

**People v Edwards**

2019 NY Slip Op 34417(U)

February 19, 2019

County Court, Westchester County

Docket Number: Indictment No. 18-1214

Judge: Susan Cacace

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

**FILED and ENTERED**  
  
**WESTCHESTER  
COUNTY CLERK**

-against-

**FILED**



**FEB 20 2019**

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

**DECISION AND ORDER**

Indictment No. 18-1214

CLINT EDWARDS,

Defendant.

-----X  
CACACE, J.

Upon consideration of the omnibus motion submitted on behalf of the defendant, the Court has reviewed the following papers: notice of motion, affirmation in support and memorandum of law of counsel for the defendant, Rachel J. Filasto, Esq., and the affirmation in opposition and memorandum of law of Assistant District Attorney Valerie A. Livingston, Esq., and the stenographic minutes of the Westchester County Grand Jury from November 16, 2018.

By the instant indictment, the defendant presently stands charged with a single count of Assault in the Second Degree in violation of Penal Law § 120.05(3), and a single count of Obstructing Governmental Administration in the Second Degree in violation of Penal Law § 195.05. In support of the crimes charged, it is alleged by the People that on or about October 2, 2018 at approximately 7:41 AM, the defendant, while confined in Cell #23 of the 1-K Block at the Westchester County Jail, did prevent Correction Officer Taras Szczur (hereinafter, the victim) from conducting his assigned suicide watch by blocking his cell window with a mattress and by sticking his arm through tray door of his cell, and did then cause the victim to suffer a non-displaced articular fracture distal tuft of the third digit of his left hand by slamming his tray door up into the victim's fingers. On November 19, 2018, the defendant was arrested and

arraigned under the instant indictment before this Court, and entered a plea of not guilty to those counts charged therein. The People and the defense jointly filed a Consent Order with this Court on December 12, 2018, having agreed to conduct discovery pursuant to the stipulated terms set forth therein. By notice of motion, the defendant seeks various forms of relief which this Court will address in seriatim:

(I. & II.) MOTION FOR INSPECTION AND RELEASE OF GRAND JURY MINUTES  
AND TO REDUCE AND/OR DISMISS COUNTS OF INDICTMENT

Defendant moves the Court to inspect the grand jury minutes and thereupon seeks the dismissal and/or reduction of one or both of the counts charged under the instant indictment, challenging the legal sufficiency of the evidence presented, the propriety of the legal instructions provided, and the manner of the grand jury proceedings. The People oppose the defendant's present application insofar as same seeks the dismissal or reduction of any counts charged in the instant indictment.

As a preliminary matter, the Court grants defendant's motion insofar as same seeks an *in-camera* inspection of the grand jury minutes, yet denies same to the extent that it seeks disclosure of those minutes to the defendant upon finding that such disclosure is not necessary to assist with the determination of the instant motion (*see Matter of Brown v Rotker*, 215 AD2d 378; *see also Matter of Brown v LaTorella*, 229 AD2d 391).

With respect to the defendant's challenge to the legal sufficiency of the evidence presented, the Court conducted an *in-camera* examination of the grand jury minutes in order to

determine whether the evidence presented before the grand jury was legally sufficient to support the crimes charged under the instant indictment. Upon consideration of a motion to dismiss an indictment pursuant to CPL 210.20(1)(b), the relevant inquiry concerns the legal sufficiency of the evidence, not the weight or adequacy of the proof (*see People v Galatro*, 84 NY2d 160). In this regard, it is well-settled that legally sufficient evidence is defined as competent evidence, which if accepted as true, would establish the defendant's commission of each and every element of each offense charged (*see* CPL 70.10[1]; *see also* *People v Jensen*, 86 NY2d 248; *People v Jennings*, 69 NY2d 103, 114-116), which has been held to mean proof of a *prima facie* case, as opposed to proof beyond a reasonable doubt (*see* *People v Gordon*, 88 NY2d 92, 95-96; *see also* *People v Mikuszewski*, 73 NY2d 407). Furthermore, in its evaluation of the sufficiency of the evidence, the reviewing court must determine whether the evidence, when viewed in the light most favorable to the People, if unexplained and uncontradicted, would warrant conviction by a petit jury (*see* *People v Swamp*, 84 NY2d 725, 730; *see also* *People v Pelchat*, 62 NY2d 97, 105). Based upon the *in-camera* review of the grand jury minutes, the Court finds that the competent evidence presented, when viewed in the light most favorable to the People, if unexplained and uncontradicted, was legally sufficient to establish the defendant's commission of all elements of the charged offenses.

With respect to the defendant's application seeking the dismissal of the instant indictment due to the alleged inadequacy of the legal instructions provided to the grand jurors during the presentation of this matter, the Court recognizes that a grand jury need not be instructed with the same degree of precision that is required when the Court instructs a petit jury (*People v Calbud*, 49 NY2d 389; *People v Valles*, 62 NY2d 36). Based upon an *in-camera* review of the grand jury

minutes, this Court finds that the legal instructions provided to the grand jurors by the assistant district attorney were adequate and complete.

To the extent that the defendant's instant application can be understood to seek the dismissal of the instant indictment due to alleged defects in the grand jury proceedings as a result of the failure of the People to comply with the requirements of CPL Article 190 during the grand jury presentation concerning this matter, this Court finds that the grand jury proceedings were conducted in conformity with the requirements of CPL Article 190, and otherwise the moving papers are insufficient to overcome the presumption of regularity which attaches to grand jury proceedings (*see People v Dominique*, 90 NY2d 880; *see also Viraq v Hynes*, 54 NY2d 437).

