

People v Negron

2019 NY Slip Op 34897(U)

July 29, 2019

County Court, Westchester County

Docket Number: Ind. No. 19-0056

Judge: David S. Zuckerman

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

FILED

DECISION & ORDER

VICTOR NEGRON and OMAR FERNANDEZ,
TIMOTHY C. DONI
COUNTY CLERK
COUNTY OF WESTCHESTER
Defendants.

Ind. No.: 19-0056

-----X
ZUCKERMAN, J.

Defendants stand accused under Indictment No. 19-0056 of Robbery in the First Degree (Penal Law §§160.15[4]) and Robbery in the Second Degree (Penal Law §§160.10[1]). As set forth in the Indictment, it is alleged that, on or about November 25, 2018, Defendants, in Westchester County, New York, aiding and abetting and acting in concert with each other, and each while actually present together, forcibly stole property from another person, and in the course or commission thereof, or in immediate flight therefrom, displayed what appeared to be a firearm. By Notices of Motion dated June 10, 2019, with accompanying Affirmations, Defendants move for omnibus relief. In response, the People have submitted Affirmations in Opposition dated June 24, 2019.

The motions are disposed of as follows:

DEFENDANT NEGRON

A. DISCOVERY AND INSPECTION

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 are reminded of 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.

B. 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.

**C. 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 (c) 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.

D. MOTION FOR A HUNTLEY/DUNAWAY HEARING

Defendant moves, pursuant to CPL §710.20(3), to suppress noticed statements, including that they were the product of an arrest that was not based on probable cause. The People, in their Affirmation in Opposition, state that there was no impropriety in obtaining the statements attributable to Defendant, and in particular that they were the product of an arrest that was based on probable cause. They do, however, consent to a hearing in the issue. Consequently, the motion to suppress noticed statements is granted to the extent that a *Huntley* hearing is ordered to determine the voluntariness of the noticed statements.

E. 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 the identification procedure attributable to Defendant in the instant matter, and consent to a hearing. Consequently, the motion to

suppress noticed identification procedures is granted to the extent that a *Wade* hearing is ordered to determine the propriety of the noticed identification procedures.

DEFENDANT FERNANDEZ

A. DISCOVERY AND INSPECTION

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 are reminded of 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.

**B. MOTION TO INSPECT THE GRAND JURY MINUTES
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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.

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E. MOTION TO SEVER

Defendant moves to sever the trial of the instant matter from the trial of the co-defendant. The crimes alleged herein are, the People argue, properly joinable because they are part of the same criminal transaction--a single robbery. Defendant has failed to demonstrate that the counts are not part of the same criminal transaction. The People are thus correct that the counts are joinable. Consequently, Defendant having failed to demonstrate that the counts were not properly joinable under CPL §200.20, the court has no choice but to decline to sever the trial of this defendant from the trial of the co-defendant.

Defendant also asserts that the People have given notice of statements made by the co-defendant, which inculpate Defendant, and in regard to which he would not have the right of cross-examination should one or both of those defendants decline to testify at trial. See generally *Bruton v US*, 391 US 123 (1968). Defendant also

asserts that a Sandoval/Ventimiglia ruling in favor of the co-defendant might adversely impact Defendant by curtailing cross-examination. In response, the People assert, and Defendant does not thereafter contest, that it is premature to seek severance where the People have not yet sought to introduce any such statements or proof of such bad acts, nor, in fact, has the court yet ruled on their admissibility.

Finally, while alleging that his defenses will be antagonistic to that of the co-defendant, Defendant has provided no evidence that the defenses will be antagonistic. Defendant has also failed to demonstrate that there is substantially more evidence against the co-defendant which will prejudice him at trial. Consequently, the motion to sever is denied in all respects.

F. 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:

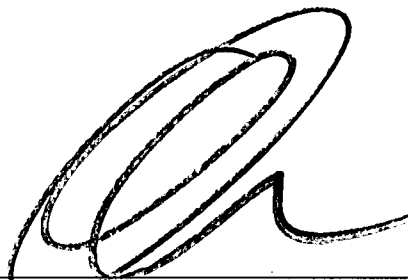
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B. Defendant must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf (see, *People v. Malphurs*, 111 A.D.2d 266 [2nd Dept. 1985]).

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.

All other motions are denied.

Dated: White Plains, New York
July 29, 2019

A handwritten signature in black ink, consisting of several overlapping loops and a trailing flourish, positioned above a horizontal line.

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

HON. ANTHONY A. SCARPINO, JR.
District Attorney, Westchester County
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601
BY: Virginia A. Marciano, Esq.
Assistant District Attorney

ERICA L. DANIELSON, ESQ.
Office of Clare J. Degnan,
Legal Aid Society of Westchester County
Attorney for Defendant Negrón
150 Grand Street, Suite 100
White Plains, NY 10601

WILLIAM F. LaFORGIA, ESQ.
Attorney for Defendant Fernandez
PO Box 298
Pleasantville, NY 10570