

People v Mezzacappa
2020 NY Slip Op 34777(U)
July 23, 2020
County Court, Westchester County
Docket Number: Indictment No. 19-1273
Judge: Anne E. Minihan
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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 7-28-2020
WESTCHESTER

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

-against-

DECISION & ORDER
Ind No.: 19-1273

GINA MEZZACAPPA,

Defendant.

-----X
MINIHAN, J.

Defendant, charged by Westchester County Indictment No. 19-1273 with Aggravated Driving While Intoxicated (VTL 1192§ [2][a][b]); Driving While Ability Impaired by the Combined Influence of Drugs (VTL 1192§ [4][a]); Assault in the Third Degree (PL § 120.00 [3]) and Criminal Mischief in the Fourth Degree (PL § 145.00 [3]), has filed an omnibus motion consisting of a Notice of Motion, an Affirmation and a Memorandum of Law. In response thereto, 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, entered in this case, the court disposes of the motion as follows:

FILED

I.

MOTION to INSPECT and DISMISS
CPL ARTICLE 190

JUL 28 2020

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant moves pursuant to CPL 210.20 to dismiss the indictment on the grounds that the evidence before the Grand Jury was legally insufficient. The court has reviewed the minutes of the proceedings before the Grand Jury.

Contrary to defendant's claim, the evidence presented, if accepted as true, is legally sufficient to establish every element of the offenses charged (CPL 210.30[2]); thus, defendant's motion to dismiss on that basis 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]).

Specifically, defendant's argument that the evidence was insufficient to support allegations and/or a charge of intoxication is unconvincing. The People presented proof in the form of testimony of the officer's observations at the scene including defendant's failure to pass a field sobriety test. In light of his training, the police officer's testimony about his observations of the defendant at the scene provided ample prima facie evidence to support the charges of her alleged intoxication.

Defendant's claim that there was insufficient evidence introduced as to her son's age, a minor who was in the vehicle at the time of the crime, is similarly unconvincing. A review of the minutes reveals that the People offered evidence through multiple witnesses including defendant's own admission that provided proof as to the approximate age of the child.

The minutes further demonstrated 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 this determination, the Court does not find it necessary to release to the parties portions of the Grand Jury minutes, like colloquies or instructions, which are not subject to automatic discovery pursuant to CPL Article 245.

II.

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 the defendant elects to testify at trial.

At the hearing, the defendant shall bear the burden of identifying any instances of her prior misconduct that she submits the People should not be permitted to use to impeach her credibility. The defendant shall be required to identify the basis of her belief that each event or incident may be unduly prejudicial to ability to testify as a witness on her own behalf (*see People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

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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.

III.

MOTION to SUPPRESS NOTICED STATEMENTS

This branch of the defendant's motion seeking to suppress statements on the grounds that they were unconstitutionally obtained is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL 710.30 (1)(a), were involuntarily made by the 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]), obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

IV.

MOTION to PRECLUDE IDENTIFICATION TESTIMONY
CPL 710

Defendant's motion is granted to the limited extent of conducting a hearing prior to trial to determine whether the identifying witness(es) noticed identifications(s) were spontaneously made and not a product of police arrangement so as to vitiate the need for a *Wade/Rodriguez* hearing.

If the identification by a witness was not spontaneous then the motion is granted to the limited extent of conducting a hearing prior to trial to determine whether the identifying witness(es) 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 prior familiarity with the defendant on the part of the witness(es), the court will then consider whether or not 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 by clear and convincing evidence that an independent source exists for such witnesses' proposed in-court identification.

V.

MOTION to SUPPRESS EVIDENCE

This branch of the defendant's motion is also granted solely to the extent of conducting a *Mapp* hearing prior to trial to determine the propriety of any search resulting in the seizure of property (*see Mapp v Ohio*, 367 US 643[1961]). The hearing will also address whether any evidence was obtained in violation of the defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

VI.

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.

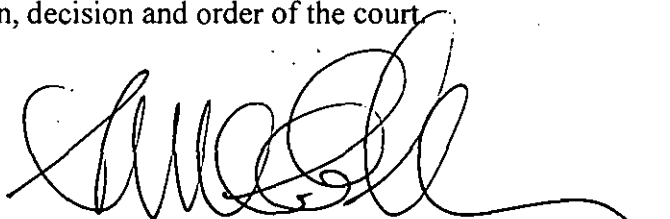
VII.

MOTION to CONDUCT PRE-TRIAL HEARINGS
TWO WEEKS in ADVANCE of TRIAL

The defendant's motion to schedule pre-trial hearings two weeks in advance of trial is denied. The hearings will be scheduled at a time that is convenient to the Court, upon due consideration of all of its other cases and obligations.

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

Dated: White Plains, New York
July 3, 2020



Honorable Anne E. Minihan
Acting Supreme Court Justice

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