

People v Ward

2020 NY Slip Op 35447(U)

July 1, 2020

County Court, Westchester County

Docket Number: Indictment No. 19-1272

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-

LA'QUANAYA WARD,

Defendant.

-----X
FUFIDIO, J.

DECISION & ORDER
Indictment No.: 19-1272

FILED

JUL - 2 2020

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, LA'QUANAYA WARD, having been indicted on or about December 16, 2019, for one count of attempted murder in the second degree (Penal Law § 110/125.25), one count of unlawful imprisonment in the first degree (Penal Law § 135.10); one count of attempted assault in the third degree (Penal Law § 110/120.00[1]) and two counts of endangering the welfare of a child (Penal Law § 260.10[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 & 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 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. Further, the bill of particulars set forth in the voluntary disclosure form provided to Defendant has adequately informed Defendant of the substance of alleged conduct and in all respects complies with CPL Article 245 and §200.95.

In addition, the People's response has certified that the police officers involved in this case have answered the questions that the People have asked them regarding certain disclosures under CPL 245.20(1)(k). There does not appear to be a problem anymore, as there had initially been in this case, with the police refusing to answer questions about whether there was anything in their personnel file that would trigger disclosure under CPL 245.20(1)(k) and where the police answers did trigger a disclosure obligation, they People affirm that the information was disclosed. The Court denies the Defendant's request that they be given the specific questions and answers that were asked and that they be given the officer's personnel files as beyond the scope of CPL Article 245 under these circumstances. Under that article, the People are still the

initial gatekeepers for the flow of discovery and the Defendant has offered no argument for her supposed entitlement to the specific questions, answers and personnel files. Nevertheless, the questions asked in the People's CPL 245.20 (1)(k) questionnaire are spelled out in *Matter of Certain Police Officers*, 67 Misc3d 458 [2020] and the People have affirmed that the officers have answered the question, number 6, about their personnel files in the negative. With the repeal of Civil Rights Law section 50-a, the Defendant is free to seek police personnel records on her own. Likewise, the Court denies the Defendant's request for a hearing on whether People's readiness declaration was valid. On February 4, 2020 the People filed their Certificate of Compliance with CPL 245.20 with a disclaimer regarding certain information that was being withheld by the police; indicating that the Westchester County Police had refused to answer any of their questions in so far as CPL 245.20(1)(k) was concerned and that the White Plains Police had only refused to answer the question about their police personnel files. Upon that filing and the concomitant declaration of readiness, the Court inquired of the People about that readiness and the Defendant was, "afford(ed) an opportunity to be heard on the record as to whether the disclosure requirements have been met" (CPL 30.30(5)). The Defendant has provided no argument or authority that CPL 30.30(5) requires a hearing after the inquiry procedure set forth in that section is completed. The Defendant is not without remedies however, if she feels that the People's declaration of readiness was illusory for want of, "see[ing] any subpoenas sent to these officers or anything beyond this one form," the Defendant has at her disposal the ability to file a motion to dismiss pursuant to CPL 30.30 and/or the ability to ask for sanctions for non-compliance as set forth CPL 245.80.

As to the defendant's demand 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.

B. MOTION FOR BILL OF PARTICULARS

The Defendant's motion for bill of particulars is denied as moot. The People have appended a bill of particulars to their motion response.

C. 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]).

The Defendant also claims defectiveness because of certain evidence that the grand jury was allowed to hear. The Court agrees with the Defendant that the testimony about the Defendant just having her children returned from foster care and that the Defendant’s third child lives with the Defendant’s mother is largely irrelevant. The People’s argument that that testimony was relevant because it explains why the Defendant and Witnesses were living in a homeless shelter, does not really go towards any “material” fact (*People v Scarola*, 71 NY2d 769 [1988]), it goes more towards setting the scene or completing the narrative of events. However, the Court disagrees that the admission of this information was extremely prejudicial. The Defendant bases her argument entirely in speculation. She offers no support for her claim that the grand jury learning about foster care placement; “potential” child protective services involvement and the “likely” loss of custody, without more, necessarily leads to an inference of a propensity for violence. Again, although irrelevant, it is a perfectly logical inference, that one of the witnesses, after describing the events that she saw which led to these charges, and describing the Defendant’s demeanor during and after those events, would now be afraid of the Defendant. The extreme remedy of dismissing a case for misconduct is justified in instances where there is an, “over-all pattern of bias and misconduct” that is willful and pervasive and where in the absence of the complained of misconduct, in this case, introducing irrelevant evidence, the grand jury might not have indicted the defendant (*People v Thompson*, 22 NY3d 687 [2014]). In light of detail and consistency of the testimony that was given by several witnesses concerning the events leading to this indictment, the Court finds in this instance that had the grand jury not received this erroneous proffer of irrelevant evidence they would still have indicted the Defendant. Accordingly, the integrity of the grand jury was not impaired and the indictment is not invalidated (*id.*).

