People v Bobbitt

2020 NY Slip Op 35623(U)

December 11, 2020

County Court, Westchester County

Docket Number: Ind. No. 20-0274

Judge: David S. Zuckerman

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FILED
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TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER

JOHN BOBBITT,

Ind. No.: 20-0274

Defendant.

----------X

ZUCKERMAN, J.

Defendant stands accused under Indictment No. 20-0274 of Murder in the Second Degree (Penal Law §125.25[1]), Criminal Possession of a Weapon in the Second Degree (Penal Law §265.03[3]) and Menacing in the Second Degree (Penal Law §120.14[i]). As set forth in the Indictment, it is alleged that, on or about April 28, 2020, Defendant, in Westchester County, New York, with intent to cause the death of another, caused that death; possessed a loaded firearm not in his home or place of business, and intentionally placed another in fear of injury or death by displaying a firearm. By Notice of Motion dated October 5, 2020, with accompanying Affirmation, Defendant moves for omnibus relief. In response, the People have submitted an Affirmation in Opposition dated October 28, 2020.

The motion is disposed of as follows:

A. DISCOVERY AND INSPECTION

Defendant's motion for discovery is granted to the extent

provided for in Criminal Procedure Law Article 245 and/or already provided by the People. If any items set forth in CPL Article 245 have not already been provided to Defendant pursuant to that Article, said items are to be provided forthwith. Any party is granted leave, if required, to apply for a Protective Order in compliance with CPL Article 245, upon notice to the opposing party and any party affected by said Protective Order. The People are directed to file a Certificate of Compliance with CPL Article 245 and the instant Order upon completion of their obligations thereunder, if they have not already done so. The People's cross-motion for reciprocal discovery is likewise granted to the extent provided for in Criminal Procedure Law Article 245, and/or already provided to the People. The People are further reminded that any response to a demand for a bill of particulars by Defendant shall adequately inform Defendant of the substance of the alleged conduct, and in all respects comply with CPL Article 245 and §200.95, within 15 days of the date of the request.

In addition, pursuant to Administrative Order 393/19, it is

ORDERED that the District Attorney and the Assistant District Attorney responsible for the case, are required to make timely disclosure of information favorable to the defense as required by *Brady v Maryland,* 373 US 83 [1963]; *Giglio v United States,* 405 US 150 [1972]; *People v Geaslen,* 54 NY2d 510 [1981];

and their progeny under the United States and New York State Constitutions and by Rule 3.8(b) of the New York State Rules of Professional Conduct; and it is further

ORDERED, that the District Attorney and the Assistant District Attorney responsible for the case or, if the matter is not being prosecuted by the District Attorney, the prosecuting agency and its assigned representatives, have a duty to learn of such favorable information that is known to others acting on the government's behalf in the case, including the police, and are therefore expected to confer with investigative and prosecutorial personnel who acted in the case and to review all files which are directly related to the prosecution or investigation of this case. For purposes of this Order, favorable information can include but is not limited to:

a) Information that impeaches the credibility of a testifying prosecution witness, including (I) benefits, promises, or inducements, express or tacit, made to a witness by a law enforcement official or law enforcement victim services agency in connection with giving testimony or cooperating in the case;

(ii) a witness's prior inconsistent statements, written or oral;

(iii) a witness's prior convictions and uncharged criminal conduct;

(iv) information that tends to show that a witness has a

motive to lie to inculpate the defendant, or a bias against the defendant or in favor of the complainant or the prosecution; and

(v) information that tends to show impairment of a witness's ability to perceive, recall, or recount relevant events, including impairment resulting from mental or physical illness or substance abuse;

b) Information that tends to exculpate, reduce the degree of an offense, or support a potential defense to a charged offense;

c) Information that tends to mitigate the degree of the defendant's culpability as to a charged offense. or to mitigate punishment;

d) Information that tends to undermine evidence of the defendant's identity as a perpetrator of a charged crime, such as a non-identification of the defendant by a witness to a charged crime or an identification or other evidence implicating another person in a manner that tends to cast doubt on the defendant's guilt; and

e) Information that could affect in the defendant's favor the ultimate decision on a suppression motion; and it is further

ORDERED, that the District Attorney and the Assistant District Attorney responsible for the case or any other agent prosecuting the case is hereby advised of his/her duty to disclose favorable information whether or not such information is

recorded in tangible form and irrespective of whether the prosecutor credits the information; and it is further

ORDERED, that the District Attorney and the Assistant District Attorney responsible for the case or any other agent responsible for the prosecution of the case is directed that favorable information must be timely disclosed in accordance with the United States and New York State constitutional standards, as well as CPL Article 245. Disclosures are presumptively "timely" if they are completed no later than 30 days before commencement of trial in a felony case and 15 days before commencement of trial in a misdemeanor case. Records of a judgment of conviction or a pending criminal action ordinarily are discoverable within the time frame provided in CPL Article 245. Disclosures that pertain to a suppression hearing are presumptively "timely" if they are made no later than 15 days before the scheduled hearing date; and it is further

ORDERED, that the District Attorney and the Assistant District Attorney responsible for the case or any other agent responsible for the prosecution of the case is hereby reminded and informed that his/her obligation to disclose is a continuing one; and it is further

