

People v Boykin

2020 NY Slip Op 35438(U)

September 16, 2020

County Court, Westchester County

Docket Number: Indictment No. 19-0861-01

Judge: George E. Fufidio

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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-

TYQUAN BOYKIN,

Defendant.

-----X
FUFIDIO, J.

DECISION & ORDER
Indictment No.: 19-0861-01

FILED 

2020 FEB 24

THE CLERK OF THE COURT
COUNTY OF WESTCHESTER

Defendant, TYQUAN BOYKIN, having been indicted on or about February 20, 2020, on one count of robbery in the first degree (Penal Law § 160.15 [4]) and one count of menacing in the second degree (Penal Law § 120.14[1]) has filed an omnibus motion which consists of a Notice of Motion, an Affirmation in Support and a Memorandum of Law. 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 this Court disposes of this motion as follows:

A. MOTION FOR A BILL OF PARTICULARS

The Defendant’s motion for a Bill of Particulars is denied. The Defendant has never requested one per CPL 200.95[2] and to the extent that the motion for one is such a request, it is untimely (CPL 200.95[3]). In any event, given the amount of discovery that is provided under CPL Article 245, the Defendant has ample information around which to construct his defense (CPL 200.95[5]).

B. 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]). In particular, the victim of the alleged crime testified before the grand jury that, in essence, he agreed to sell the Defendant some of his left over marijuana and when they went to a more secluded area the Defendant grabbed the bag of marijuana from the victim’s hand without paying for it. Then right after he grabbed the marijuana from the victim, he displayed what appeared to be a gun while at the same time grabbing the victim’s backpack, which he was ultimately unsuccessful in taking. It is immaterial that the object that the Defendant took from the victim is contraband (*People v Spann*, 56 NY2d 469 [1982]). 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]). 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 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.

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]).

D. MOTION FOR EXCULPATORY MATERIAL

The People have acknowledged their continuing duty to disclose 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.

E. 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]).

F. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY CPL ARTICLE 710

Regarding the identifications done by photographic arrays that were noticed to the Defendant, the Court orders a hearing on whether 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 witness' proposed in-court identification (*People v Riley*, 70 NY2d 523 [1987]).

As to the remaining noticed identification made during the grand jury presentation, the Court agrees with the People's argument that these were ratifications, in which the witness was shown video in which he was a participant in the events depicted and in which the Defendant is also depicted as a participant and hence outside the ambit of CPL 710.30 (*People v Gee*, 99 NY2d 158 [2002]).

G. MOTION TO SUPPRESS PHYSICAL EVIDENCE

A *Mapp/Dunaway* hearing will be conducted prior to trial to determine the propriety of the search resulting in the seizure of any evidence seized from the Defendant's person (*Mapp v. Ohio*, 367 US 643 [1961]) and 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]).

With respect to the search of 260 Valentine Lane, apartment 1B-1, Yonkers, New York, this branch of the defendant's motion is granted solely to the extent of conducting a hearing to address whether or not the Defendant has standing to challenge the search of the apartment and of places and things searched within the apartment that resulted in the seizure of evidence other than evidence that may taken from the defendant's person (see *Rakas v Illinois* 439 US 128 [1978]; *People v. Ramirez-Portoreal*, 88 NY2d 99 [1966]; *People v Ponder*, 54 NY2d 160 [1981]; *People v White*, 153 AD3d 1369 [2d Dept 2017]; *People v. Hawkins*, 262 AD2d 423 [2d

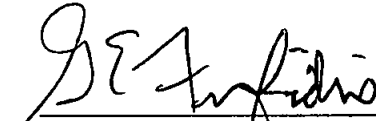
Dept 1999]). Naturally, if the Defendant does have standing to challenge the search of the apartment, then the above ordered *Mapp/Dunaway* hearings will apply to that evidence as well.

H. 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
September 16, 2020


Honorable George E. Fufidio
Westchester County Court Justice

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