 [1st Dept 2002], *lv den* 99 NY2d 655 [2003]), and that the Grand Jury was properly instructed (see *People v Calbud*, 49 NY2d 389 [1980] and *People v. Valles*, 62 NY2d 36 [1984]).

In making this determination, the Court does not find that release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court.

C. MOTION FOR A MAPP/DUNAWAY HEARING

Defendant moves to suppress all physical evidence which the People seek to introduce at trial. The People, in their Affirmation in Opposition, state that there was no impropriety in the search of Defendant at the time of his initial arrest in 2017, which was based on probable cause. Consequently, the motion to suppress physical evidence seized at the time of Defendant's 2017 arrest is granted to the extent that a pre-trial *Mapp/Dunaway* hearing is ordered to determine the propriety of that search and seizure. Defendant also moves to suppress all physical evidence seized at the time of his 2019 arrest, which the People seek to introduce at trial. The People, in their Affirmation in Opposition, state that there was no impropriety in the search incident to arrest conducted of Defendant, which was pursuant to an Indictment Arrest Warrant. The results of a search conducted

pursuant to a lawful search or arrest warrant is not subject to a suppression hearing. *People v. Arnau*, 58 NY2d 27 (1982). The court has reviewed the arrest warrant, and Grand Jury minutes (see above), and finds that they provided ample probable cause to arrest Defendant, who was known to the police officers who arrested him. Therefore, the motion is denied as to any evidence seized at the time of Defendant's 2019 arrest.

D. MOTION FOR A HUNTLEY HEARING

Defendant moves to suppress noticed statements pursuant to CPL §710.20(3) alleging, *inter alia*, that they were made after a seizure that was not based on probable cause. The People, in their Affirmation in Opposition, state that there was no impropriety in obtaining the statements attributable to Defendant. They do, however, consent to a hearing in the issue. Consequently, the motion to suppress noticed statements is granted to the extent that a *Huntley/Dunaway* hearing is ordered to determine the voluntariness of the noticed statements.

E. MOTION FOR SANDOVAL/VENTIMIGLIA/MOLINEUX HEARING

1. *Sandoval* - Granted, solely to the extent that a *Sandoval* hearing shall be held immediately prior to trial at which time:

A. The People must notify the Defendant of all specific instances of the Defendant's prior uncharged criminal, vicious or immoral conduct of which the People have knowledge and which the People intend to use at trial for purposes of impeaching the credibility of the Defendant (see, CPL §240.43); and

B. Defendant must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf (see, *People v. Malphurs*, 111 A.D.2d 266 [2nd Dept. 1985]).

2. *Ventimiglia/Molineux* - Upon the consent of the People, in the event that the People determine that they will seek to introduce evidence at trial of any prior bad acts of the Defendant, including acts sought in their case in chief such as the prior crime used to elevate Count 1 of the Indictment to a Felony, they shall so notify the Court and defense counsel and a *Ventimiglia/Molineux* hearing (see *People v Ventimiglia*, 52 NY2d 350 [1981]; *People v Molineux*, 168 NY 264 [1901]) shall be held immediately prior to trial to determine whether or not any evidence of uncharged crimes may be used by the People, including to prove their case in chief. The People are urged to make an appropriate decision in this regard sufficiently in advance of trial to allow any *Ventimiglia/Molineux* hearing to be consolidated and held with the other hearings herein.

F. MOTION FOR A WADE HEARING

Defendant moves to suppress a noticed identification procedure pursuant to CPL §710.20(3). The People, in their Affirmation in Opposition, state that there was no impropriety in the identification procedure attributable to Defendant in the instant matter, and that it actually occurred when a police witness who was previously familiar with Defendant was shown a still photograph

and/or a video, and asked if Defendant was the person portrayed in the two photos. Consequently, the motion to suppress a noticed identification procedure is denied.

F. MOTION TO CONTROVERT A SEARCH WARRANT

Defendant moves to suppress physical evidence seized by way of a search warrant which the People seek to introduce at trial. With respect to physical evidence recovered pursuant to execution of a search warrant, the court has reviewed the affidavit in support of the search warrant and finds it provided the issuing magistrate with ample probable cause to support issuance of the warrant. Further, this court reviewed the search order and finds it to be proper in all respects. Therefore, the motion to controvert is denied. This court notes that, according to the Voluntary Disclosure Form and People's Affirmations filed in this case, the People have provided defense counsel with access to the search warrant and supporting affidavit.

G. MOTION TO SEVER

Defendant moves to sever the trial of the instant Indictment from that of his co-defendant, asserting that a joint trial would result in undue prejudice to him due to antagonistic defenses, that he might be implicated by the statement of a co-defendant who might choose not to testify at a joint trial, and the possibility that counsel for his co-defendants would not be bound by any *Sandoval/Ventimigila* ruling which this court may issue with regard to the prosecution. The People, in light of the fact that the co-

defendant is scheduled to start trial imminently, have consented to the motion. The court thus, with the consent of the People, grants severance of the trial of this defendant from the trial of the co-defendant.

All other motions are denied.

Dated: White Plains, New York
November 12, 2019



HON. DAVID S. ZUCKERMAN, A.J.S.C.

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