

People v Martinez

2020 NY Slip Op 35618(U)

August 11, 2020

County Court, Westchester County

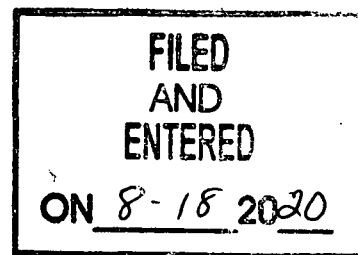
Docket Number: Indictment No. 20-0075

Judge: Anne E. Minihan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER



THE PEOPLE OF THE STATE OF NEW YORK **FILED**

-against-

AUG 18 2020

AMENDED¹ DECISION &
ORDER

GERMAN MARTINEZ

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Indictment No. 20-0075

Defendant.

-----X
MINIHAN, J.

Defendant, GERMAN MARTINEZ, charged by Westchester County Indictment Number 20-0075 with Burglary in the First Degree (Penal Law § 140.30 [3]), Robbery in the First Degree (Penal Law § 160.15[3]), Burglary in the Second Degree (Penal Law § 140.25[2]) (six counts), Attempted Burglary in the Second Degree (Penal Law §§ 110/140.25[2]), Burglary in the Third Degree (Penal Law 140.20), Grand Larceny in the Third Degree (Penal Law § 155.35[1]) (six counts), Criminal Possession of Stolen Property in the Fourth Degree (Penal Law § 165.45[1]) (two counts), Criminal Mischief in the Third Degree (Penal Law § 145.05[2]), and Possession of Burglar's Tools (Penal Law § 140.35), 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 STRIKE IDENTIFICATION NOTICES and
PRECLUDE IDENTIFICATION TESTIMONY
CPL 710

The motion to strike is denied. Said notices are in conformity with the statutory requirements of CPL 710.30.

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.

¹This decision and order amends the original decision and order only to the extent of granting defendant's motion to dismiss to the extent of reducing the 17th count of the indictment from grand larceny in the third degree to grand larceny in the fourth degree.

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* material² 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 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. 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 SUPPRESS PHYSICAL EVIDENCE

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 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]).

² 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.

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 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]).

V.

MOTION to STRIKE PREJUDICIAL LANGUAGE

Defendant's motion to strike certain language from the indictment as irrelevant and prejudicial is denied. The language concluding the indictment merely identifies defendant's acts as public, rather than private wrongs (*see People v Gill*, 164 AD2d 867 [2d Dept 1990]; *People v Winters*, 194 AD2d 703 [2d Dept 1993]).

VI.

MOTION to INSPECT and DISMISS
CPL ARTICLE 190

Defendant moves to dismiss the indictment on the grounds that the indictment is facially insufficient, the evidence before the grand jury was legally insufficient, and the grand jury proceeding was defective within the meaning of CPL 210.35. The court has reviewed the minutes of the grand jury proceeding.

As the People concede, there was insufficient evidence presented to the grand jury as to value to support the 17th count of the indictment, charging defendant with Grand Larceny in the Third Degree. Thus, that count is hereby reduced to Grand Larceny in the Fourth Degree.

As for the remainder of the indictment, 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]).

Defendant’s request to dismiss the indictment in furtherance of justice is denied. The defendant has cited no persuasive or compelling factor, consideration or circumstances under CPL 210.40 warranting dismissal of this indictment. The court has examined the factors listed in CPL 210.40, which include, in relevant part, the seriousness and circumstances of the offense; the extent of harm caused by the offense; the evidence of guilt; the history, character and condition of the defendant; any exceptionally serious misconduct of law enforcement personnel; the purpose and effect of imposing upon the defendant a sentence authorized for the charged offenses; the potential impact of a dismissal on public confidence in the judicial system; the potential impact of dismissal upon the safety and welfare of the community; and other relevant facts suggesting that a conviction would not serve a useful purpose. Having done so, the court has discerned no compelling factor, consideration or circumstance which clearly demonstrates that further prosecution or conviction of the defendant would constitute or result in injustice.

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.

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 to STRIKE STATEMENT NOTICES and to
PRECLUDE STATEMENT TESTIMONY
CPL 710

The motion to strike is denied. Said notice is in conformity with the statutory requirements of CPL 710.30.

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]).

IX.

MOTION to CONDUCT PRE-TRIAL HEARINGS
TWENTY DAYS in ADVANCE of TRIAL

The defendant's motion to schedule pre-trial hearings twenty days prior to trial is denied. The hearings will be scheduled at a time that is convenient to the Court, upon due consideration of all of its other cases and obligations.

X.

LEAVE TO MAKE ADDITIONAL MOTIONS

Defendant's motion for leave to make additional 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 11, 2020

Hon Anne E. Minihan / ESF
Honorable Anne E. Minihan
Acting Justice of the Supreme Court

To:

HON. ANTHONY A. SCARPINO, JR.
District Attorney, Westchester County
111 Dr. Martin Luther King, Jr., Blvd.
White Plains, New York 10601
Attn: A.D.A. Charlotte A. Gudis
A.D.A. Maria Wager

CLARE J. DEGNAN, ESQ.
LEGAL AID SOCIETY
150 Grand Street, Suite 100
White Plains, NY 10601
Attn: Nicholas Speranza, Esq.
Attorney for defendant, German Martinez