

People v Bourdier

2020 NY Slip Op 35465(U)

August 31, 2020

County Court, Westchester County

Docket Number: Indictment No. 19-0989

Judge: Anne E. Minihan

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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-

TAHISHA BOURDIER

Defendant.
-----X

MINIHAN, J.

FILED
AND ENTERED
ON 9-1-2020
WESTCHESTER

DECISION & ORDER

Indictment No. 19-0989

FILED

SEP - 1 2020

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, TAHISHA BOURDIER, charged by Westchester County Indictment Number 19-0989 with Grand Larceny in the Third Degree (Penal Law § 155.35[1]) and Criminal Possession of a Forged Instrument in the Second Degree (Penal Law § 170.25) (62 counts), has filed an omnibus motion consisting of a Notice of Motion and an Affirmation in Support. In response, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Upon consideration of these papers, and the stenographic transcript of the grand jury minutes, the court disposes of this motion as follows:

I. & II.

MOTION for a BILL OF PARTICULARS
CPL 200.95 & DISCOVERY CPL 245.10

While acknowledging that she did heretofore demand a bill of particulars pursuant to CPL 200.95, defendant now demands a bill of particulars setting forth, for each count in the indictment, the specific date of deposit and the amount of the check. Defendant argues that if the People had timely provided the required discovery under CPL 245.10, in particular the grand jury testimony, then defense counsel would "likely not need a bill of particulars." The People argue that defendant's request for a bill of particulars should be denied as untimely and, in any event, unnecessary given the discovery already provided. The People are correct that defendant's request for a bill of particulars is untimely, as CPL 200.95(3) requires that a request for a bill of particulars be served upon the prosecution within thirty (30) days after arraignment. Nonetheless, the People are hereby directed to provide a bill of particulars within five days of their receipt of this order (*see* CPL Article 245; CPL 200.95).

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

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.

III.

MOTION to INSPECT, DISMISS and/or REDUCE
CPL ARTICLE 190

Defendant moves to dismiss and/or reduce the charges in the indictment on the ground that the evidence presented to the grand jury was not legally sufficient to support the charges. Defendant also moves to dismiss the indictment on the basis that 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]).

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

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]).

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.

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 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 her 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]).

V.

MOTION to STRIKE ALIBI NOTICE

Defendant's motion to strike the alibi notice is denied. Contrary to the defendant's contentions, it is well-settled that CPL 250.20 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]).

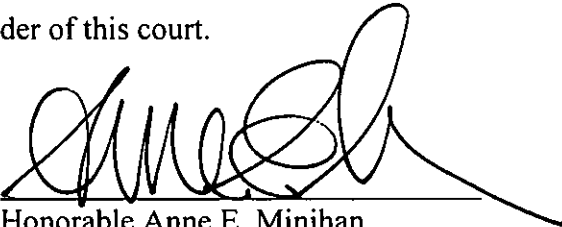
VI.

LEAVE TO MAKE ADDITIONAL MOTIONS

Defendant's motion for leave to make additional pre-trial 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
August 31, 2020



Honorable Anne E. Minihan
Acting Justice of the Supreme Court

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