

People v Knight

2019 NY Slip Op 34399(U)

July 16, 2019

County Court, Westchester County

Docket Number: Indictment No. 19-0154

Judge: George E. Fufidio

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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-

ANDREW KNIGHT & ROBERT FOSTER,

FILED

JUL 15 2019

DECISION & ORDER

Indictment No.: 19-0154

TIMOTHY C. IDONI
Defendant COUNTY CLERK
COUNTY OF WESTCHESTER

FUFIDIO, J.

Defendant, ROBERT FOSTER, having been indicted on or about February 14, 2019 for hindering prosecution in the first degree, has filed a motion by Order to Show Cause along with an Affirmation. 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

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 grand jury was properly instructed (*see People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2nd Dept 2013]). 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 [2nd 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 [2nd 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]). More specifically, the Defendant, in his motion urges the dismissal of this indictment for three specific instances, the first, that the People failed to present "material" information to the grand jury, second, that the grand jury received inaccurate or misleading information and third, that the video evidence admitted into evidence was improperly

authenticated, all of which, he claims, affect the sufficiency of the evidence presented.

Regarding his first contention, the Defendant does not voice what particular “material” evidence he alleges was withheld from the grand jury, nevertheless, the People enjoy wide latitude with respect to how they present their case and what evidence to present, as long as the decision to not present evidence favorable to the defendant does not result in a, “needless or unfounded prosecution” (*People v Valles*, 62 NY2d 36 [1984]; *People v Perry*, 187 AD2d 678 [2nd Dept. 1992]). Here, based on a review of the evidence before the grand jury the Court finds that this is not an unfounded prosecution and is amply supported. Second, with respect to the grand jury hearing misleading or inaccurate evidence, based on the evidence presented, the fact that the Defendant was identified as one of the People in several of the videos presented as evidence, the Court does not find that the grand jury was misled, nor, were they misled at any other point during the presentation. Finally, the Court finds that the videos were properly authenticated, but even if they were not and the Court disregarded them, there remained ample evidence by which to indict the defendant (*People v Huston*, 88 NY2d 400 [1996]).

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 FOR SEVERANCE

When charges against co-defendants are properly joined in a single indictment, motions for separate trials are addressed to the discretion of the trial court (*see People v Mahboubian*, 74 NY2d 174, 183 [1989]). When such a motion is made, “severance is compelled where the core of each defense is in irreconcilable conflict with the other and where there is a 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). Inasmuch as the defenses asserted by the defendant and the co-defendants are not in irreconcilable conflict with each other such that there is a danger that the conflict alone would lead a jury to infer the defendant’s guilt, his motion to sever is denied (*see People v Terry*, 78 AD3d 1207 [2d Dept 2010]).

The defendant was properly joined in the same indictment (CPL 200.40[1]). The Court may, however, for good cause shown order that defendant be tried separately. Good cause includes a showing that defendant would be “unduly prejudiced by a joint trial” (CPL 200.40[1]). Further, where the proof against all defendants is supplied by the same evidence, “only the most cogent reasons warrant a severance” (*People v Bornholdt*, 33 NY2d 75, 87 [1973]; *People v Kevin Watts*, 159 AD2d 740 [2d Dept 1990]). And, “. . . a strong public policy favors joinder, because it expedites the judicial process, reduces court congestion, and avoids the necessity of recalling witnesses. . .” (*People v Mahboubian*, 74 NY2d 174, 183 [1989]).

Here, the cases against the Co-Defendant, who is charged with murder and this Defendant who is charged with helping the Defendant avoid capture for that murder both require the same evidence with respect to the murder. The Defendant’s case requires extra proof regarding the hindering portion, however, the core of the evidence is the same. The Defendant argues that the difference in severity

between hindering prosecution and murder will create a spillover effect, however, because the evidence as it pertains to both defendants is so similar, the jury will necessarily have to hear about the actions comprising the murder regardless of whether or not they are being tried together or separately. Likewise, temporally, the Defendant's case is so distinct, that there does not appear to be any danger of the Co-Defendant's actions being imputed on to the Defendant simply because the cases are tried together. The Defendant did not enter the picture until the Co-Defendant had already long since fled the scene of the murder. Similarly, the Defendant complains that there may be mention of gang affiliation without elaborating on how the testimony will manifest or how it will affect the Defendant. If the People wish to use this evidence against the Defendant they will have to litigate the use of it, and if they use such evidence against the Co-Defendant or other witnesses then it is difficult to see how that would impact this Defendant. This speculation is not sufficient to overcome the judicial preference for joint trials.

