

People v Rose

2021 NY Slip Op 33990(U)

June 9, 2021

County Court, Westchester County

Docket Number: Indictment No. 21-0155

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 6-9-2021
WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

FILED

-against-

JUN 10 2021

DECISION & ORDER
Indictment No. 21-0155

ALEXIS ROSE,

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant.

-----X
MINIHAN, J.

Defendant, Alexis Rose, charged by Westchester County Indictment Number 21-0155 with Murder in the Second Degree (Penal Law § 125.25[1]), Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03[3]), Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03[1][b]), Criminal Contempt in the First Degree (Penal Law § 215.51[b][i]) and Criminal Contempt in the Second Degree (Penal Law § 215.50[3]), 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 and DISMISS and/or REDUCE
CPL ARTICLE 190

Defendant moves pursuant to CPL 210.20(1) to dismiss the indictment and/or reduce the 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. On consent of the People, the court has reviewed the minutes of the grand jury proceeding.

Here, the evidence presented to the grand jury, if accepted as true, would be legally sufficient to establish defendant's guilt of the charges (CPL 210.30[2]). Accordingly, defendant's motion to dismiss the indictment is denied. 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]).

Defendant's claim that the grand jury proceeding was defective within the meaning of CPL 210.35 is without merit. A review of the minutes reveals, inter alia, 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 of 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]).

To the extent that defendant challenges the sufficiency of the indictment, that portion of the motion is denied. The indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's commission thereof with sufficient precision as to clearly apprise the defendant of the conduct which is the subject of the indictment (CPL 200.50). The indictment charges each and every element of the crimes, and alleges that the defendant committed the acts which constitute the crimes at a specified place during a specified time period and, therefore, is sufficient on its face (*People v Cohen*, 52 NY2d 584 [1981]; *People v Iannone*, 45 NY2d 589 [1978]).

The People acknowledge that they will comply with their obligations concerning grand jury testimony pursuant to CPL 245.20(1)(b). The court does not find it necessary to order release of those portions of the grand jury minutes as constitute colloquies or instructions.

II.

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, 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 used by the People, including to prove their case in chief. 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.

III.

MOTION to PRECLUDE NOTICED STATEMENT TESTIMONY
CPL 710

The People served defendant with notices pursuant to CPL § 710.30(1)(a) of statements allegedly made by defendant. Defendant moves to suppress the alleged statements as involuntary, the product of an unlawful arrest, and obtained in violation of his Sixth Amendment right to counsel. 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, and/or obtained in violation of the defendant's Fourth Amendment rights (see *Dunaway v New York*, 442 US 200 [1979]).

IV.

MOTION to SUPPRESS PHYSICAL EVIDENCE

This branch of defendant's motion is granted solely to the extent of ordering a pretrial *Mapp* hearing to determine the propriety of any search resulting in the seizure of property not obtained pursuant to a search warrant (*Mapp v Ohio*, 367 US 643 [1961]). 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]).

As to any evidence secured pursuant to the search warrants dated March 6 and 8, 2021 for the search of defendant's vehicle, cell phone, and apartment, and two safes and a lock box recovered from the apartment, the motion to suppress is denied as defendant's motion fails to controvert the search warrants. 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]). The Fourth Amendment to the U.S. Constitution provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Article I § 12 of the New York State Constitution contains identical language. Consistent with these constitutional provisions, CPL 690.45(4) requires that when a search warrant authorizes the seizure of property, the warrant must include "[a] description of the property which is the subject of the search." "To meet the particularity requirement, the warrant must be specific enough to leave no discretion to the police" (see *People v Cahill*, 2 NY3d 14, 41 [2003]). Upon review of the four corners of the search warrant affidavits, the warrants were adequately supported by probable cause, and sufficiently particular as to the place to be searched and the things to be seized (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]). Thus, defendant's motion to controvert the search warrants is denied.

V.

MOTION to PRECLUDE NOTICED IDENTIFICATION TESTIMONY
CPL 710

The People served defendant pursuant to CPL § 710.30(1)(b) with notice of alleged identifications of defendant. Defendant's motion to suppress testimony of the noticed identifications is granted to the limited extent of ordering a pre-trial *Wade* hearing (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, defendant bears the ultimate burden of proving that the procedure was unduly suggestive. Where suggestiveness is shown, the People must show the existence of an independent source by clear and convincing evidence. The hearing will address the People's claim that an identifying witness had a sufficient prior familiarity with defendant as to render the witness impervious to police suggestion (*see People v Rodriguez*, 79 NY2d 445 [1992]).

VI.

MOTION to CONDUCT PRE-TRIAL HEARINGS
TWO WEEKS in ADVANCE of TRIAL

The defendant's motion to schedule pre-trial hearings two weeks in advance of trial is denied. The hearings will be scheduled at a time that is convenient to the Court, upon due consideration of all of its other cases and obligations.

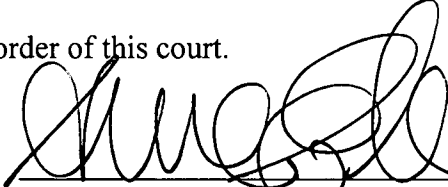
VII.

LEAVE TO MAKE ADDITIONAL MOTIONS

The remaining branch of defendant's motion seeks leave to make additional motions. This 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
June 9, 2021


Honorable Anne E. Minihan
Acting Justice of the Supreme Court

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