

People v Bonanno

2020 NY Slip Op 35397(U)

December 2, 2020

County Court, Westchester County

Docket Number: Indictment No. 19-0859

Judge: George E. Fufidio

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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-

MATTHEW BONANNO,

Defendant.

-----X
FUFIDIO, J.

DECISION & ORDER
Indictment No.: 19-0859

FILED

DEC - 2 2020

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, MATTHEW BONANNO, having been indicted on or about August 23, 2019, for one count of criminal possession of a weapon in the second degree (Penal Law § 265.03[2]); nine counts of criminal possession of a weapon in the second degree (Penal Law § 265.03[3]); eight counts of criminal possession of a weapon in the third degree (Penal Law § 265.02 [7]); thirty three counts of criminal possession of a weapon in the third degree (Penal Law § 265.02[8]); four counts of criminal possession of a weapon in the fourth degree (Penal Law § 265.01[1]) and criminal possession of a weapon in the second degree (Penal Law § 265.03[1][b]) has filed an omnibus motion which consists of a Notice of Motion, an Affirmation in Support, the Defendant's Affidavit and a Memorandum of Law. In response, the People have filed an Affirmation in Opposition together with a Memorandum of Law and the Defendant in turn filed a Reply. Upon consideration of these papers and the stenographic transcript of the grand jury minutes this Court disposes of this motion as follows:

A. MOTION TO SUPPRESS STATEMENTS

The Court grants the Defendant's motion 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]).

B. MOTION TO SUPPRESS PHYSICAL EVIDENCE AND
CONTROVERT SEARCH WARRANTS

The Court grants the Defendant's motion solely to the extent that *Mapp* and *Dunaway* hearings are directed to be held prior to trial to determine the propriety of any search resulting in the seizure of property (see, *Mapp v Ohio*, 367 US 643 [1961]) and whether any evidence was obtained in violation of the defendant's Fourth Amendment rights (see, *Dunaway v New York*, 442 US 200 [1979]) and whether there was probable cause to arrest the defendant.

C. MOTION FOR SANDOVAL/VENTIMIGLIA/MOLINEUX HEARING

Granted, solely to the extent that *Sandoval/Ventimiglia/Molineux* hearings, as the case may be, shall be held immediately prior to trial, as follows:

I. Pursuant to CPL §245.20, the People must notify the Defendant, not less than fifteen days prior to the first scheduled date for trial, of all specific instances of Defendant's uncharged misconduct and criminal acts of which the People have knowledge and which the People intend to use at trial for purposes of impeaching the credibility of the Defendant, or as substantive proof of any material issue in the case, designating, as the case may be for each act or acts, the intended use (impeachment or substantive proof) for which the act or acts will be offered; and

II. Defendant, at the ordered hearing, 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 AD2d 266 [2nd Dept. 1985]).

E. MOTION TO INSPECT AND 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. 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 Boamong*, 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]). Regarding the Defendant's specific claim that one civilian witness and one police witness testified two different ways about who, the civilian or the police officer, actually opened the glove compartment to retrieve a pistol that was inside, the Court disagrees that in this context such divergent testimony is material to the grand jury's determination of whether there was sufficient evidence to believe the Defendant committed a crime with respect to that gun (*People v Deitsch*, 97 AD2d 327 [1983]). The Defendant will have ample opportunity to make what he will of the discrepancy in testimony at the suppression hearing before trial. It may come to be that such testimony will be material on the issue of whether certain evidence is required to be suppressed, but for purposes of this motion, it is not enough to warrant a dismissal of the indictment (*People v Suarez*, 122 AD2d 861 [1986]).

In making this determination, the Court does not find that release of such portions of the Grand Jury minutes as have not already been disclosed pursuant to CPL Article 245 to the parties was necessary to assist the Court.

D & E. MOTION FOR DISCOVERY, DISCLOSURE AND INSPECTION

Defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 245.20 and/or already provided by the People. If any items set forth in CPL Article 245 have not already been provided to Defendant pursuant to that Article, said items are to be provided forthwith. Any party is granted leave, if required, to apply for a Protective Order in compliance with CPL Article 245, upon notice to the opposing party and any party affected by said Protective Order. The People are directed to file a Certificate of Compliance with CPL Article 245 and the instant Order upon completion of their obligations thereunder, if they have not already done so. Any cross-motion for reciprocal discovery is likewise granted to the extent provided for in Criminal Procedure Law Article 245, and/or already provided to the People.

The Defendant has been persistent in his request for police personnel files for the officers involved in this case and has been insistent that the People need to turn these over to the Defendant, ostensibly regardless of whether or not the items and information contained therein relate to the subject matter of the case (CPL 245.20(1); see also, *People v Garrett*, 23 NY3d 878 [2014]).¹ The People are already under the obligation to disclose the information contained in CPL 245.20 (1)(k) as it relates to the officers involved in this case, however, the full police personnel files cannot be deemed to be within the People's possession, custody or control (*In the Matter of Certain Police Officers*, 67 Misc3d 458 [Westchester County Court, 2020, Blackwood, J.]). This is especially true since the repeal of Civil Rights Law section 50-a. The Defendant is

¹ The People have recently sought and received a trial *subpoena duces tecum* from the Court to compel the police department to turn over these documents.

free to seek police personnel records on his own. Furthermore, he is not without remedies if he feels that the People's declaration of readiness for failure to provide police personnel files was illusory. The Defendant has at his disposal the ability to file a motion to dismiss pursuant to CPL 30.30 as well as the ability to seek sanctions for non-compliance as set forth CPL 245.80.

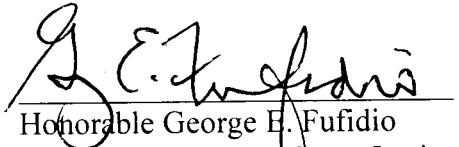
To the extent that it also includes specific information contained in police personnel files, the People have acknowledged their continuing duty to disclose any and all exculpatory material at the earliest possible date upon its discovery (*see, Brady v Maryland*, 373 US 83 [1963]; *Giglio v United States*, 405 US 150 [1972]). In the event that the People are, or become, aware of any material which is arguably exculpatory and they are not willing to consent to its disclosure to the defendant, they are directed to immediately disclose such material to the court to permit an *in camera* inspection and determination as to whether the material must be disclosed to the defendant.

G. MOTION RESERVING THE RIGHT TO FILE ADDITIONAL MOTIONS

Defendant's motion reserving the right to file additional motions is denied. Should the Defendant file any other motions that were not raised in his *Omnibus* motion, then they will need to be in compliance with CPL 255.20.

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

Dated: White Plains, New York
December 2, 2020


Honorable George E. Fufidio
Westchester County Court Justice

To:

HON. ANTHONY A. SCARPINO, JR.
District Attorney, Westchester County
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601

BY:

VIRGINIA A. MARCIANO, ESQ.
Assistant District Attorney

MARIA I. WAGER, ESQ.
Assistant District Attorney

PAUL GENTILE, ESQ.
Attorney for the Defendant
260 Madison Avenue, 22nd Floor
New York, New York 10016