

People v Raysor

2019 NY Slip Op 34936(U)

October 4, 2019

County Court, Westchester County

Docket Number: Ind. No. 19-0138

Judge: David S. Zuckerman

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

FILED

RE

-against-

DECISION & ORDER

OCT 25 2019

DAVID RAYSOR,

Ind. No.: 19-0138

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

-----X

ZUCKERMAN, J.

Defendant stands accused under Indictment No. 19-0138 of two counts of Criminal Possession of a Forged Instrument in the Second Degree (Penal Law §170.25) and one count each of Grand Larceny in the Fourth Degree (Penal Law §155.30[1]) and Attempted Petit Larceny (Penal Law §110/155.25). As set forth in the Indictment, it is alleged that, on or about and between October 10, 2017 and September 25, 2018, Defendant, in Westchester County, New York, with knowledge that it is forged and with intent to defraud, possessed two forged debit cards, stole property belonging to another which was valued in excess of \$1,000.00, and attempted to steal property belonging to another. By Notice of Motion dated August 20, 2019, with accompanying Affirmation, Defendant moves for omnibus relief. In response, the People have submitted an Affirmation in Opposition dated September 9, 2019.

The motion is disposed of as follows:

**A. 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.

B. MOTION TO PRECLUDE STATEMENT AND/OR IDENTIFICATION EVIDENCE

Defendant moves to preclude unnoticed statement and identification evidence. The People oppose the motion, arguing that they are not aware of any unnoticed statement or identification evidence. The motion is thus denied, with leave to Defendant to renew at such time, if any, that the People seek to introduce any such statement or identification evidence.

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. 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 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, relief is denied as such material or information is 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]).

E. MOTION TO DISMISS FOR LACK OF SPEEDY TRIAL

Defendant moves, pursuant to CPL §30.30(1)(a), to dismiss the indictment on the grounds that he has been denied a speedy trial.

In response, the People argue that their timely filing of a Statement of Readiness and the application of excludable pre-readiness time within the meaning of CPL §30.30(4)(b) compels denial of Defendant's statutory speedy trial challenge.

CPL §30.30 provides

§ 30.30. Speedy trial; time limitations

1. Except as otherwise provided in subdivision three, a motion made pursuant to paragraph (e) of subdivision one of section 170.30 or paragraph (g) of subdivision one of section 210.20 must be granted where the people are not ready for trial within:

(a) six months of the commencement of a criminal action wherein a defendant is accused of one or more offenses, at least one of which is a felony;

4. In computing the time within which the people must be ready for trial pursuant to subdivisions one and two, the following periods must be excluded:

(a) a reasonable period of delay resulting from other proceedings concerning the defendant, including but not limited to: proceedings for the determination of competency and the period during which defendant is incompetent to stand trial; demand to produce; request for a bill of particulars; pre-trial motions; appeals; trial of other charges; and the period during which such matters are under consideration by the court; or

(b) the period of delay resulting from a continuance by the court at the request of, or with the consent of, the defendant or his counsel.

Notwithstanding its title, CPL §30.30 does not guarantee the defendant a speedy trial. Rather, it requires that the People be ready for trial within the statutory time frame. *People v. Berkowitz*, 50 NY2d 333 (1980).

With respect to an indictment, a motion to dismiss pursuant to CPL §30.30(1)(a) must be granted where the People are not ready for trial within six months of the commencement of the criminal action unless the People show that a sufficient period of time is excludable pursuant to CPL §30.30(4)(a)-(j). *People v Barden*, 2016 NY Slip Op 04659 (June 14, 2016); *People v Chavis*, 91 NY2d 500 (1998); *People v. Berkowitz*, *supra*; *People v Gordon*, 110 AD3d 736 (2nd Dept 2013). The instant Defendant having shown the existence of a delay greater than six months, the burden of proving the excludability of certain periods thereafter falls upon the People. *People v. Kendzia*, 64 NY2d 331, 338 (1985).

In cases where the defendant is charged with at least one felony, the People must be ready for trial within six months of the commencement of the action. CPL §30.30(1)(a). An action is commenced "upon the filing of an accusatory instrument against a defendant in a criminal court." CPL §1.20[17]). Thus, the instant criminal action was commenced on September 8, 2018, when a felony complaint was filed in the City Court of the City of Mount Vernon. Pursuant to CPL §30.30, the speedy trial time period is first calculated in terms of calendar months and then converted to days. *People v Cortes*, 80 NY2d 201, 207, fn. 3 (1992). Here, the applicable period within which the People were required to declare trial readiness, extending six months from September 8, 2018 to March 8, 2019, comprised 181 days. *Chavis*, *supra*; *Cortes*, *supra*; *People v Stiles*, 70 NY2d 765, 767 (1987). It is not disputed by

the parties that the People answered ready for trial on July 8, 2019, or 122 days after March 8, 2019. Hence, for the instant matter to survive dismissal on speedy trial grounds, 122 days between September 8, 2018 and July 8, 2019 must have been excludable for speedy trial purposes.

The People contend, and Defendant has not contested, that the period from Defendant's September 8, 2018 arraignment through January 16, 2019 (when Defendant requested a Felony Hearing) is excludable as a period when the matter was continued at the request of, or at the consent of, Defendant. See CPL §30.30(4)(b). The People submitted the stenographic minutes of the six court dates during that time period--September 8, 2018, September 10, 2018, October 3, 2018, October 31, 2018, November 28, 2018, and December 19, 2019. As properly argued by the People, and not contested by Defendant, on each of those dates, the matter was adjourned at the request, or with the consent, of Defendant (who was represented by counsel at all times). That period encompassed 131 days of excludable time, or 9 days more than need be excludable. *People v Meierdiercks*, (1986); *People v Worley*, 66 NY2d 523 (1985); *People v Jones*, 151 Misc2d 582 (Ap Term, 2nd Dept 1991), *ap den* 79 NY2d 921 (1992).

Thus, a total of 172 days elapsed between commencement of the action and the date of declared readiness, absent intervening excludable periods of time. Therefore, the People, having established that less than six months of includable time passed,

the motion to dismiss the Indictment for violation of Defendant's statutory speedy trial rights must be denied.

All other motions are denied.

Dated: White Plains, New York
October 4, 2019



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

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