People v Daniels
2019 NY Slip Op 34404(U)
September 13, 2019
County Court, Westchester County
Docket Number: Indictment No. 19-0332-11
Judge: Anne E. Minihan
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FILED
AND ENTERED
ON 9-16 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

DECISION & ORDER
Indictment No. 19-0332-11

FILED
SEP 16 2019
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

MINIHAN, J.

Defendant, VICTOR JUSTICE a/k/a "VIC," is charged by Westchester County Indictment Number 19-0332-11, as Aiding, Abetting and 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]). Defendant is separately charged with Criminal Possession of a Controlled Substance in the Third Degree (Penal Law § 220.16 [1]) 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:

I.

MOTION for DISCOVERY, DISCLOSURE and INSPECTION
CPL ARTICLE 240

The parties have entered into a stipulation by way of a Consent Discovery Order dated July 9, 2019 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, specifically information related to Detective Camilo Antonini, the People have acknowledged their continuing duty to disclose exculpatory material, to the extent it is discoverable, 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 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 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).

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]).

II.

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, 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]).

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

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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 request to dismiss the indictment in furtherance of justice is denied. The defendant has cited no persuasive or compelling factor, consideration or circumstances under CPL 210.40 warranting dismissal of this indictment.

Defendant's argument that the People failed to prove the crime of enterprise corruption and/or that defendant committed the charged crimes in furtherance of the enterprise is belied by a review of the grand jury records and is without merit in light of the totality of the evidence presented to the grand jury and the reasonable inferences drawn from the totality of the evidence in favor of the People (*People v Woodson*, 105 AD3d782 [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]).

III.

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. The court orders, on the People's consent, a pre-trial hearing 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).

At the hearing, 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.

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IV.

MOTION to STRIKE PREJUDICIAL LANGUAGE

Defendant's motion to strike certain language from the indictment on the grounds that it is surplusage, irrelevant or prejudicial is denied. The language concluding the indictment merely identifies the defendant's acts as public, rather than private wrongs and such language should not be stricken as prejudicial (*see People v Gill*, 164 AD2d 867 [2d Dept 1990]; *People v Winters*, 194 AD2d 703 [2d Dept 1993]; *People v Garcia*, 170 Misc. 2d 543 [Westchester Co. Ct. 1996]).

V.

MOTION to STRIKE IDENTIFICATION NOTICE and
PRECLUDE IDENTIFICATION TESTIMONY
CPL 710

The motion to strike is denied. Said notice is in conformity with the statutory requirements of CPL 710.30.

Defendant's motion is granted to the limited extent of conducting a hearing prior to trial to determine whether the identifying witness(es) had a sufficient prior familiarity with the defendant as to render them impervious to police suggestion (*People v Rodriguez*, 79 NY 2d 445 [1992]). In the event the court finds that there was not a sufficient prior familiarity with the defendant on the part of the witness(es), the court will then consider whether or not the noticed identifications were unduly suggestive (*United States v Wade*, 388 US 218 [1967]). Specifically, the court shall determine whether the identifications were so improperly suggestive as to taint any in-court identification. In the event the identifications are 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 witnesses' proposed in-court identification.

VI.

MOTION to SUPPRESS PHYSICAL EVIDENCE

Defendant moves to suppress all physical evidence, including evidence obtained pursuant to any search warrant or eavesdropping warrant, and evidence seized pursuant to his arrest.

Evidence obtained by eavesdropping warrant

To the extent defendant's motion is to suppress evidence obtained from eavesdropping warrants which did not target his cell phone, or intercept any communications to which defendant was a party, that branch of the motion is denied for lack of standing (*see* CPL 710.20, 710.10[5]). Defendant has no standing to be heard on matters involving GPS coordinates or telephone records of a third-party's device in which he has no reasonable expectation of privacy (*see People v Kramer*, 92 NY2d 529, 538-540 [1998]; *People v Anderson*, 149 AD3d 1407, 1408-1409 [3d Dept 2017] *lv. denied* 30 NY3d 947 [2017]). Thus, defendant's challenge is only relevant with respect to the eavesdropping warrants dated:

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October 4, 2018; October 31, 2018; November 28, 2018; December 21, 2018; January 18, 2019; February 15, 2019, and; March 15, 2019.

To the extent defendant's motion is to the eavesdropping warrants on the basis that the supporting applications failed to demonstrate probable cause for their issuance it is without merit. "[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 affidavits supporting the relevant eavesdropping applications, the warrants were adequately supported by probable cause. Specifically, there was probable cause to believe that the targeted phones were being used in the commission of the offenses designated in the warrants (*see* CPL 700.15; *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 defendant's motion seeks to suppress evidence obtained from the eavesdropping warrants on the basis that the supporting affidavits relied on facts supplied by informants, but did not satisfy the *Aguilar-Spinelli* test, the motion is denied (*see* CPL 700.20[3]). To the extent that the applications relied on information from informants, the applications 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]). Giving deference to the issuing court's findings, defendant's allegations provide no basis to alter the issuing court's finding of probable cause for the subject warrants (*see Franks v Delaware*, 438 US 154, 171 [1978]; *People v Traymore*, 241 AD2d 226 [1st Dept 1998]).

Evidence seized pursuant to defendant's arrest

Notwithstanding the above, defendant's motion to suppress evidence is granted solely to the extent of conducting a pre-trial hearing to address whether any evidence was unlawfully seized from defendant at the time of his arrest (*see Mapp v Ohio*, 367 US 643 [1961]). The hearing will also address whether any evidence was obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

VII.

MOTION to STRIKE STATEMENT NOTICE and
PRECLUDE STATEMENT TESTIMONY
CPL 710

The motion to strike is denied. Said notice is in conformity with the statutory requirements of CPL 710.30.

This branch of the defendant's motion seeking to suppress statements on the grounds that they were unconstitutionally obtained is granted 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]).

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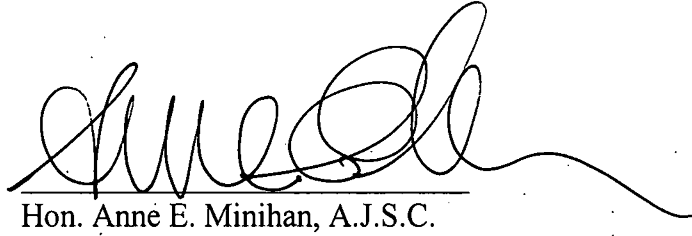
VIII.

MOTION for TIME to FILE FUTURE MOTIONS

This 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
September 13, 2019



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

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