People v Daniels
2019 NY Slip Op 34402(U)
July 2, 2019
County Court, Westchester County
Docket Number: Indictment No. 19-0332-08
Judge: Anne E. Minihan

[* 1]

FILED
AND ENTERED
ON 7-2 2019
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
Indictment No. 19-0332-08

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.

FILED
JUL 03 2019
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

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MINIHAN, J.

Defendant is charged by Westchester County Indictment Number 19-0332-08, 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 indictment.

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]).

Defendant's vague and conclusory claim that "the evidence presented to the grand jury violates the *Brady* rule" is wholly unsupported and without merit.

To the extent that defendant claims that the grand jury proceedings were defective, that claim fails. Defendant 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]), but has offered no sworn factual allegations to show that the grand jury proceedings were defective. The minutes reveal that 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]).

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 DISCOVERY, DISCLOSURE and INSPECTION
CPL ARTICLE 240

The parties have entered into a stipulation on April 24, 2019 by way of a Consent Discovery Order consenting to the enumerated discovery in this case. 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 also 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]). If the People are or become aware of any material which is arguably exculpatory and they are not willing to consent to its disclosure to 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 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.

As for defendant's demands for discovery as to search warrants and eavesdropping warrants, the People already provided defendant with voluminous records pursuant to CPL 240 and CPL 700.70, as confirmed by the People's letters to this court dated April 24, 2019, and May 16, 2019. With respect to defendant's claim about missing line sheets, the People are hereby ordered to immediately turn over any outstanding line sheets relevant to this defendant, as promised in their letter dated April 24, 2019. If the People fail to turn over any such outstanding material within one week of the date of this order, defense counsel may make a supplemental motion on this specific issue as to the line sheets, if appropriate.

Except to the extent that 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]).

C.

MOTION T to SUPPRESS PHYSICAL EVIDENCE and to SUPPRESS ALL EVIDENCE OBTAINED BY WARRANT

Defendant seeks to suppress all evidence obtained by eavesdropping warrant on the basis that the People failed to comply with the notice provisions of CPL 700.70 with respect to the Port Chester eavesdropping warrants. CPL 700.70 provides, in relevant part, that the contents of any intercepted communication, or evidence derived therefrom, may not be received in evidence or otherwise disclosed at trial unless the People, within 15 days after arraignment, furnish defendant with the subject warrant

and accompanying application. The statute provides that the trial court may extend the 15-day period upon good cause shown and a lack of prejudice to the defendant from the delay in receiving such papers (CPL 700.70). The Court of Appeals has emphasized the need for strict compliance with CPL 700.70 and warned that if the People failed to comply and there was neither an application for an extension of time within the 15 days nor a showing of good cause and lack of prejudice, the evidence derived from the intercepted communication must be suppressed (*see People v Schultz*, 67 NY2d 144 [1986]; *People v Liberatore*, 79 NY2d 208, 212-213 [1992]). Requiring meticulous compliance with the notice and disclosure requirements ot CPL 700.70 protects a defendant's right to test whether the issuance of an eavesdropping warrant was based on probable cause (*see People v Liberatore*, 79 NY2d at 215-216). The Court of Appeals has recognized, however, that the need to protect the identity of informants for their own well-being, and to ensure the flow of information to the police, are equally compelling interests (*see People v Liberatore*, 79 NY2d at 215-216).

Here, defendant was arraigned on April 11, 2019, and at a discovery conference on April 24, 2019, the People provided defendant with the eavesdropping warrants and supporting applications relevant to the instant charges. By letter dated that same day, the People stated that the investigation underlying the present charges stemmed from a separate investigation in the Village of Port Chester, and that there were several eavesdropping warrants and supporting applications used in the Port Chester investigation which, while not directly related to the present defendants, would be provided to defense counsel. The People stressed that none of the named targets in the eavesdropping warrants in the present investigation were named targets in the Port Chester eavesdropping warrants. The People pointed out that the Port Chester papers were the subject of a pending CPL 240.50 application for a protective order and would be turned over to defense counsel after a determination on that application. By order dated April 28, 2019, this court granted a protective order as to the Port Chester eavesdropping warrants and applications, permitting the People to redact the papers and suspending further discovery of them pursuant to CPL 240.50. On or about May 6, 2019, the People informed defense counsel that the redacted materials were available to be downloaded onto an external hard drive at defense counsel's convenience. Shortly thereafter, defense counsel dropped off an external hard drive. It is undisputed that on May 14, 2019, the People informed defense counsel that the hard drive was ready to be picked up, and that on May 15, 2019, defense counsel picked it up. By letter dated May 16, 2019, the People confirmed to the court that defendant was furnished with, in pertinent part, the redacted Port Chester eavesdropping warrants and supporting papers.

Under the circumstances, the court finds no violation of the notice provisions of CPL 700.70 such as to require suppression (*see People v Liberatore*, 79 NY2d at 214; *see also People v Packies*, 156 Misc 2d 710 [Sup Ct, Suffolk County 1993]). There was full compliance with CPL 700.70 except for the Port Chester papers which were the subject of the protective order. Defense counsel was made aware of the Port Chester papers on April 24, 2019, and they were made available to defense counsel on May 6, 2019. Defendant has not shown that suppression for a violation of CPL 700.70 is warranted.

Defendant moves to suppress any evidence derived from the 2002 and 2004 Mount Vernon eavesdropping warrants, referenced in the applications supporting the eavesdropping warrants relevant herein, on the basis that the People did not turn over the papers as to the 2002 and 2004 warrants. The People explain that the applications supporting the warrants relevant herein referenced the 2002 and

2004 warrants only to comply with a statutory requirement (*see* CPL 700.20[f]) and to establish the reliability of confidential informants. The People argue that they did not need to furnish those papers to defendant because they did not provide probable cause for the issuance of the eavesdropping warrants relevant herein. Upon review of the applications supporting the eavesdropping warrants relevant herein, the court agrees with the People and finds no cause for suppression on this ground. The supporting applications relevant herein establish probable cause for surveillance with respect to defendant without reliance on the 2002 and 2004 papers.

Notwithstanding the foregoing, this branch of defendant's motion is granted to the extent of ordering that a pre-trial *Mapp* hearing be held to determine the propriety of any search, not conducted pursuant to warrant, which resulted in the seizure of property (*see 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]).

D.

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]).

E.

MOTION to SUPPRESS IDENTIFICATION TESTIMONY
CPL 710.30

The People served defendant with CPL 710.30 notice of an identification of defendant from a single photo by a member of the police. Defendant's motion is granted to the limited extent of ordering a pre-trial hearing to determine whether the identifying witness had a sufficient prior familiarity with the defendant as to render the witness impervious to police suggestion (*People v Rodriguez*, 79 NY2d 445 [1992]). If the court finds that there was not a sufficient prior familiarity with the defendant on the part of the witness, the court will then consider whether or not the noticed identification was unduly suggestive (*United States v Wade*, 388 US 218 [1967]). Specifically, the court shall determine whether the identification was so improperly suggestive as to taint any in-court identification. If the identification is found to be unduly suggestive, the court shall then go on to consider whether the People

have proven by clear and convincing evidence that an independent source exists for such witness' proposed in-court identification.

F.

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. 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, and 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). The 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 [1901]). If the People move to introduce such evidence, the defendant may renew this aspect of his motion.

G.

MOTION for TIME to FILE FUTURE MOTIONS

Except to the extent specifically granted herein, defendant is denied leave to make additional motions. 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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