With respect to the Defendant's second ground, he has not demonstrated what his Co-Defendant's exculpatory testimony would be and ignores the other evidence that decidedly inculpates him, such as statements that he made to the police and statements made in front of other, third party witnesses (*People v Bornholdt*, 33 NY2d 75 [1973]). Accordingly, the Defendant's motion for severance is denied.

C. MOTION TO SUPPRESS STATEMENTS

The Court grants the Defendant's motion to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the Defendant, which have been noticed by the People pursuant to CPL 710.30 (1)(a) were involuntarily made by the Defendant within the meaning of CPL 60.45 (see CPL 710.20 (3); CPL 710.60 [3][b]; *People v Weaver*, 49 NY2d 1012 [1980]), 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]).

D. MOTION TO SUPPRESS PHYSICAL EVIDENCE

Upon the Court's review of the four corners of the search warrant affidavits and orders, the court finds that all of the warrants executed in this case were adequately supported by probable cause to believe that evidence at the location could tend to show that the offense was committed and that the defendant was the one who committed it (see *People v Keves*, 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]).

The Court grants the Defendant's motion solely to the extent that *Mapp* and *Dunaway* hearings are directed to be held prior to trial to determine the propriety of any search resulting in the seizure of property from areas in which the Defendant can demonstrate a reasonable expectation of privacy, for example his car and possibly a location in Goldens Bridge, New York (see, *Mapp v Ohio*, 367 US 643 [1961]) and whether any evidence was obtained in violation of the defendant's Fourth Amendment rights (see, *Dunaway v New York*, 442 US 200 [1979]). At the hearing, the Defendant will have to demonstrate standing with respect to the evidence he wishes to suppress.

However, the Court agrees with the People that the Defendant lacks standing to challenge much of the evidence that was seized in this case, especially as it pertains to evidence at the crime scene and evidence in the victim and his co-defendant's apartment.

F. MOTION FOR SANDOVAL AND VENTIMIGLIA HEARINGS

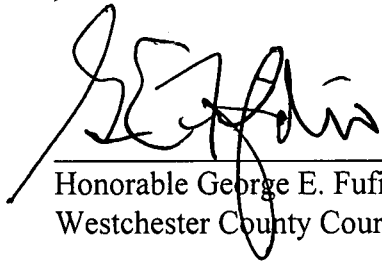
The Defendant has moved for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into the Defendant's prior criminal convictions, prior uncharged criminal act, and vicious or immoral conduct (see, *People v Sandoval*, 34 NY2d 371[1974]). The People have consented to, and it is now ordered that immediately prior to trial the court will conduct a *Sandoval* hearing.

At the hearing, the People are required to notify the Defendant of all specific instances of his criminal, prior uncharged criminal acts and 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). The Defendant shall then 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 him should he decide testify as a witness on his own behalf and thereby prevent him from exercising this right (see, *People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

The Defendant's application for a *Ventimiglia* hearing is denied as premature, because the People have not indicated an intention to use any evidence of prior bad act or uncharged crimes of the Defendant in its case in chief (see, *People v Molineaux*, 168 NY2d 264 [1901]; *People v Ventimiglia*, 52 NY2d 350 [1981]). The People have stated that if they do intend to use any *Molineaux* evidence that they will inform the defense and the court of their intention and at that point the Defendant may renew this aspect of his motion.

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

Dated: White Plains, New York
July 16, 2019



Honorable George E. Fufidio
Westchester County Court Judge

To:

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