

People v Daniels

2019 NY Slip Op 34401(U)

July 2, 2019

County Court, Westchester County

Docket Number: Indictment No. 19-0332-09

Judge: Anne E. Minihan

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FILED
AND ENTERED
ON 7-2 2019
WESTCHESTER

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

WALTER DANIELS a/k/a "T," KEITH HOLLAR a/k/a
"BLAZE," JOSHUA QUINONES a/k/a "H,"
JAMES HEWLIN a/k/a "TEEKO" a/k/a "TEEKUS,"
ROY ROGERS a/k/a "FOX," LEON BROOKS a/k/a
"ZACK," SAMUEL FORBES a/k/a "JUNIOR,"
RODERICK RIVERS a/k/a "JUJU," EDVIN MORALES,
WILLIAM RUTHERFORD a/k/a "UNIQUE," VICTOR
JUSTICE a/k/a "VIC," LAMONT KILLIAN

Defendant.

-----X
MINIHAN, J.

DECISION & ORDER
Indictment No. 19-0332-09

FILED ^{DR}
JUL 03 2019
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant is charged by Westchester County Indictment Number 19-0332-09, acting in concert with all other codefendants, with Enterprise Corruption (Penal Law § 460.20) and Conspiracy in the Fourth Degree (Penal Law § 105.10[1]), and is charged separately with Criminal Sale of a Controlled Substance in the Third Degree (Penal Law § 220.39[1]), and Criminal Possession of a Controlled Substance in the Third Degree (Penal Law § 220.16[1]) (two counts), and has filed an omnibus motion which consists of a Notice of Motion and an Affirmation in Support. 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 indictment¹.

¹While the notice of motion includes a request to dismiss the indictment on speedy trial grounds, the motion papers make no arguments in support of that branch of the motion, which is, thus, denied.

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 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, and 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]).

To the extent that defendant seeks to dismiss the indictment on the basis that his arrest was unlawful, that branch of the motion is denied. The grounds for the dismissal of an indictment are purely statutory (*see* CPL 210.20 *et. seq.*), and do not include illegal arrest. The remedy for an unlawful arrest would be to exclude evidence obtained from that illegal arrest (*see generally People v Winn*, 232 AD2d 438 [2d Dept 1996]).

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 CONTROVERT THE WARRANTS and to
SUPPRESS PHYSICAL EVIDENCE

Defendant's motion to suppress any evidence obtained by warrant is denied. Defendant was the target of a search warrant pertaining to a vehicle dated April 10, 2019, an eavesdropping warrant dated March 15, 2019, and an arrest warrant dated April 10, 2019.

As for the search warrant of the subject vehicle, the court denies the motion to controvert, and denies suppression of any evidence obtained thereby, finding that the warrant was adequately supported by probable cause and was sufficiently particular. 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. Consistent with these constitutional provisions, CPL 690.45(4) requires that when a search warrant authorizes the seizure of property, the warrant must include "[a] description of the property which is the subject of the search." "To meet the particularity requirement, the warrant must be specific enough to leave no discretion to the police" (*see People v Cahill*, 2 NY3d 14, 41 [2003]). Upon review of the four corners of the search warrant affidavit, the search warrant was adequately supported by probable cause, and sufficiently particular as to the place to be searched and the things to be seized (*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]). To the extent that the supporting affidavit relied upon facts supplied by informant(s) the affidavit demonstrated both the reliability of the informant(s) and the basis of the informant(s)' knowledge (*see Aguilar v Texas*, 378 US 108 [1964]; *Spinelli v United States*, 393 US 410 [1969]). The defendant's conclusory allegations failed to demonstrate that the search warrant was based upon an affidavit containing false statements made knowingly or intentionally, or with reckless disregard for the truth (*see People v McGeachy*, 74 AD3d 989 [2d Dept 2010]), or that it was executed beyond its scope and authorization. Contrary to defendant's claim, the search warrant had a "no knock" provision. Any alleged failure by the People to make a return on the warrant does not undermine the validity of the search warrant or the search (*see People v Fernandez*, 61 AD3d 891 [2d Dept 2009]).

To the extent that defendant's motion seeks to controvert the eavesdropping warrant, the motion is denied. "[T]he probable cause necessary for the issuance of an eavesdropping warrant is measured by the same standards used to determine whether probable cause exists for the issuance of a search warrant" (*People v Tambe*, 71 NY2d 492, 500 [1988]). Upon review of the four corners of the supporting affidavit, the court finds that the eavesdropping warrant was adequately supported by probable cause. Specifically, there was probable cause to believe that the targeted phone was being used in the commission of the offenses designated in the warrants (*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]). To the extent that the supporting affidavit relied upon facts supplied by informant(s) the

affidavit satisfied *Aguilar-Spinelli* (see *Aguilar v Texas*, 378 US 108 [1964]; *Spinelli v United States*, 393 US 410 [1969]). Defendant's conclusory challenges failed to rebut the People's showing in the application for the warrant that the calls were properly recorded and sufficiently minimized.