Based upon the foregoing, the defendant's application seeking the reduction or dismissal of any of the counts charged under the instant indictment is denied.

### (III.) MOTION TO SUPPRESS PHYSICAL EVIDENCE

The defendant moves this Court to suppress any physical evidence seized in this case from the defendant's person, or from his dominion and control, alleging that such property was seized in the absence of probable cause, and otherwise unlawfully in contravention of the defendant's constitutional rights pursuant to Article I, Section 12 of the New York State Constitution, *Dunaway v New York* (442 US 200) and *Mapp v Ohio* (367 US 643). The People oppose the defendant's instant suppression application upon both procedural and substantive grounds, initially arguing that the defendant's challenge to the alleged seizure of physical evidence should be denied as moot due to the absence of any seizure of physical evidence from

the defendant, and further arguing that the instant application must be summarily denied due to the failure of the defendant to support the instant motion with sufficient sworn allegations of fact concerning police misconduct in violation of the defendant's rights under either the New York State Constitution or the United States Constitution.

Turning first to consider the defendant's motion challenging the trial admissibility of all physical evidence seized from his person, and/or his dominion and control, the sufficiency of the factual allegations set forth in support of such a motion may be determined upon the evaluation of the three factors set forth by the Court of Appeals in *People v Mendoza* (82 NY2d 415); specifically: (1) the existence of particular facts within the motion papers, as opposed to conclusions, will weigh in favor of sufficiency, (2) the factual allegations set forth within the motion papers, if any, must be considered in the context of the prosecution's theory of the case, and (3) the specific factual allegations referenced above must be considered in view of the defendant's access to information (*see* CPL 710.60 [3][b]). Here, the defendant's moving papers merely set forth conclusory claims relating that any physical evidence seized from the defendant "was obtained under unfair circumstances, and in the absence of the defendant's attorney, and was a direct result of constitutionally impermissible conduct" without submitting any specific factual allegations which support the alleged illegality of the seizure of any evidence.

Upon this record, the Court finds the defendant's conclusory claims of unlawful police conduct fail to controvert the specific information provided by the People in support of the existence of probable cause for the defendant's arrest (*see People v Jones*, 95 NY2d 721; *see also People v France*, 12 NY3d 790; *People v Bouzy*, 242 AD2d 729, 730, *app. denied* 91 NY2d 889; *People v Jeffreys*, 284 AD2d 550; *People v Soto*, 284 AD2d 158; *Matter of Raoul A.*, 240 AD2d

565). Accordingly, upon review of the defendant's moving papers, the Court finds that the sworn factual allegations set forth by the defendant in support of the instant suppression application are insufficient within the meaning of CPL 710.60(3)(b) to warrant either the suppression of any acquired evidence, or a hearing concerning the propriety of the acquisition of any such evidence (*see People v Mendoza*, 82 NY2d 415; *see also People v Hightower*, 85 NY2d 988; *People v Rosa*, 249 AD2d 494).

Based upon the foregoing, the defendant's motion to suppress physical evidence is summarily denied pursuant to CPL 710.60(3)(b).

#### (IV.) MOTION FOR DISCOVERY, DISCLOSURE AND INSPECTION

Defendant moves this Court to enter an order directing the People to provide the defense with material for discovery, disclosure and inspection beyond that which has been consented to by the People and the defense through the execution of a Consent Discovery Order before this Court on December 12, 2018. The People oppose the defendant's present application, asserting that their previously communicated consent to provide the defense with material for discovery, disclosure and inspection through consent discovery practice constitutes all statutorily required discovery under CPL Article 240.

In this regard, it is well-settled that the courts have no authority to order discovery for which there exists no statutory basis (*see Matter of Pirro v LaCava*, 230 AD2d 909; *see also Matter of Catterson v Jones*, 229 AD2d 435). Here, defendant's motion seeks discovery and inspection of material to which the People have not consented, and defendant has failed to

demonstrate that the People have unjustifiably refused to permit his inspection of any material discoverable pursuant to CPL Sections 240.20 or 240.40.


Accordingly, insofar as defendant's request seeks disclosure of material which has either been consented to by the People, sought in advance of the applicable statutory timetable, or pertains to material which is not subject to disclosure pursuant to CPL Article 240 or governing case law, the application for further discovery is denied; however, insofar as the defendant seeks to compel the People to disclose all exculpatory material which relates to this case, as well as information pertaining to any agreements or inducements which might influence the decision of a witness to testify in connection with this matter, defendant's motion is granted to the extent that the People are advised of their continuing obligation to preserve and disclose to the defense any exculpatory material which should come within their possession or control pursuant to *Brady v Maryland* (373 US 83) and its progeny (CPL 240.60).

(V.) MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS

Insofar as the defendant seeks leave to file additional motions, same is denied with leave to renew upon a sufficient showing of "good cause" pursuant to CPL 255.20(3).

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York  
February 19, 2019

  
Honorable Susan Cacace  
County Court Judge

TO:

Honorable Anthony A. Scarpino  
Westchester County District Attorney  
County Courthouse  
111 Dr. Martin Luther King, Jr. Blvd.  
White Plains, New York 10601  
Attn: A.D.A. Valerie A. Livingston

Rachel J. Filasto, Esq.  
Harold, Salant, Strassfield & Spielberg  
Attorney for Defendant  
81 Main Street, Ste. 205  
White Plains, New York 10601