

People v Riddenhour

2020 NY Slip Op 35583(U)

November 10, 2020

County Court, Westchester County

Docket Number: Indictment No. 20-0254

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 11-10-2020
WESTCHESTER

-----X
THE PEOPLE OF THE STATE OF NEW YORK

FILED

-against-

NOV 10 2020

LAMONT RIDDENHOUR

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

DECISION & ORDER
Indictment No. 20-0254

Defendant.

-----X
MINIHAN, J.

Defendant, LAMONT RIDDENHOUR, charged by Westchester County Indictment Number 20-0254 with Arson in the Second Degree (Penal Law § 150.15) and Criminal Mischief in the Second Degree (Penal Law § 145.10), 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, the stenographic transcript of the grand jury minutes and the Consent Discovery Order entered in this case, this court disposes of this motion as follows:

I.

MOTION to INSPECT and DISMISS
CPL ARTICLE 190

Defendant moves to dismiss the charges on the basis that there was legally insufficient evidence of the charges presented to the grand jury. Defendant challenges whether there was sufficient evidence identifying defendant as the perpetrator and argues specifically that there was a “lack of evidence that the person seen on the porch even started the fire.” Alternatively, defendant argues that the top count of Arson in the Second Degree should be reduced to Arson in the Third Degree because the evidence before the grand jury was legally insufficient to show that a nonparticipant’s presence in the building was either known by defendant or reasonably probable. The People oppose dismissal or reduction and argue that defendant has a very selective view of the grand jury evidence and contend that the top count of assault in the second degree is legally sufficient as presented.

The court has reviewed the minutes of the proceeding which reveal that the Grand Jury heard from three witnesses who testified that the house was occupied by squatters. The evidence revealed that another witness, who occupied the house, hosted a yard sale and after the defendant was unhappy with his purchase, threatened to burn down the house. The evidence, viewed most favorably to the People reveal that there was sufficient evidence to establish that the defendant was aware of the circumstances that squatters lived there, including the witness that was threatened, which renders “the presence of another person in the building” a very reasonable possibility (*People v Burns*, 68 AD3d 1246 [3d Dept 2009]; *People v Lingle*, 34 AD3d 287 [1st Dept 2006]). As such, there is no reasonable view of the evidence that defendant lacked actual, or at least constructive, knowledge of the building's occupied status.

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]).

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.

II.

MOTION to PRECLUDE STATEMENT TESTIMONY
CPL 710

The motion to preclude use of the noticed statements is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether the statement was involuntarily made by 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]).

III.

MOTION to PRECLUDE IDENTIFICATION TESTIMONY
CPL 710

Defendant's motion to suppress identification testimony is granted to the limited extent of ordering a pre-trial *Wade* hearing (see *United States v Wade*, 388 US 218 [1967]). At the hearing, the People bear the initial burden of establishing the reasonableness of the police conduct and the lack of any undue suggestiveness (see *People v Chipp*, 75 NY2d 327, 335 [1990] cert. denied 498 US 833

[1990]; *People v Berrios*, 28 NY2d 361 [1971]). Once that burden is met, the defendant bears the ultimate burden of proving that the procedure was unduly suggestive. Where suggestiveness is shown, the People must show the existence of an independent source by clear and convincing evidence.

IV.

MOTION to SUPPRESS PHYSICAL EVIDENCE

This branch of the defendant's motion is granted solely to the extent of ordering a pre-trial *Mapp* hearing to determine the propriety of any search resulting in the seizure of property (*see Mapp v Ohio*, 367 US 643 [1961]). 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]).

V.


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 his prior misconduct that he submits the People should not be permitted to use to impeach his credibility. The defendant shall be required to identify the basis of his belief that each event or incident may be unduly prejudicial to his ability to testify as a witness on his own behalf (*see People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

The foregoing constitutes the decision and order of this court.

Dated: White Plains, New York
November 10, 2020


Honorable Anne E. Minihan
Acting Justice of the Supreme Court

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