

People v Louis

2019 NY Slip Op 34907(U)

December 18, 2019

County Court, Westchester County

Docket Number: Ind No. 19-858

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 1-2 20²⁰~~19~~
WESTCHESTER

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

-against-

ISAAC LOUIS,

Defendant.

-----X
MINIHAN, J.

DECISION & ORDER

Ind No.: 19-858

FILED 

JAN - 7 2020

THOMAS C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, charged by Westchester County Indictment No. 19-858 with Robbery in the First Degree (Penal Law § 160.15[4]) (two counts), Robbery in the Second Degree (Penal Law § 160.10[1]) (two counts), and Robbery in the Third Degree (Penal Law § 160.05), has filed an omnibus motion consisting 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 dated October 8, 2019, entered in this case, the court disposes of this 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.

A review of the grand jury minutes reveals that the evidence presented, if accepted as true, is legally sufficient to establish every element of the offenses charged (CPL 210.30 [2]). Accordingly, defendant's motion to dismiss the indictment is denied. Pursuant to CPL 190.65(1), an indictment must be supported by legally sufficient evidence which establishes that the defendant committed the offenses charged. "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]).

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 TO SUPPRESS IDENTIFICATION TESTIMONY

Defendant moves to suppress the noticed identifications (*see* CPL 710.30[1][b]) on the basis that they are the product of his unlawful arrest and of suggestive police identification procedures. With regard to defendant’s argument that the identification procedures were suggestive, defendant’s motion to suppress is granted to the extent of ordering a pre-trial *Wade* hearing (*see United States v Wade*, 388 US 218 [1967]). At the hearing, the People bear the initial burden of establishing the reasonableness of the police conduct and the lack of any undue suggestiveness (*see People v Chipp*, 75 NY2d 327, 335 [1990] *cert. denied* 498 US 833 [1990]; *People v Berrios*, 28 NY2d 361 [1971]). Once that burden is met, the defendant bears the ultimate burden of proving that the procedure was unduly suggestive. Where suggestiveness is shown, the People must show the existence of an independent source by clear and convincing evidence. As for defendant’s claim that he was arrested unlawfully without probable cause, as discussed in the section pertaining to defendant’s motion to suppress his statements, the court is ordering a probable cause hearing pursuant to *Dunaway v New York*, 442 US 200 [1979]).

III.

MOTION to PRECLUDE STATEMENT TESTIMONY CPL 710

Defendant moves to suppress his noticed statements (*see* CPL 710.30[1][a]) on the basis that they were involuntary, the fruits of his unlawful arrest, and the product of custodial interrogation without proper *Miranda* warnings.

Defendant's motion to suppress the noticed statement as unconstitutionally obtained is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether the statements were 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]), and/or obtained in violation of defendant's Fourth Amendment rights (see *Dunaway v New York*, 442 US 200 [1979]).

IV.

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 he elects to testify at trial.

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]).

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.

V.

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.

VI.

MOTION for DISCOVERY, DISCLOSURE and INSPECTION
CPL ARTICLE 245

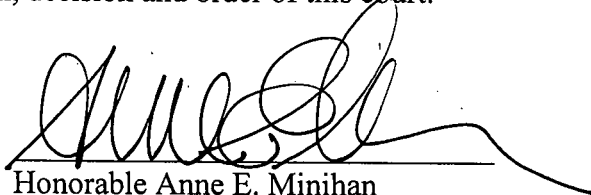
To whatever extent material that is discoverable under Criminal Procedure Law Article 245 has not already been provided to the defense by the People, the defendant's motion is granted and such discovery, including both *Brady* material¹ and *Rosario* material, shall be provided forthwith. Leave is granted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

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

Dated: White Plains, New York
December 18, 2019



Honorable Anne E. Minihan
Acting Supreme Court Justice

¹The 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.