ORDERED, notwithstanding the foregoing, that a prosecutor may apply for a protective order, which may be issued for good cause, and CPL Article 245 shall be deemed to apply, with respect

to disclosures required under this Order. Moreover, the prosecutor may request a ruling from the court on the need for disclosure. Only willful and deliberate conduct will constitute a violation of this Order or be eligible to result in personal sanctions against a prosecutor; and it is further

ORDERED, that counsel for the defendant is required to:

a) confer with the defendant about his/her case and is required to keep the defendant informed about all significant developments in the case; and

b) timely communicate any and all plea offers to the defendant and to provide him/her with reasonable advice about the advantages and disadvantages of any such plea offer including the potential sentencing ranges that apply in the case;

c) where applicable, insure the defendant receives competent advice concerning immigration consequences as required under *Padilla v Kentucky*, 559 US 356 [2010];

d) perform a reasonable investigation of the facts and the law pertinent to the case (including, as applicable, visiting the scene, interviewing witnesses, subpoenaing pertinent materials, consulting experts; inspecting exhibits, reviewing all discovery materials obtained from the prosecution, researching legal issues, etc.) or, as appropriate, making a reasonable professional judgment not to investigate a particular matter;

e) comply with the requirements of the New York State Rules

of Professional Conduct regarding conflicts of interest, and when appropriate, timely notify the court of a possible conflict so that an inquiry may be undertaken or a ruling made;

f) possess or acquire a reasonable knowledge and familiarity with criminal procedural and evidentiary law to ensure constitutionally effective representation in the case; and

g) in accordance with statute, provide notices as specified in CPL sections 250.10, 250.20 and 250.30. (e.g., a demand, intent to introduce the evidence, etc.)

B. MOTION TO SUPPRESS IDENTIFICATION/FOR A *WADE* HEARING

A review of the Indictment and attached Notices indicates that, pursuant to CPL §710.20(3), the People served Defendant with notice of an identification procedure, namely several photo-arrays. Defendant asserts that there were constitutional improprieties in the identification procedures employed to identify him. The People argue that the showing here of a photo-array was not unduly suggestive. They also assert that, in any event, the witness had an independent source for the identification because the parties knew each other. The People do, however, consent to a hearing. Consequently, a hearing is ordered, first to determine whether the identifying witness had a sufficient prior familiarity with the defendant as to render him impervious to police suggestion *(People v Rodriguez*, 79 NY2d 445[1992]). In the event the court finds that there was not a

sufficient familiarity with the defendant on the part of the witness, the court will then consider whether the noticed identification was unduly suggestive *(United States v Wade*, 388 US 218 [1967]). Specifically, the court shall determine whether the identification was so improperly suggestive as to taint any in-court identification. In the event the identification is found to be unduly suggestive, the court shall then go on to consider whether the People have proven that an independent source exists for such witness's proposed in-court identification.

C. MOTION FOR A *MAPP/DUNAWAY* HEARING

Defendant moves to suppress all physical evidence seized from him which the People seek to introduce against him at trial, *inter alia*, because it followed an arrest that was not based on probable cause. The People, in their Affirmation in Opposition, state that there was no impropriety in the search conducted and the seizure made, and add, in particular, that it followed an arrest that was based on probable cause pursuant to a valid arrest warrant.

The results of searches conducted pursuant to lawful search or arrest warrants are not subject to a suppression hearing. *People v. Arnau*, 58 NY2d 27 (1982)[1]. The court has reviewed the

[1] The court notes that, besides the arrest warrant, there were two New York search warrants (for GPS data and a cellurlar telephone) and one New Jersey search warrant for New Jersey premises.

affidavits in support of the warrants, and the Grand Jury minutes as noted below, and finds they provided the issuing magistrate with ample probable cause to support issuance of the warrants. Further, this court reviewed the search orders and finds them to be proper in all respects. This court notes that according to the Voluntary Disclosure Form and People's Affirmations filed in this case, the People have provided defense counsel with access to the search warrants.

Consequently, the motion to suppress physical evidence (for a *Mapp* hearing) is denied.

D. MOTION FOR A *HUNTLEY/DUNAWAY* HEARING

Defendant moves, pursuant to CPL §710.20(3), to suppress noticed statements. The People, in their Affirmation in Opposition, state that there were no improprieties regarding acquisition of the statements attributable to Defendant and assert that they followed an arrest that was based on probable cause. However, they do consent to a hearing. Consequently, the motion to suppress noticed statements is granted, to the extent that a pre-trial *Huntley/Dunaway* hearing is ordered.

E. 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 © 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.

F. 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:

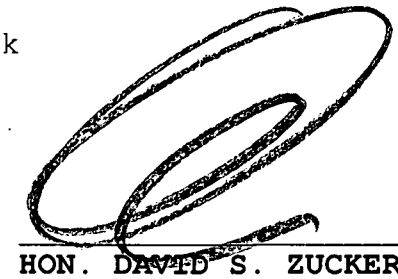
A. Pursuant to CPL §245.20, the People must notify the Defendant, not less than fifteen days prior to the first scheduled date for trial, of all specific instances of Defendant's uncharged misconduct and criminal acts of which the

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]).

All other motions are denied.

Dated: White Plains, New York
December 11, 2020



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