

People v Rivera

2020 NY Slip Op 35586(U)

June 30, 2020

County Court, Westchester County

Docket Number: Indictment No. 20-0073

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
and
ENTERED

6-30 2020

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THE PEOPLE OF THE STATE OF NEW YORK

FILED

-against-

JUN 30 2020

DECISION & ORDER
Indictment No. 20-0073

JOSE RIVERA,

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER
Defendant.

-----X
MINIHAN, J.

Defendant, JOSE RIVERA, is charged by Westchester County Indictment Number 20-0073 with BURGLARY IN THE SECOND DEGREE (Penal Law § 140.25 [2]). Defendant has filed an omnibus motion consisting of a Notice of Motion and an Affirmation in Support, with exhibits. 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 for SANDOVAL and VENTIMIGLIA HEARINGS

Defendant has moved for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into the defendant's prior criminal convictions, prior uncharged criminal, vicious or immoral conduct. On the People's consent, the court orders a pre-trial hearing pursuant to *People v Sandoval* (34 NY2d 371[1974]). At said hearing, the People shall notify the defendant, *in compliance with CPL Article 245, and in any event not less than 15 days prior to the first scheduled trial date*, of all specific instances of defendant's criminal, prior uncharged criminal, vicious or immoral conduct of which they have knowledge and which they intend to use to impeach defendant's credibility if he elects to testify at trial.

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 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]).

Upon the consent of the People, if the People determine that they will seek to introduce at trial evidence in their case-in-chief of any prior uncharged misconduct and criminal acts of the defendant, the People shall 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 any such evidence may be used by the People 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 any other hearings ordered herein.

II.

MOTION for DISCOVERY, DISCLOSURE and INSPECTION
CPL ARTICLE 245

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 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 he has not been provided, he 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.

The People recognize their continuing duty to disclose the terms of any deal or agreement made between the People and any prosecution witness at the earliest possible date (*see People v Steadman*, 82 NY2d 1 [1993]; *Giglio v United States*, 405 US 150 [1972]; *Brady v Maryland*, 373 US 83 [1963]; *People v Wooley*, 200 AD2d 644 [2d Dept 1994]).

Further, the bill of particulars set forth in the voluntary disclosure form provided to defendant has adequately informed defendant of the substance of the alleged conduct and in all respects complies with CPL Article 245 and Section 200.95.

III.

MOTION to INSPECT and DISMISS
CPL ARTICLE 190

Defendant moves pursuant to CPL 210.20 to dismiss the indictment 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. Specifically, defendant argues that the People failed to

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 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.

present evidence showing that the defendant entered the dwelling with the intent to commit a crime. The court has reviewed the minutes of the proceedings before the Grand Jury which demonstrates that the People presented evidence that the defendant was identified inside the apartment by the victim, entered without permission and fled the apartment when he learned that the victim was home.

It is well settled that the intent to commit a crime may be inferred by the circumstances (*People v Steinberg*, 79 NY2d 673, 682 [1992]). As such, it was reasonable for the grand jury to infer that the defendant entered unlawfully with the intent to commit a crime as proof of a larceny is not required (*People v Moore*, 139 AD2d 676 [1988]).

The indictment contains a plain and concise factual statement which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's commission thereof with sufficient precision as to clearly apprise the defendant of the conduct which is the subject of the indictment (CPL 200.50). The indictment charges each and every element of the crime, and alleges that the defendant committed the acts which constitute the crime at a specified place during a specified time period and, therefore, is sufficient on its face (*People v Cohen*, 52 NY2d 584 [1981]; *People v Iannone*, 45 NY2d 589 [1978]).

Pursuant to CPL 190.65(1), an indictment must be supported by legally sufficient evidence which establishes that the defendant committed the offenses charged. The evidence presented, if accepted as true, is legally sufficient to establish every element of the offense charged (CPL 210.30[2]). "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]).

A review of the minutes reveals that the evidence presented, if accepted as true, would be legally sufficient to establish every element of the offense charged (CPL 210.30 [2]). Accordingly, defendant's motion to dismiss the indictment is denied.

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 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 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 to PRECLUDE STATEMENT TESTIMONY
CPL 710

Defendant's motion to suppress the noticed statements as unconstitutionally obtained 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]).

V.

MOTION to PRECLUDE IDENTIFICATION TESTIMONY
CPL 710

The People noticed one identification of defendant by the victim made on November 1, 2019, one block from the crime scene, at around 10:08pm when the police brought the victim to that location to conduct a show-up identification.

Defendant's motion to suppress testimony of the noticed identification 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 related to the identification (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.

The motion is granted to the extent of conducting a pre-trial *Payton* hearing, on consent of the People, which shall include whether the police actually entered the defendant's home as the parties dispute where the defendant was detained; and if so, whether the police entry into the home was with consent or due to exigent circumstances (*Payton v New York*, 445 US 573, 583 [1980]) to determine whether his warrantless arrest was supported by probable cause and to justify the "level-three" intrusion by police into the home (*People v Debour*, 40 NY2d 210, 223 [1976]).

VI.

MOTION to SUPPRESS EVIDENCE

Defendant moves to suppress any evidence obtained as a result of the arrest and search and seizure of the items seized. This branch of the defendant's motion is granted solely to the extent of conducting a *Mapp* hearing prior to trial to determine the propriety of any search, to the extent he has standing, resulting in the seizure of evidence including the Styrofoam cup that he discarded at police headquarters, and items from the crime scene (*see Mapp v Ohio*, 367 US 643[1961]) The hearing will also address whether his warrantless arrest was supported by probable cause so that a search was incident to a lawful arrest (*Payton v New York*, 445 US 573, 583 [1980]; *People v Bunce*, 141 AD3d 536 [2d Dept 2016]). The hearing will also address whether any evidence was obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

VII.

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]).

VIII.

MOTION for TIME to FILE FUTURE MOTIONS

This motion is denied. Any future motion must be brought by way of order to show cause setting forth reasons as to why said motion was not brought in conformity with CPL 255.20.

IX.

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]). The defendant's remaining contentions are without merit and his application is accordingly denied.

The foregoing constitutes the decision and order of this court.

Dated: White Plains, New York
June 30, 2020



Honorable Anne E. Minihan
Acting Justice of the Supreme Court

To:

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