

**People v Lyde**

2019 NY Slip Op 34105(U)

March 18, 2019

County Court, Westchester County

Docket Number: 18-0540-01-02

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

**FILED**

**MAR 20 2019**

FILED  
AND ENTERED  
ON 3-19 2019  
WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

DECISION & ORDER  
Indictment No. 18-0540-01-02

KEVIN LYDE and KEVIN YOUNG A/K/A "FLATS"

Defendants.

-----X  
MINIHAN, J.

Defendant KEVIN YOUNG, by Westchester County Indictment No. 18-0540-01-02, is charged, acting in concert with codefendant, Kevin Lyde, with Grand Larceny in the Second Degree (Penal Law § 155.40[1]) (two counts), and Burglary in the Third Degree (Penal Law § 140.20) (four counts), and has filed an omnibus motion which consists of a Notice of Motion, an Affirmation in Support, and a Memorandum of Law, with exhibits. 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 to INSPECT, DISMISS and/or REDUCE  
CPL ARTICLE 190

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 defendant, who 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]), has offered no sworn factual allegations, in support of his argument that the grand jury proceedings were defective. The minutes reveal a quorum of the grand jurors was present during the presentation of evidence, that the Assistant District Attorney properly instructed the grand jury on the law, and only permitted those grand jurors who heard all the evidence to vote the matter (*see People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]).

The indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's commission thereof with sufficient precision as to clearly apprise the defendant of the conduct which is the subject of the indictment (CPL 200.50). The indictment charges each and every element of the crimes, and alleges that the defendant committed the acts which constitute the crimes at a specified place during a specified time period and, therefore, is sufficient on its face (*People v Cohen*, 52 NY2d 584 [1981]; *People v Iannone*, 45 NY2d 589 [1978]).

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 [2d 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 [2d 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]).

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]).

B.

#### MOTION to SUPPRESS NOTICED STATEMENTS

This branch of the defendant's motion seeking to suppress statements which he allegedly made, and which were noticed by the People pursuant to CPL 710.30, on the grounds that they were unconstitutionally obtained is granted to the extent that a pre-trial *Huntley* hearing shall be held, on consent of the People, to determine whether the alleged statements were involuntarily made within the meaning of CPL 60.45 (see CPL 710.20(3); CPL 710.60[3][b]; *People v Weaver*, 49 NY2d 1012 [1980]). The hearing will also address whether the alleged statements were obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (see *Dunaway v New York*, 442 US 200 [1979]).

C.

MOTION TO SUPPRESS IDENTIFICATION TESTIMONY

With respect to the defendant's motion to suppress identification testimony, the Court grants a *Rodriguez* hearing, on consent of the People, to determine the specific circumstances of the alleged relationship between the witness and the defendant (*see People v Rodriguez*, 79 NY2d 445 [1992]). Thereafter, if necessary, the Court will conduct a *Wade* hearing (*see United States v Wade*, 388 US 218 [1967]).

D.

MOTION to CONTROVERT the SEARCH WARRANTS and  
SUPPRESS PHYSICAL EVIDENCE

Defendant moves to suppress all physical evidence as the fruits of his unlawful arrest without probable cause. The court grants this branch of the motion to the extent that a *Mapp/Dunaway* hearing shall be held prior to trial to determine the lawfulness of any search, not conducted pursuant to a search warrant, resulting in the seizure of property (*see Dunaway v New York*, 442 US 200 [1979]; *Mapp v Ohio*, 367 US 643[1961]). The hearing will also address whether any evidence was obtained in violation of the defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

Defendant moves to suppress as the fruits of his illegal arrest all physical evidence seized pursuant to court order, including the N.J. wiretap order (Jerejian, J.) dated February 28, 2018, the search warrant orders (Minihan, J.) dated April 3, 2018, the GPS order (Cacace, J.) dated February 2, 2018, and the N.J. orders for communications data (Jerejian, J.) dated December 20, 2017, February 12, 2018, and March 28, 2018, and any extensions to these orders. The court denies defendant's motion to controvert the subject court orders. With respect to the orders pertaining to the residence, car, and cell phone of codefendant, and of third-parties, the motion is denied on the basis that defendant has not set forth any facts to suggest that he had a legitimate expectation of privacy in those things and, thus, lacks standing to challenge their search (*see Rakas v Illinois*, 439 US 128 [1978]; *People v Ramirez-Portoreal*, 88 NY2d 99 [1996]; *People v Ponder*, 54 NY2d 160 [1981]; *People v White*, 153 AD3d 1369 [2d Dept 2017]; *People v Hawkins*, 262 AD2d 423 [2d Dept 1999]).