Regarding testimony that the Defendant picked up her son Sincere and threatened to smash him on the ground, in conjunction with the bill of particulars, the Court finds that to be, at the very least, the *actus reus* of the crime of endangering the welfare of a child and thus relevant,

despite the obvious prejudicial impact of being charged with a crime that testimony had on the Defendant.¹

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. 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]).

F. MOTION TO STRIKE PREJUDICIAL LANGUAGE

The defendant moves to strike certain language from the indictment on the grounds that it is surplusage, irrelevant or prejudicial. The language concluding the indictment merely identifies the defendant's acts as public, rather than private wrongs and such language should not be stricken as prejudicial. This motion is denied (*see, People v Gill*, 164 AD2d 867 [2d Dept 1990]; *People v Winters*, 194 AD2d 703 [2d Dept 1993]; *People v Garcia*, 170 Misc. 2d 543 [Westchester Co. Ct. 1996]).

G. 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

¹ In the People's *omnibus* response, they argue that the reason this testimony was relevant is because it makes out the *actus reus* of attempted assault in the third degree on the 1 year old victim, Sincere, who the grand jury testimony shows the Defendant lifted above her head and appeared ready to slam onto the ground. However, the grand jury testimony and grand jury instructions are that the attempted assault in the third degree charge was in reference to the 2 year old victim, King, who, the testimony shows, the Defendant punched in the face and then carried to the bath tub where she tried to drown him by holding him under the water. Either constitutes sufficient evidence to sustain an attempted assault in the third degree charge. The bill of particulars also spells out that the attempted assault in the third degree charge refers to the conduct against King.

counsel, and/or obtained in violation of the Defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

H. MOTION TO PRECLUDE UNNOTICED IDENTIFICATIONS AND STATEMENTS

The People have not expressed any indication that they plan on using any unnoticed statements made by or identifications made of the Defendant. Should they intend to use any of which the Defendant would have been entitled to notice, they will have to show good cause as to why they were not noticed within fifteen days of arraignment (CPL 710.30) and if that showing is made, then the Court will conduct a *Huntley* or *Wade* hearing as appropriate.

I & J. MOTION TO SUPPRESS PHYSICAL EVIDENCE AND CONTROVERT SEARCH WARRANTS

Upon the Court's review of the four corners of the search warrant affidavits and orders, the court finds that the warrant was adequately supported by probable cause to believe that evidence at the locations searched could tend to show that the offense was committed and that the defendant was the one who committed it (*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 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.

K. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY
CPL ARTICLE 710

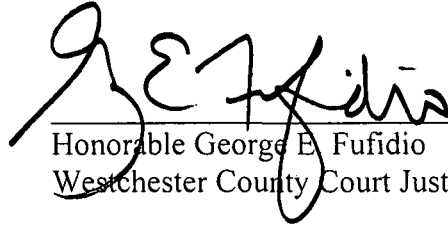
This motion is denied as moot. The People did not provide any CPL 710.30 identification notices. See, POINT H, *supra*.

L. MOTION TO STRIKE ALIBI NOTICE

The Defendant's motion to strike the alibi notice is denied. Contrary to the Defendant's contentions, it is well-settled that CPL 250.00 is indeed in compliance with the constitutional requirements (*see People v Dawson*, 185 AD2d 854 [2d Dept 1992]; *People v Cruz*, 176 AD2d 751 [2d Dept 1991]; *People v Gill*, 164 AD2d 867 [2d Dept 1990]) and provides equality in the required disclosure (*People v Peterson*, 96 AD2d 871 [2d Dept 1983]; *see generally Wardius v Oregon*, 412 US 470 [1973]).

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

Dated: White Plains, New York
July 1, 2020


Honorable George E. Fufidio
Westchester County Court Justice

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