

People v Zupo

2021 NY Slip Op 33606(U)

May 12, 2021

County Court, Broome County

Docket Number: Docket No. 70088-21

Judge: Kevin P. Dooley

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This opinion is uncorrected and not selected for official publication.

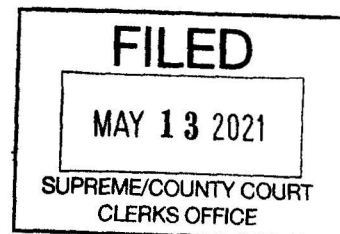
STATE OF NEW YORK
COUNTY COURT :: COUNTY OF BROOME

THE PEOPLE OF THE STATE OF NEW YORK

-v-

RUTHANN F. ZUPO,
Defendant.

KEVIN P. DOOLEY, J.



DECISION AND ORDER

Indictment No. 21-058

Docket No. 70088-21

On February 11, 2021, a Broome County Grand Jury handed up Indictment No. 21-058, charging the above-named defendant with Promoting Prison Contraband in the First Degree, a class D felony. The indictment alleges that on October 27, 2020, the defendant knowingly and unlawfully introduced into the Broome County Correctional Facility a quantity of fentanyl, which constituted dangerous contraband.

The defendant was arraigned in Broome County Court on February 18, 2021. On April 19, 2021, the defendant filed with the Court an Omnibus Motion seeking certain Orders and relief in connection with the indictment filed against him. The People's response was filed on May 11, 2021. The following constitutes the Decision and Order of the Court.

GRAND JURY MOTIONS

The defendant moves for an Order, pursuant to CPL 210.30, for inspection of the stenographic minutes of the grand jury proceeding for the Court to determine whether the evidence before the grand jury was legally sufficient to support the charges contained in the indictment, and whether the grand jury proceedings were defective within the meaning of CPL 210.35. The People have no objection to the Court examining the grand jury minutes and provided a copy of the same for the Court's review on May 11, 2021. Upon examination of the minutes, the Court finds that release of the minutes to the defense is not necessary to assist the Court in making its determination of the motion. Accordingly, the defendant's request for release of the grand jury minutes is denied.

In reviewing the legal sufficiency of the evidence presented, the Court must view the evidence in a light most favorable to the People and determine whether the evidence, if unexplained or uncontradicted, would be sufficient to support a guilty verdict after trial. The

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Court's inquiry is limited to assessing whether the facts, if proven, and the logical inferences flowing therefrom, provide proof of every element of the crimes charged and the defendant's commission of those crimes. Its inquiry does not include weighing the proof or examining its adequacy or determining whether there was reasonable cause to believe the accused committed the crimes charged, as the resolution of such questions is exclusively the province of the grand jury. *People v. Jensen*, 86 NY2d 248 (1995).

Upon examination, the evidence presented to the grand jury was legally sufficient to establish the commission by the defendant of the offense charged in the indictment or lesser included offense thereof. In addition, there were no defects in the grand jury proceedings within the meaning of CPL 210.20 (1) (c). Therefore, the defendant's motion to dismiss the indictment is denied.

MOTIONS FOR PRE-TRIAL DISCLOSURES

As part of his Omnibus Motion, the defendant moves for Orders requiring the prosecution to furnish a Bill of Particulars and to disclose all favorable or exculpatory material pursuant to *Brady v. Maryland*, 373 US 83 (1963). The prosecutor responded to the defendant's request for a Bill of Particulars. He also acknowledges his duty under *Brady* and will continue to provide *Brady* material to the defendant if and when such material becomes available.

If the defendant believes he has not received discovery materials to which he is entitled, he can move for an Order to compel specific disclosure, preclude evidence, or other applicable relief pursuant to CPL 245.35 and 245.80.

REQUESTS AND MOTIONS FOR PRE-TRIAL HEARINGS

Request for Sandoval/Ventimiglia Hearing

The defendant requests that the Court conduct a pre-trial hearing to determine the admissibility of the defendant's prior criminal convictions and/or uncharged criminal conduct at trial, either as part of the People's direct case or for cross-examination of the defendant, should she elect to testify. The prosecutor has no objection to the Court conducting such a hearing and alleges that the defendant has nine prior convictions the prosecutor seeks to use during cross-examination. Therefore, a hearing, pursuant to *People v. Sandoval*, 34 NY2d 371 (1974), will be conducted on May 14, 2021, at 1:30 p.m. At the hearing, the prosecutor must set forth both the

convictions and any underlying facts he seeks to use during cross-examination, and any uncharged criminal conduct he seeks to introduce in the People's case-in-chief pursuant to *People v Molineux*, 168 NY 264 (1901).

Motion to Preclude and/or Suppress Statements

The defendant moves for an Order precluding any statements and admissions of the defendant made to law enforcement officers for which sufficient notice under CPL 710.30 was not given. The prosecutor responds that the sum and substance of any statements made by the defendant were contained in the reports provided to the defendant on February 10, 2021 through his Office's D.E.M.S program.¹ Therefore, the defendant's motion to preclude any of her statements contained in the reports is denied.

The defendant also moves for an Order suppressing all statements and admissions attributed to her that were made to law enforcement officers on the ground the statements were involuntarily made or obtained in violation of her constitutional rights. The prosecutor objects to the Court conducting a hearing pursuant to *People v. Huntley*, 15 NY2d 72 (1965), arguing that all the statements made by the defendant were voluntarily made.²

CPL 710.60 (2) provides that the Court may not summarily deny a motion to suppress statements of a defendant on the ground the statement was involuntarily made. Therefore, a pre-trial hearing will be conducted on May 14, 2021, at 1:30 p.m., to determine whether any statements of the defendant were involuntarily made or obtained in violation of her right to counsel.

¹ DEMS is a software program used by the Broome County District Attorney's Office to provide defense counsel access to electronically stored discovery materials. As discovery materials and information are submitted to the District Attorney's Office, they are uploaded into the DEMS program and made available to defense counsel, who are provided with a username and password to access and download "the discovery package" for a specific case. Each discovery package includes a compliance report in PDF format, listing the files included in the packet and the file's location.

² In his motion response, the prosecutor also opposes "the defendant's request to redact any portions of his January 4, 2019 recorded interview" and states he intends to offer a copy of the interview at the *Huntley* hearing without playing it. The Court assumes this is a drafting error on the part of the prosecutor, because the response does not appear to be related to this case.

DEMAND FOR RECIPROCAL DISCOVERY

As part of his motion response, the prosecutor served a Demand for Reciprocal Discovery pursuant to CPL 245.20 (4). The defendant is directed to file a response to the Demand by May 21, 2021.

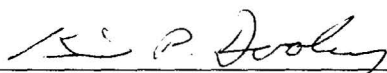
MOTION FOR FURTHER RELIEF

Criminal Procedure Law Section 255.20 provides that absent a showing of good cause, all pre-trial motions must be filed at the same time and within 45 days of arraignment. Therefore, good cause must be established before the Court will consider granting the defense leave to renew or make further motions.

The above constitutes the Decision and Order of Court.

It is so Ordered.

Dated: May 12, 2021
Binghamton, New York



HON. KEVIN P. DOOLEY
Broome County Court Judge