With respect to the search warrant orders for defendant's cell phone and residence, and to the extent that the N.J. wiretap intercepted telephone calls of defendant, the motion to controvert is denied. The results of a search conducted pursuant to a facially sufficient search warrant are not subject to a suppression hearing (*People v Arnau*, 58 NY2d 27 [1982]). The Fourth Amendment to the U.S. Constitution provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Article I § 12 of the New York State Constitution contains identical language. Upon review of the four corners of the supporting affidavits, the subject warrants were adequately supported by probable cause

(see *People v Keyes*, 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]). Thus, defendant's motion for suppression of evidence seized pursuant to the court orders is denied.

E.

MOTION for DISCOVERY, DISCLOSURE and INSPECTION  
CPL ARTICLE 240

The parties have entered into a stipulation by way of a Consent Discovery Order consenting to the enumerated discovery in this case. Defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 240. If there any further items discoverable pursuant to Criminal Procedure Law Article 240 which have not been provided to defendant pursuant to the Consent Discovery Order, they are to be provided forthwith.

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]). The People have also acknowledged their duty to comply with *People v Rosario*, (9 NY2d 286 [1961]). 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 such must be disclosed to the defendant.

As to the defendant's demand for scientific related discovery, the People have acknowledged their continuing duty to disclose any written report or document concerning a physical or mental examination or test that the People intend to introduce, or the person who created them, at trial pursuant to CPL 240.20 (1)(c).

Defendant's motion for a further Bill of Particulars is denied. The Bill of Particulars set forth in the Consent Discovery Order provided to the defendant has adequately informed the defendant of the substance of his alleged conduct and in all respects complies with CPL 200.95.

The People recognize their continuing duty to disclose the terms of any deal or agreement made between the People and any prosecution witness at the earliest possible date (see *People v Steadman*, 82 NY2d 1 [1993]; *Giglio v United States*, 405 US 150 [1972]; *Brady v Maryland*, 373 US 83 [1963]; *People v Wooley*, 200 AD2d 644 [2d Dept 1994]).

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]).

F.

#### MOTION for SEVERANCE

The court denies defendant's motion for a severance. Whether to grant a separate trial is a matter vested to the sound discretion of the trial court (*People v Mahboubian*, 74 NY2d 174, 183 [1989]). Where, as here, the defendants are charged with acting in concert, and proof against the defendants is supplied by the same evidence, only the most cogent reasons warrant a severance (*see People v Bornholdt*, 33 NY2d 75, 87 [1973]). "Severance is compelled where the core of each defense is in irreconcilable conflict with the other and where there is significant danger, as both defenses are portrayed to the trial court, that the conflict alone would lead the jury to infer defendant's guilt" (*People v Mahboubian*, 74 NY2d at 184). Defendant has failed to show good cause for severance (*see* CPL 200.40 [1]). Defendant's claim that severance is warranted pursuant to *Bruton v United States* (391 US 123 [1968]) is unconvincing given that the People have not served notice of any statement by the codefendant. Defendant's speculation that the codefendant will pursue an antagonistic defense is an insufficient basis to proceed with separate trials (*see People v Chaplin*, 181 AD2d 828 [2d Dept 1992]).

G.

#### MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

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, vicious or immoral conduct. The People have consented to a *Sandoval* hearing. Accordingly, it is ordered that immediately prior to trial a hearing shall be conducted pursuant to *People v Sandoval* (34 NY2d 371[1974]). At said hearing, the People shall be required to notify the defendant of all specific instances of his criminal, prior uncharged criminal, 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). Defendant shall 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 his ability to testify as a witness on his own behalf (*see People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

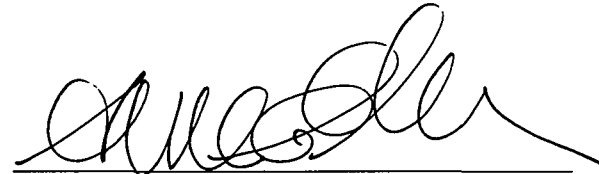
Defendant's application for a hearing, pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]) is denied since the People have not indicated an intention to use evidence of any prior bad act or uncharged crimes of the defendant during its case in chief (*see People v Molineaux*, 168 NY2d 264 [1991]). If the People move to introduce such evidence, the defendant may renew this aspect of his motion.

H.

MOTION for TIME to FILE FUTURE MOTIONS

This branch of the motion is denied. Any future motion must be brought by way of order to show cause setting forth reasons as to why said motion was not brought in conformity with CPL 255.20.

Dated: White Plains, New York  
March 18, 2019



Honorable Anne E. Minihan  
Acting Justice of the Supreme Court

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