

People v Shulman-Hutter

2020 NY Slip Op 35502(U)

November 10, 2020

Supreme Court, Westchester County

Docket Number: Docket No. 20-0259

Judge: Susan M. Capeci

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK,

DECISION AND ORDER
Docket #20-0259

-against-

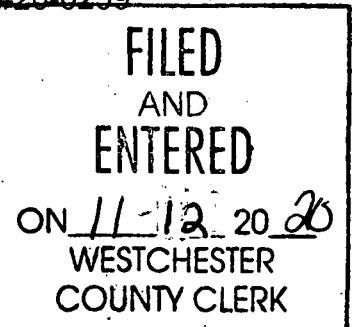
MAX SHULMAN-HUTTER,

Defendant.

FILED

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TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER



The defendant, charged by indictment with attempted assault in the first degree (P.L. 11/120.00 (1)), assault in the second (P.L. 120.05 (2)), and criminal possession of a weapon in the fourth degree (P.L. 265.01 (2)), makes this omnibus motion seeking: 1) inspection of the grand jury minutes by the Court and the defendant, and thereafter, for the dismissal of the indictment and/or reduction of the charges contained therein; 2) suppression of the statements alleged to have been made by him, or in the alternative, for a Huntley hearing; 3) suppression of physical evidence, including the knife and photographs, obtained from the home on the ground that there was no consent to search the premises, no search warrant, and no exigencies present, or a Dunaway/Mapp hearing; 4) a Sandoval/Ventimiglia/Molineux hearing; and 5) disclosure of Brady material.

The People consent to an *in camera* review by the Court of the Grand Jury minutes for legal sufficiency and the release of the grand jury testimony to the defendant, consent to Mapp/Dunaway and Huntley hearings, and to a Sandoval/Ventimiglia/Molineux hearing, but otherwise oppose the motion. The Court now finds as follows.

1. MOTION TO INSPECT 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 Boampong, 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]).

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.

2. MOTION TO SUPPRESS STATEMENTS

The People have served the defendant with 9 separate CPL 710.30 notices with respect to oral statements alleged to have been made by him to law enforcement authorities. The defendant argues that these noticed statements should be suppressed as involuntarily made.

The defendant's motion for suppression of the above statements as set forth in the CPL 710.30 notices is granted to the extent that the Court will conduct a Huntley hearing prior to trial concerning the noticed statements allegedly made by the defendant

for the purpose of determining whether Miranda warnings were necessary and, if so, whether he was so advised and made a knowing, intelligent and voluntary waiver thereof, or whether the statements were otherwise involuntarily made within the meaning of CPL 60.45.

3. MOTION TO SUPPRESS PHYSICAL EVIDENCE

The defendant's motion for a hearing on the issue of whether physical evidence was lawfully recovered from his home is granted. The defendant asserts that the police officers entered his home without consent, or a search warrant, and that there were no exigencies present since both he and the victim he told the officers no one else was in the home. The People respond that the police officers entered the home pursuant to the emergency doctrine, after arriving at the scene and finding the victim had been stabbed and was suffering severe injuries and bleeding. They argue the police had reasonable grounds to believe others might be in medical distress, in order to justify their warrantless entry into the home.

Since the defendant has raised a factual issue as to the circumstances under which evidence was obtained from his home, the motion for a Dunaway/Mapp hearing is granted (People v Mendoza, 82 NY2d 415 (1993); People v Bryant, 8 NY3d 530 (2007)).

4. 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:

- A. 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


B. 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]).

5. DISCLOSURE OF BRADY MATERIAL

The People have acknowledged their continuing obligation to disclose any exculpatory material in their possession, and are directed to do so in accordance with CPL 245.20.

This constitutes the Decision and Order of this Court.

Dated: November 10, 2020
White Plains, New York



HON. SUSAN M. CAPECI
A.J.S.C.

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