

People v Willis

2021 NY Slip Op 33988(U)

November 11, 2021

County Court, Westchester County

Docket Number: Indictment No. 20-0153

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 11-12 2021
WESTCHESTER

-----X
THE PEOPLE OF THE STATE OF NEW YORK

FILED^{TO}

-against-

OMAR WILLIS, LATIEK FRAZER &
THOMAS RICKETTS,

NOV 16 2021

DECISION & ORDER

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER Indictment No. 20-0153
Defendants.

-----X
MINIHAN, J.

Westchester County Indictment Number 20-0153 charges defendant, Thomas Ricketts, together with codefendants Omar Willis and Latiek Frazer, with Conspiracy in the Fourth Degree (Penal Law § 105.10[1]), Burglary in the Second Degree (Penal Law § 140.25[2]) (eight counts), Grand Larceny in the Second Degree (Penal Law § 155.40) (three counts), Grand Larceny in the Third Degree (Penal Law § 155.35[1]) (four counts), Grand Larceny in the Fourth Degree (Penal Law § 155.30[4]), Criminal Mischief in the Second Degree (Penal Law § 145.10), Criminal Possession of Stolen Property in the Third Degree (Penal Law § 165.50), and Criminal Possession of Stolen Property in the Fourth Degree (Penal Law § 165.45[1]) (two counts), and charges defendant, together with codefendant Willis, with Burglary in the Second Degree (Penal Law § 140.25[2]), and Grand Larceny in the Fourth Degree (Penal Law § 155.30[1]), and charges defendant, individually, with Attempted Burglary in the Second Degree (Penal Law §§ 110/140.25).

The indictment also charges codefendant Frazer, individually, with Criminal Possession of Stolen Property in the Fourth Degree (Penal Law § 165.45[1]) (six counts), Criminal Possession of Stolen Property in the Fifth Degree (Penal Law § 165.40) (seven counts), and Unlawful Possession of Personal Identification Information in the Third Degree (Penal Law § 190.81) (six counts), and charges codefendant Willis, individually, with Criminal Possession of Stolen Property in the Fifth Degree (Penal Law § 165.40) (three counts), and Attempted Burglary in the Second Degree (Penal Law §§ 110/140.25[2]), and charges codefendants Willis and Frazer, together, with Burglary in the Second Degree (Penal Law § 140.25[2]), and Grand Larceny in the Third Degree (Penal Law § 155.35[1]).

Defendant, Thomas Ricketts, has filed an omnibus motion consisting of a Notice of Motion, an Affirmation in Support, and a Memorandum of Law. In response, the People have filed an Affirmation in Opposition together with a Memorandum of Law.

I.

MOTION to INSPECT, DISMISS and/or REDUCE
CPL ARTICLE 190

Defendant moves pursuant to CPL 210.20 to dismiss the indictment, or reduce the counts thereof, on the grounds that the evidence before the Grand Jury was legally insufficient, and the Grand Jury proceeding was defective within the meaning of CPL 210.35. On consent of the People, the court has reviewed the minutes of the proceedings before the Grand Jury.

The court denies defendant's motion to dismiss or reduce the counts in the indictment for legally insufficient evidence because 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]). 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]). Here, the evidence presented, if accepted as true, is legally sufficient to establish every element of each offense charged (CPL 210.30[2]).

The court finds unconvincing defendant's claim that the Grand Jury proceeding was defective within the meaning of CPL 210.35. A review of the minutes reveal 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 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]).

II.

MOTION to PRECLUDE EVIDENCE of
NOTICED STATEMENTS
CPL 710

The People served defendant with CPL 710.30 notice of his alleged statements. Defendant moves to suppress evidence of the noticed statements as involuntary and obtained in violation of his rights under the Fifth, Sixth and Fourteenth Amendments to the U.S. Constitution. On the People's consent, the court orders a pre-trial *Huntley* hearing to determine whether the alleged statements were involuntary within the meaning of CPL 60.45 (*see* CPL 710.20(3); CPL 710.60[3][b]; *People v Weaver*, 49 NY2d 1012 [1980]). The hearing will also address whether the alleged statements were obtained in violation of defendant's Sixth Amendment right to counsel.

III.

MOTION to PRECLUDE IDENTIFICATION TESTIMONY
CPL 710

Pursuant to CPL 710.30, the People served defendant with notice of alleged identifications. Defendant moves to suppress evidence of the alleged identifications as unduly suggestive. The People consent to a *Wade* hearing as to the photo array identification only, and argue that the motion as to the

remaining identification methods should be summarily denied. The court grants defendant's motion to suppress to the extent of ordering a pre-trial *Wade* hearing as to all of the noticed identifications (*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 identification procedure was unduly suggestive. Where suggestiveness is shown, the People must show the existence of an independent source by clear and convincing evidence.

IV.

MOTION to SUPPRESS PHYSICAL EVIDENCE

Defendant moves to suppress any physical evidence recovered from the vehicle and from his person arguing that the police unlawfully stopped and searched the vehicle and arrested him without probable cause. The People argue that the vehicle stop and search were legal and that any evidence seized from the vehicle and from defendant was lawfully obtained. The People point out that evidence was obtained from the vehicle pursuant to a search warrant.

Defendant's motion to suppress physical evidence is granted solely to the extent of ordering a pre-trial *Mapp* hearing to determine the propriety of any search resulting in the seizure of property not obtained pursuant to a search warrant (*see Mapp v Ohio*, 367 US 643 [1961]). The results of a search conducted pursuant to a facially sufficient search warrant are not subject to a suppression hearing (*People v Arnau*, 58 NY2d 27 [1982]). While the defendant's motion does not seek to controvert the search warrant for the Audi, the court has reviewed the supporting affidavit for that search warrant order and finds that the warrant was adequately supported by probable cause (*see People v Keyes*, 291 AD2d 571 [2d Dept 2002]; *see generally People v Badilla*, 130 AD3d 744 [2d Dept 2015]; *People v Elysee*, 49 AD3d 33 [2d Dept 2007]).

The hearing will also address whether any evidence was obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

V.

MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

Defendant has moved for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into the defendant's prior criminal convictions, or prior uncharged criminal, vicious or immoral conduct. On the People's consent, the court orders a pre-trial *Sandoval* hearing (*see People v Sandoval*, 34 NY2d 371 [1974]). At said hearing, the People shall notify the defendant, *in compliance with CPL Article 245*, of all specific instances of his criminal, prior uncharged criminal, vicious or immoral conduct of which they have knowledge and which they intend to use in an attempt to impeach the defendant's credibility if he elects to testify at trial, *and in any event not less than 15 days prior to the first scheduled trial date*. 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]).

On the People's consent, if 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 so used by the People. 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.

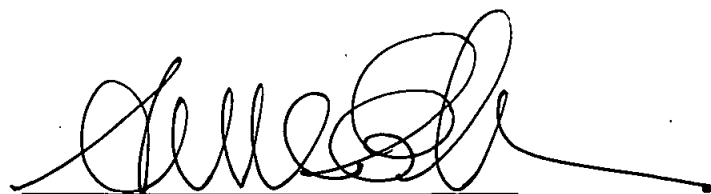
VI.

LEAVE TO MAKE ADDITIONAL MOTIONS

To the extent that defendant's motion seeks leave to make additional motions, that branch of the motion 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
November 11, 2021



Honorable Anne E. Minihan
Acting Justice of the Supreme Court

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