

People v Pavlisak

2021 NY Slip Op 33915(U)

November 3, 2021

County Court, Broome County

Docket Number: Indictment No. 21-147

Judge: Joseph F. Cawley

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK
COUNTY COURT : : BROOME COUNTY

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

MICHAEL J. PAVLISAK

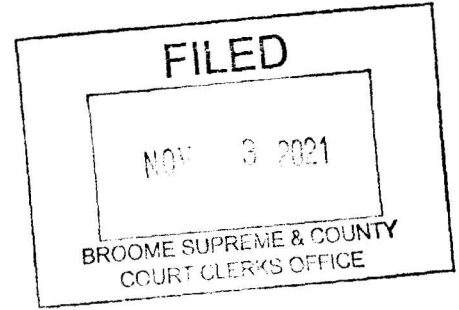
Defendants.

JOSEPH F. CAWLEY, J.

The defendant moves pursuant to Section 210.30 of the Criminal Procedure Law for an examination of the stenographic minutes of the grand jury proceeding for the purpose of determining whether the evidence before the grand jury was legally sufficient to support the charge(s) contained in the indictment, and seeks dismissal or reduction of the indictment for the insufficiency of the evidence or for other defects in the grand jury proceedings. (Criminal Procedure Law §210.20).

The People have interposed no objection to the Court's examination of the grand jury minutes and have provided same to the Court for its review on the issue of legal sufficiency. In reviewing the legal sufficiency of an indictment, the court must view the evidence in the 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 court's inquiry is limited to assessing whether the facts, if proven, and the logical inferences flowing therefrom, supply proof of each element of the charged crimes. The court is not to weigh the proof or examine its adequacy (*People v. Galatro*, 84 N.Y.2d 160 (1994)).

A Grand Jury indictment is authorized when evidence before it is legally sufficient



DECISION AND ORDER

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to establish that such person committed an offense, and competent and admissible evidence before it provides reasonable cause to believe that such person committed such offense (CPL 190.65). Typically, the submission of some inadmissible evidence will be deemed fatal only when the remaining evidence is insufficient to sustain the indictment (*People v. Huston*, 88 N.Y.2d 400).

The Court may dismiss an indictment pursuant to CPL Section 210.20(1)(c), when the Grand Jury proceeding was defective pursuant to CPL Section 210.35. Under subdivision (5), of that statute, a Grand Jury proceeding is defective when the proceeding fails to conform with the requirements of the statutes governing the Grand Jury to such a degree that the integrity of the proceeding is impaired and prejudice to the defendant may result. Not every improper comment, elicitation of inadmissible testimony, impermissible question or mistake renders an indictment defective. Isolated instances of misconduct will not necessarily impair the integrity of the proceedings or lead to the possibility of prejudice, and the submission of some inadmissible evidence will not be deemed fatal as long as the remaining evidence is sufficient to sustain the indictment. The exceptional remedy of dismissal is warranted only where a defect in the proceedings creates a possibility of prejudice. Actual prejudice, however, need not be shown, but where prosecutorial wrongdoing, fraudulent conduct, or errors potentially prejudice the ultimate decision reached by the Grand Jury, the indictment must be dismissed (*People v. Huston*, 88 N.Y.2d 400).

Further, it is “unsound to measure the adequacy of the legal instructions given to the grand jury by the same standards that are utilized in assessing a trial court’s instructions to a petit jury” (*People v. Calbud Inc.*, 49 NY2d 389). Rather, it is “sufficient if the District Attorney provides the Grand Jury with enough information to enable it intelligently to decide whether a crime has been committed and to determine whether there exists legally sufficient evidence to establish the material elements of the

crime” (*id.*, at 394-395).

Upon examination, the evidence before the grand jury was legally sufficient to establish the commission by the defendant of the offenses charged or lesser included offenses thereof. The legal instructions given were sufficient, fair and accurate. The presentation was legal and proper.

The Court finds no defects in the grand jury proceedings warranting dismissal or reduction.

The defendant’s motion to dismiss or reduce is denied.

The defendant has requested *Ventimiglia* and *Sandoval* hearings. The People have indicated to the Court that they will seek to cross examine the defendant, in the event he does testify at trial, with prior convictions. Based upon the foregoing, a *Sandoval* hearing will be conducted prior to jury selection.

The People have indicated that they will not seek to introduce on their direct case evidence of uncharged bad acts. As such, defendant’s request for a *Ventimiglia* hearing is denied as moot.

The defendant has requested suppression of statements allegedly made to law enforcement, or in the alternative, that a hearing be conducted to determine the admissibility of said statements. The People do not oppose a suppression hearing on the matter. The defendant’s motion is granted to the extent that a *Huntley* hearing will be scheduled by the Court.


CPL 245.20 provides for automatic discovery and disclosure of several categories of items and information. In the interest of judicial economy, if either party has a particularized reason to believe that there remains outstanding discovery that they have not received, he or she is directed to contact opposing counsel upon receipt of this Order. If the issue remains unresolved within two days of receipt of this Order, counsel for the aggrieved party shall contact the Court to request an immediate compliance conference.

As part of the same, to the extent that the People come into possession of information which they believe would form the basis for a protective order, they are required to provide the Court with a sufficiently detailed factual predicate to enable it to evaluate the applicability of Article 245's factors governing the issuance of protective orders (see *People v. Beaton*, 2020 NY Slip Opn, 00372 (2nd Dept. 2020)).

This constitutes the Decision and Order of the Court.

It is so Ordered.

DATED: November 3, 2021
Binghamton, NY



Hon. Joseph F. Cawley
Broome County Court Judge

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