

People v Straker

2019 NY Slip Op 34412(U)

December 23, 2019

County Court, Westchester County

Docket Number: Indictment No. 19-0882-02

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 1-2 2020
WESTCHESTER

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

-against-

SHANELLE STRAKER and
HENRY LANTIGUA,

Defendant.

-----X
MINIHAN, J.

DECISION & ORDER
Ind No.: 19-0882-02

FILED

JAN - 2 2020

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, SHANELLE STRAKER, charged by Westchester County Indictment No. 19-0882-02 with Criminally Negligent Homicide (Penal Law § 125.10), and Endangering the Welfare of a Child (Penal Law § 260.10[1]), has filed an omnibus motion consisting of a Notice of Motion, an Affirmation, and a Memorandum of Law. In response thereto, 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 dated October 22, 2019, entered in this case, the court disposes of the motion as follows:

I.

MOTION to INSPECT and DISMISS
CPL ARTICLE 190

Defendant moves pursuant to CPL 210.20(1)(b) and (c) to dismiss the indictment on the grounds that the evidence before the Grand Jury was legally insufficient and that the Grand Jury proceeding was defective within the meaning of CPL 210.35. The court has reviewed the minutes of the proceedings before the Grand Jury.

The indictment contains a plain and concise factual statement 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 crime, and alleges that the defendant committed the acts which constitute the crime 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]).

Pursuant to CPL 190.65(1), an indictment must be supported by legally sufficient evidence which establishes that the defendant committed the offenses charged. The evidence presented, if accepted as true, is legally sufficient to establish every element of the 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]).

A review of the minutes reveals that the evidence presented, if accepted as true, would be legally sufficient to establish every element of the offense charged (CPL 210.30 [2]). Accordingly, defendant's motion to dismiss the indictment is denied.

Defendant's claim that the Grand Jury proceeding was defective within the meaning of CPL 210.35 is without merit. A review of the minutes reveals 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 Collier*, 72 NY2d 298 [1988]; *People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]).

In making the present determination, the court does not find it necessary to order release of those portions of the Grand Jury minutes as constitute colloquy or instructions.

II.

MOTION for DISCOVERY, DISCLOSURE and INSPECTION
CPL ARTICLE 245

To whatever extent material that is discoverable under Criminal Procedure Law Article 245 has not already been provided to the defense by the People, the defendant's motion is granted and such discovery, including both *Brady* material¹ and *Rosario* material, shall be

¹ The People acknowledge their continuing duty to disclose exculpatory material (*Brady v Maryland*, 373 US 83 [1963]; see *Giglio v United States*, 405 US 150 [1971]). If the People are or become aware of any such material which is arguably subject to disclosure under *Brady* and its progeny and Criminal Procedure Law Article 245 which they are unwilling to consent to disclose, they are directed to bring it to the immediate attention of the court and to submit it for the court's in camera inspection and determination as to whether it constitutes *Brady* material discoverable by the defendant.

provided forthwith. Leave is granted for either party to seek a protective order (CPL Article 245). If the defense has a particularized reason to believe that there remains outstanding discovery with which he has not been provided, he is directed to contact the assigned Assistant District Attorney upon receipt of t order. *If the issue remains unresolved within two days of receipt of this order, counsel for the defendant shall contact the court to request an immediate compliance conference.*

If the People have fulfilled their discovery obligations but have not yet filed a Certificate of Compliance, they are directed to do so forthwith and they are reminded of their continuing obligation to remain in compliance with the discovery mandates set forth in CPL Article 245 and to file supplemental Certificates of Compliance as the need arises.

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]).

Further, the bill of particulars set forth in the voluntary disclosure form provided to defendant has adequately informed defendant of the substance of the alleged conduct and in all respects complies with CPL Article 245 and Section 200.95.

III.

MOTION to STRIKE NOTICED STATEMENTS
and to PRECLUDE STATEMENT TESTIMONY
CPL 710

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

The People served CPL 710.30(1)(a) notices of two statements which defendant allegedly made on June 1, 2018 at 1:15 a.m. at Mt. Vernon Police Department and on June 15, 2018 at 12:30 p.m. at Mt. Vernon Police Department. Defendant argues that the alleged statements must be suppressed because they are the product of custodial interrogation without proper *Miranda* warnings. Defendant's motion to suppress the noticed statements as unconstitutionally obtained is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether the statement was involuntarily made by 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]).

IV.

MOTION to SUPPRESS PHYSICAL EVIDENCE

Defendant seeks to suppress all physical evidence seized as a result of her arrest on the basis that the arrest was unlawful and the evidence, thus, is tainted fruit. This branch of the defendant's motion is granted solely to the extent of ordering a pretrial *Mapp* hearing to determine the propriety of any search resulting 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]).

Insofar as defendant challenges the seizure of evidence not obtained from her person, the pre-trial hearing will address whether defendant had a reasonable expectation of privacy in any of the locations searched to constitute standing to challenge the seizure of any physical evidence (*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]). If it is determined that the defendant has standing then the *Mapp/Dunaway* hearing will also determine the propriety of the subject search and seizure (*see Mapp v Ohio*, 367 US 643 [1961]).

