

People v Scott
2019 NY Slip Op 34830(U)
May 28, 2019
County Court, Westchester County
Docket Number: Ind. No. 19-0059
Judge: David S. Zuckerman
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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED 

JUN - 5 2019

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THE PEOPLE OF THE STATE OF NEW YORK

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER
DECISION & ORDER

-against-

MARLON SCOTT,

Ind. No.: 19-0059

Defendant.

-----X
ZUCKERMAN, J.

Defendant stands accused under Indictment No. 18-1039 of Attempted Assault in the First Degree (Penal Law §110/120.10[1]), two counts of Criminal Use of a Firearm in the Second Degree (Penal Law §265.08[1]), Criminal Possession of a Weapon in the Second Degree (Penal Law §265.03[3] and Criminal Possession of a Weapon in the Third Degree (Penal Law §265.02[1]). As set forth in the Indictment, it is alleged that, on or about September 16, 2018, Defendant, in Westchester County, New York, with intent to cause serious physical injury to another, attempted to cause said injury by means of a deadly weapon; and possessed a loaded firearm. By Notice of Motion dated April 29, 2019, with accompanying Affirmation, Defendant moves for omnibus relief. In response, the People have submitted an Affirmation in Opposition dated May 13, 2019.

The motion is disposed of as follows:

A. MOTION FOR DISCOVERY AND INSPECTION

Defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 240 and/or provided by the People. If any items set forth in CPL Article 240 have not been provided to Defendant pursuant to the consent discovery order in the instant matter, said items are to be provided forthwith. Further, the bill of particulars set forth in the voluntary disclosure form provided to Defendant has adequately informed her of the substance of her alleged conduct and in all respects complies with CPL §200.95.

The People acknowledge their continuing duty to disclose exculpatory material (see *Brady v Maryland*, 373 US 83 [1963] and *Giglio v United States*, 405 US 150 [1971]) at the earliest possible date. If the People are or become aware of any material which is arguably exculpatory but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

To any further extent, including regarding the production of Rosario material at this time, the application is denied as seeking material or information beyond the scope of discovery (see *People v Colavito*, 87 NY2d 423 [1996]; *Matter of Catterson v Jones*, 229 AD2d 435 [2nd Dept 1996]; *Matter of Catterson v Rohl*, 202 AD2d 420 [2nd Dept 1994]; *Matter of Brown v Appelman*, 241 AD2d 279 [2nd Dept 1998]).

**B. MOTION TO INSPECT THE GRAND JURY MINUTES
AND TO DISMISS AND/OR REDUCE THE INDICTMENT**

Defendant moves pursuant to CPL §§210.20(1)(b) and © to dismiss the indictment, or counts thereof, 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. On consent of the People, the Court has reviewed the minutes of the proceedings before the Grand Jury.

Pursuant to CPL §190.65(1), an indictment must be supported by legally sufficient evidence which establishes that the defendant committed the offenses charged. Legally sufficient evidence is competent evidence which, if accepted as true, would establish each and every element of the offense charged and the defendant's commission thereof (CPL §70.10[1]); *People v Jennings*, 69 NY2d 103 [1986]). "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 Bello*, 92 NY2d 523 (1998); *People v Ackies*, 79 AD3d 1050 (2nd Dept 2010). In rendering a determination, "[t]he reviewing court's inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of each element of the charged crimes and whether the grand jury could rationally have drawn the inference of guilt." *Bello*, *supra*, quoting *People v Boampong*, 57 AD3d 794 (2nd Dept 2008-- internal quotations omitted).

A review of the minutes reveals that the evidence presented,

if accepted as true, would be legally sufficient to establish every element of the offenses charged (see CPL §210.30[2]). Accordingly, Defendant's motion to dismiss or reduce for lack of sufficient evidence is denied.

With respect to Defendant's claim that the Grand Jury proceeding was defective within the meaning of CPL §210.35, a review of the minutes supports a finding that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, that the grand jurors who voted to indict heard all the "essential and critical evidence" (see *People v Collier*, 72 NY2d 298 [1988]; *People v Julius*, 300 AD2d 167 [1st Dept 2002], lv den 99 NY2d 655 [2003]), and that the Grand Jury was properly instructed (see *People v Calbud*, 49 NY2d 389 [1980] and *People v. Valles*, 62 NY2d 36 [1984]).

In making this determination, the Court does not find that release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court.

C. MOTION FOR SANDOVAL/VENTIMIGLIA/MOLINEUX HEARING

1. *Sandoval* - Granted, solely to the extent that a *Sandoval* hearing shall be held immediately prior to trial at which time:

A. The People must notify the Defendant of all specific instances of the Defendant's prior uncharged criminal, vicious or immoral conduct of which the People have knowledge and which the People intend to use at trial for purposes of impeaching the

credibility of the Defendant (see, CPL §240.43); and

B. Defendant must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf (see, *People v. Malphurs*, 111 A.D.2d 266 [2nd Dept. 1985]).

2. *Ventimiglia/Molineux* - Upon the consent of the People, in the event that the People determine that they will seek to introduce evidence at trial of any prior bad acts of the Defendant, including acts sought in their case in chief such as the prior crime used to elevate Count 1 of the Indictment to a Felony, they shall so notify the Court and defense counsel 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 or not any evidence of uncharged crimes may be used by the People, including 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 the other hearings herein.

D. MOTION FOR A WADE HEARING

Defendant moves to suppress noticed identification procedures pursuant to CPL §710.20(3). The People, in their Affirmation in Opposition, state that there was no impropriety in conducting the identification procedures noticed to Defendant and, in particular, that the party involved in the photographic array challenged was

the victim, who was and is very familiar with Defendant. Consequently, the motion to suppress noticed identification procedures is granted to the limited extent that a hearing is ordered to determine whether the identifying witnesses had a sufficient prior familiarity with the defendant as to render them impervious to police suggestion (*People v Rodriguez*, 79 NY2d 445[1992]). In the event the court finds that there was not a sufficient familiarity with the defendant on the part of the witnesses, the court will then consider whether 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 that an independent source exists for such witnesses' proposed in-court identification.

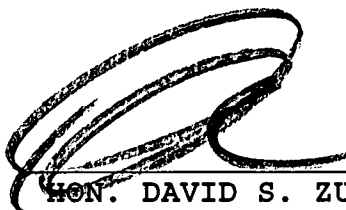
E. MOTION FOR A HUNTLEY/DUNAWAY HEARING

Defendant moves to suppress noticed statements pursuant to CPL §710.20(3), including that they were the product of an unlawful arrest. The People, in their Affirmation in Opposition, state that there was no impropriety in obtaining the statements attributable to Defendant, and that they followed an arrest that was based on probable cause. They do, however, consent to a hearing on the issue. Consequently, the motion to suppress noticed statements is granted to the extent that a *Huntley/Dunaway* hearing is ordered to

determine those issues.

All other motions are denied.

Dated: White Plains, New York
May 28, 2019

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke at the end.

HON. DAVID S. ZUCKERMAN, A.J.S.C.

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