

People v Hayes

2020 NY Slip Op 35624(U)

December 11, 2020

County Court, Westchester County

Docket Number: Ind. No. 20-0312

Judge: David S. Zuckerman

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.

FILED *MP*

DEC 22 2020

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER

RICHARD HAYES,

Ind. No.: 20-0312

Defendant.

-----X

ZUCKERMAN, J.

Defendant stands accused under Indictment No. 20-0312 of Attempted Murder in the Second Degree (Penal Law §110/125.25[1]) and Assault in the First Degree (Penal Law §120.10[]). As set forth in the Indictment, it is alleged that, on or about August 14, 2020, Defendant, in Westchester County, New York, with intent to cause the death of another, attempted to cause that death; and, with intent to cause serious physical injury to another, caused said injury by means of a deadly weapon. 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 November 16, 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 inculcate 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 identification procedures, namely several observations of a video. Defendant asserts that there were constitutional improprieties in the identification procedures employed to identify him. The People argue that the showing here of video portions 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 identification procedures were unduly suggestive in nature. If, after the hearing, the identification procedure is found to have been unduly suggestive in nature, the court will go on to determine whether there is an independent source for any in-court identification.

C. MOTION FOR A MAPP/DUNAWAY

Defendant moves to suppress all physical evidence seized from him which the People seek to introduce at trial, *inter alia*, because the seizure 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, and included items seized from the victim's apartment in which Defendant had no expectation of privacy. Defendant has not thereafter contradicted the latter assertion.

Consequently, the motion to suppress physical evidence (for a *Mapp* hearing) is granted solely to the extent that a pre-trial *Mapp/Dunaway* hearing is ordered, except same is denied as it pertains to items seized from the victim's apartment.

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

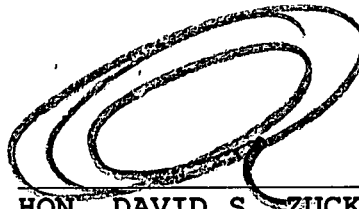
Granted, solely to the extent that Sandoval/Ventimiglia/Molineux hearings, as the case may be, shall be held immediately prior to trial, as follows:

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



HON. DAVID S. ZUCKERMAN, A.J.S.C.

HON. ANTHONY A. SCARPINO, JR.
District Attorney, Westchester County
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601
BY: Davida M. Hawkes, Esq.
Assistant District Attorney

ANGELO G. MacDONALD, ESQ.
Attorney for Defendant
222 Bloomingdale Road, Suite 301
White Plains, NY 10605