Defendant seeks to controvert the search warrants for her apartment and the contents of cellular phone(s) (2 recovered from the dresser of a bedroom in her residence and 2 recovered from her co-defendant during his interview on June 1, 2018). To the extent she has standing, her argument fails. 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]). Upon review of the four corners of the search warrant affidavits, the warrants were adequately supported by probable cause (*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 defendant fails to demonstrate that the warrants were based upon affidavits containing false statements made knowingly or intentionally, or with reckless disregard for the truth (*People v McGeachy*, 74 AD3d 989 [2d Dept 2010]). The defendant has failed to make a substantial preliminary showing of cause for a *Franks-Alfinito* hearing (*Franks v Delaware*, 438 US 154 [1978]; *People v Alfinito*, 16 NY2d 181 [1965]; *People v Novick*, 293 AD2d 692 [2d Dept 2002]). The court has reviewed the affidavits in support of the search warrants for the defendant's cell phone(s) and apartment and finds that they did provide the signing magistrate with probable cause to believe that evidence could be located at the locations described in the warrants. The court has also reviewed the orders and finds them to be proper in all respects.

Lastly, pursuant to the Consent Discovery Order, the People consented to provide defense counsel with copies of the search warrants and supporting affidavits. The People are directed to disclose the warrants and supporting affidavits, if they have not already turned them over; or to move for a protective order. Should the People move for a protective order, an *in camera* inquiry will be conducted prior to trial pursuant to *People v Seychel*, 136 Misc2d 310 [Sup. Ct. NY Co. 1987] as reaffirmed by the Court of Appeals in *People v Castillo*, 80 NY2d 578 [1992]).

V.

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 pre-trial hearing pursuant to *People v Sandoval* (34 NY2d 371[1974]). At said hearing, the People shall notify the defendant, *in compliance with CPL Article 245, and in any event not less than 15 days prior to the first scheduled trial date*, of all specific instances of defendant's criminal, prior uncharged criminal, vicious or immoral conduct of which they have knowledge and which they intend to use to impeach defendant's credibility if she elects to testify at trial.

At the hearing, the defendant shall bear the burden of identifying any instances of her prior misconduct that she submits the People should not be permitted to use to impeach her credibility. The defendant shall be required to identify the basis of her belief that each event or incident may be unduly prejudicial to ability to testify as a witness on her own behalf (*see People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

Upon the consent of the People, if the People determine that they will seek to introduce at trial evidence in their case-in-chief of any prior uncharged misconduct and criminal acts of the defendant, the People shall notify the court and defense counsel, *in compliance with CPL Article 245, and in any event not less than 15 days prior to the first scheduled trial date*, and a *Ventimiglia/Molineux* hearing (*see People v Ventimiglia*, 52 NY2d 350 [1981]; *People v Molineux*, 168 NY 264 [1901]) shall be held immediately prior to trial to determine whether any such evidence may be used by the People to prove their case-in-chief. The People are urged to make an appropriate decision in this regard sufficiently in advance of trial to allow any *Ventimiglia/Molineux* hearing to be consolidated and held with any other hearings ordered herein.

VI.

MOTION for LEAVE to FILE FUTURE MOTIONS

This branch of the motion is denied. Should defendant intend to bring further motions for omnibus relief, she must do so by order to show cause setting forth reasons as to why a motion was not and could not have been brought in conformity with CPL 255.20.

VII.

MOTION to PRECLUDE
UNNOTICED IDENTIFICATIONS

The court denies as premature defendant's motion to preclude the People from introducing at trial any identifications of the defendant made by witnesses which were not noticed pursuant to CPL 710.30. The People acknowledge the statutory requirements of CPL 710.30.

VIII.

MOTION FOR a SEVERANCE and
FOR a SEPARATE TRIAL

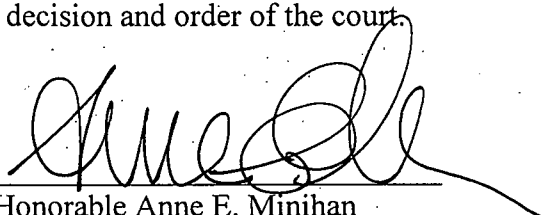
The defendant moves for a severance from her co-defendant and for a separate trial. Defendant presents no sworn allegations of fact or evidence to support the assertion that undue prejudice will result by joinder nor does she particularize the reasons as to why she would be prejudiced by a joint-trial with co-defendant. Defendant's speculation that her co-defendant would pursue an antagonistic defense is an insufficient basis to proceed with separate trials (*People v Chaplin*, 181 AD2d 828 [2d Dept 1992]). Defendant has failed to show good cause for severance (CPL 200.40 [1]).

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* or *Huntley* ruling is denied as premature, with leave to renew after a *Sandoval* or *Huntley* ruling, and upon a showing that a joint trial will result in unfair prejudice to her and substantially impair her defense. Notably, a limiting instruction at trial would properly direct the jury to separately consider the proof as to each crime charged, thereby eliminating any prejudice to the defendant (*see People v Veeny*, 215 AD2d 605 [2d Dept 1995]).

The foregoing constitutes the opinion, decision and order of the court.

Dated: White Plains, New York
 December 23, 2019


 Honorable Anne E. Minihan
 Acting Supreme Court Justice

To: HON. ANTHONY A. SCARPINO, Jr.
 District Attorney, Westchester County
 111 Dr. Martin Luther King, Jr., Blvd.
 White Plains, NY 10601

Harold, Salant, Strassfield & Spielberg
 By: Rachel Filasto, Esq.
 Attorney For Shannelle Straker