Notwithstanding the foregoing, defendant's motion to suppress physical evidence is granted to the extent of conducting a *Mapp* hearing prior to trial to determine the propriety of any search, not conducted pursuant to a warrant, resulting in the seizure of property (see *Mapp v Ohio*, 367 US 643[1961]). Moreover, the hearing will address whether any evidence was obtained in violation of the defendant's Fourth Amendment rights (see *Dunaway v New York*, 442 US 200 [1979]).

C.

**MOTION to SUPPRESS UNNOTICED &
NOTICED STATEMENTS & IDENTIFICATIONS**

Insofar as the motion seeks to preclude the People from introducing statements or identifications at trial which were not noticed pursuant to CPL 710.30, that branch of the motion is denied as premature. Likewise, that branch of the motion which seeks to preclude noticed statements is denied as premature, since the People advise that they have not noticed any statements by defendant. The People acknowledge the statutory requirements of CPL 710.30.

The People note in a footnote that on April 25, 2019, they served defendant with 710.30 notice of an identification of defendant during the grand jury presentation by a detective viewing surveillance video. To the extent that defendant's motion seeks to suppress identification testimony, the Court grants a *Rodriguez* hearing to determine the specific circumstances of the alleged relationship between the witness and the defendant (*People v Rodriguez*, 79 NY2d 445 [1992]). Thereafter, if necessary, the Court will conduct a *Wade* hearing.

D.

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, and prior uncharged criminal, vicious or immoral conduct. On the People's consent, the court orders a pretrial hearing pursuant to *People v Sandoval* (34 NY2d 371[1974]). At the 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.

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 *Brady* 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 request for discovery of the search warrant and supporting affidavit is denied as moot because the People already turned over that discovery.

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.

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 DISCLOSURE of INFORMANTS

Defendant's motion for a *Darden/Goggins* hearing is denied since he has failed to demonstrate what relevant testimony any such witness would have on the issue of his innocence or guilt (*see People v Goggins*, 34 NY2d 163 [1974]; *People v Rivera*, 98 AD3d 529 [2d Dept 2012]). "[T]o compel production of a confidential informant, the defendant must demonstrate that the proposed testimony of the informant would tend to be exculpatory or would create a reasonable doubt as to the reliability of the prosecution's case either through direct examination or impeachment" (*People v Rivera*, 98 AD3d at 529-530). "Bare assertions or conclusory allegations by a defendant that a witness is needed to establish his innocence will not suffice" (*People v Pena*, 37 NY2d 642, 644 [1975]).

G.

MOTION FOR a SEVERANCE and
FOR a SEPARATE TRIAL

The defendant was properly joined in the indictment (CPL 200.40[1][d]). While the court may, in its discretion and for good cause shown, order that defendant be tried separately, defendant failed to demonstrate good cause for severance. 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]). "[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]). Defendant's motion to sever on the ground that there would potentially be prejudice arising from a *Sandoval* ruling is denied as premature, with leave to renew after a *Sandoval* ruling, and upon a showing that a joint trial will result in unfair prejudice to him and substantially impair his defense.

H.

MOTION for an AUDIBILITY HEARING

Inasmuch as codefendant(s) on this indictment have moved for an audibility hearing, and the People consented to same, the court orders a pretrial hearing to determine whether the relevant

communications recorded pursuant to the eavesdropping warrants are so inaudible and indistinct that a jury must speculate as to their contents (*see People v Harrell*, 187 AD2d 453 [2d Dept 1992]; *People v Morgan*, 175 AD2d 930, 932 [2d Dept 1991]). Whether a recording should be admitted into evidence is within the discretion of the trial court (*People v Morgan*, 175 AD2d 930, 932 [2d Dept 1991]). This determination is to be made after weighing the probative value of the evidence against the potential for prejudice (*People v Harrell*, 187 AD2d 453 [2d Dept 1992]).

I.

MOTION to CONDUCT PRE-TRIAL HEARINGS
TWENTY DAYS in ADVANCE of TRIAL

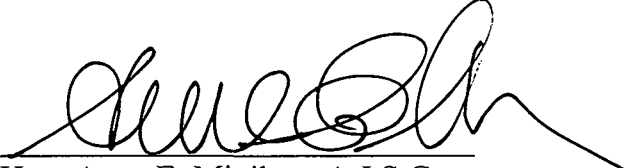
The defendant's motion to schedule pre-trial hearings twenty days prior to trial is denied. The hearings will be scheduled at a time that is convenient to the Court, upon due consideration of all of its other cases and obligations.

J.

MOTION for TIME to FILE FUTURE MOTIONS

Except to the extent specifically granted herein, that branch of the motion which seeks leave to make future motions 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
July 2, 2019


Hon. Anne E. Minihan, A.J.S.C.

To:

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