

People v Machado

2020 NY Slip Op 34913(U)

September 10, 2020

County Court, Westchester County

Docket Number: Indictment No. 1286-2019

Judge: Anne E. Minihan

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FILED
AND ENTERED
ON 9-16-2020
WESTCHESTER

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

JOHNNY MACHADO,

Defendant.

-----X
MINIHAN, J.

DECISION & ORDER
Indictment No. 1286-2019

FILED
SEP 22 2020

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, Johnny Machado, charged by Westchester County Indictment Number 1286-2019 with Leaving the Scene of an Accident (VTL § 600 [2]) and Criminally Negligent Homicide (Penal Law § 125.10), has filed an omnibus motion consisting of a Notice of Motion, an Affirmation in Support and “Defendant’s Affirmation [Amended]”. 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 entered in this case, this court disposes of this motion as follows:

I.

MOTION to INSPECT and DISMISS
CPL ARTICLE 190

Defendant moves to dismiss the indictment on the grounds that the indictment is facially insufficient, the evidence before the grand jury was legally insufficient, and the grand jury proceeding was defective within the meaning of CPL 210.35. The court has reviewed the minutes of the grand jury proceeding.

The evidence presented to the grand jury, if accepted as true, would be legally sufficient to establish defendant’s guilt of the charges (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, inter alia, 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 of 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]).

Defendant's request to dismiss the indictment in furtherance of justice is denied. The defendant has cited no persuasive or compelling factor, consideration or circumstances under CPL 210.40 warranting dismissal of this indictment. The court has examined the factors listed in CPL 210.40, which include, in relevant part, the seriousness and circumstances of the offense; the extent of harm caused by the offense; the evidence of guilt; the history, character and condition of the defendant; any exceptionally serious misconduct of law enforcement personnel; the purpose and effect of imposing upon the defendant a sentence authorized for the charged offenses; the potential impact of a dismissal on public confidence in the judicial system; the potential impact of dismissal upon the safety and welfare of the community; and other relevant facts suggesting that a conviction would not serve a useful purpose. Having done so, the court has discerned no compelling factor, consideration or circumstance which clearly demonstrates that further prosecution or conviction of the defendant would constitute or result in injustice.

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 colloquies or instructions.

II.

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

¹ The 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

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 counsel has not been provided, counsel 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.

To the extent the People cross-move for reciprocal discovery, it is likewise granted to the extent provided for in CPL Article 245. Further, the Bill of Particulars set forth in the voluntary disclosure form provided to defendant has adequately informed defendant of the substance of the alleged conduct and in all respects complies with CPL Article 245 and Section 200.95.

III.

MOTION to SUPPRESS PHYSICAL EVIDENCE
& CONTROVERT THE SEARCH WARRANTS

The results of a search conducted pursuant to a facially sufficient search warrant are not subject to a suppression hearing (*People v Arnau*, 58 NY2d 27 [1982]). To the extent that the defendant has standing to contest any property seized pursuant to the search warrants, and to the extent that the defendant challenges the sufficiency of the search warrants, that argument fails. Upon review of the four corners of the search warrant affidavits, the warrants for two cell phones were adequately supported by probable cause (*see People v Keves*, 291 AD2d 571 [2d Dept 2002]; *see generally People v Badilla*, 130 AD3d 744 [2d Dept 2015]; *People v Elysee*, 49 AD3d 33 [2d Dept 2007]).

The defendant fails to demonstrate that the warrants were based upon affidavits containing false statements made knowingly or intentionally, or with reckless disregard for the truth (*People v McGeachy*, 74 AD3d 989 [2d Dept 2010]). The defendant has failed to make a substantial preliminary showing of cause for a *Franks-Alfinito* hearing (*Franks v Delaware*, 438 US 154 [1978]; *People v Alfinito*, 16 NY2d 181 [1965]; *People v Novick*, 293 AD2d 692 [2d Dept 2002]). The Court has reviewed the affidavits in support of the search warrants for the defendant's cell phones and finds that they did provide the signing magistrate with probable cause to believe that evidence could be located at the locations described in the warrants. The Court has also reviewed the orders and finds them to be proper in all respects.

Lastly, pursuant to the Consent Discovery Order, the People consented to provide defense counsel with copies of the search warrants and supporting affidavits. The People are directed to disclose the warrants and supporting affidavits, if they have not already turned them over; or to move for a

the court's in camera inspection and determination as to whether it constitutes *Brady* material discoverable by the defendant.

protective order. Should the People move for a protective order, an *in camera* inquiry will be conducted prior to trial pursuant to *People v Seychel*, 136 Misc2d 310 [Sup. Ct. NY Co. 1987] as reaffirmed by the Court of Appeals in *People v Castillo*, 80 NY2d 578 [1992]).

Notwithstanding, this branch of the defendant's motion is 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 excluding the property seized pursuant to the search warrants (*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]).

IV.

MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

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 uncharged misconduct and criminal acts of the defendant, including acts sought to be used in their case in chief, they shall so 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 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.

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]).

V.

MOTION to PRECLUDE UNNOTICED STATEMENTS

This motion to preclude the People from introducing statements at trial that were not noticed is denied as premature. The People acknowledge the statutory requirements of CPL 710.30.

VI.

MOTION to PRECLUDE STATEMENT TESTIMONY
CPL 710

The motion to preclude use of the noticed statements is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether the statement(s) was 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]), 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]).

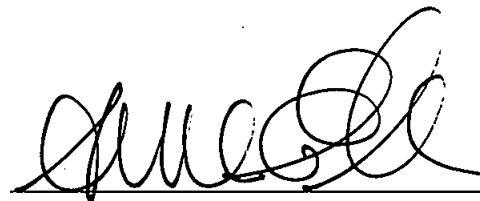
VII.

LEAVE TO MAKE ADDITIONAL MOTIONS

Defendant's motion for leave to make additional motions is denied. Defendant must demonstrate good cause for any further pre-trial motion for omnibus relief, in accordance with CPL 255.20(3).

The foregoing constitutes the decision and order of this court.

Dated: White Plains, New York
September 10, 2020



Honorable Anne E. Minihan
Acting Justice of the Supreme Court

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