

People v Monteleone
2019 NY Slip Op 33979(U)
July 29, 2019
County Court, Westchester County
Docket Number: 18-0278
Judge: David S. Zuckerman
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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER

MARIE MONTELEONE,

Ind. No.: 18-0278

Defendant.

-----X

ZUCKERMAN, J.

Defendant stands accused under Indictment No. 18-0278 of Grand Larceny in the Second Degree (Penal Law §155.40[1]). As set forth in the Indictment, it is alleged that, on or about and between February 1, 2008 and July 11, 2013, Defendant, in Westchester County, New York, stole property from another valued in excess of \$50,000.00. By Notice of Motion dated June 10, 2019, with accompanying Affirmation, Defendant moves for omnibus relief. In response, the People have submitted an Affirmation in Opposition dated June 24, 2019.

The motion is disposed of as follows:

A. MOTION FOR DISCOVERY AND INSPECTION

Defendant's motion for 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

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TIMOTHY C. DONI
COUNTY CLERK
COUNTY OF WESTCHESTER

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, the application is denied as seeking material or information 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 FOR A MAPP/DUNAWAY HEARING

Defendant moves to suppress all physical evidence which the People seek to introduce against her at trial, including an allegation that it was recovered after a search that was not based on probable cause. The People, in their Affirmation in Opposition, state that there was no impropriety in the search conducted and seizure made and add, in particular, that it was based on probable cause. Consequently, the motion to suppress physical evidence is

granted to the extent that a pre-trial *Mapp/Dunaway* hearing is ordered to determine the propriety of the search and seizure.

C. 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).

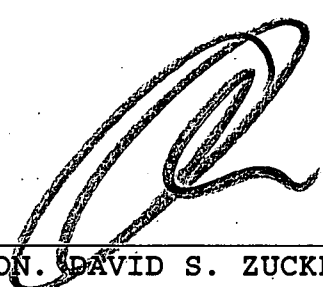
A review of the minutes reveals that the evidence presented, if accepted as true, would be legally sufficient to establish every element of the offenses charged (see CPL §210.30[2]). Accordingly, Defendant's motion to dismiss or reduce for lack of sufficient evidence is denied.

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.

All other motions are denied.

Dated: White Plains, New York
July 29, 2019



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

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