

People v Lyttle

2021 NY Slip Op 34087(U)

July 16, 2021

County Court, Westchester County

Docket Number: Indictment No. 20-0558

Judge: George E. Fufidio

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FILED 

JUN 19 2021

**TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER**

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

DECISION & ORDER

TYSON LYTTLE,

Indictment No.: 20-0558

Fufidio

Defendants.

-----X
FUFIDIO, J.

Defendant, TYSON LYTTLE, having been indicted on or about March 31, 2021 for one count of driving while intoxicated as a felony (VTL § 1192 (3)) and one count of aggravated unlicensed operation in the first degree in violation of VTL section 511(3)(a)(i) has filed an omnibus motion which consists 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. Upon consideration of these papers, the stenographic transcript of the grand jury minutes this Court disposes of this motion as follows:

A & B. MOTION TO INSPECT, DISMISS AND/OR REDUCE THE INDICTMENT

Defendant moves pursuant to CPL §§210.20(1)(b) and (c) 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.

The grand jury was properly instructed (*see People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]). The evidence presented, if accepted as true, is legally sufficient to establish every element of each offense charged (CPL 210.30[2]). “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]). This prong of the Defendant’s motion is denied.

Additionally, the Court finds that the Defendant has not met his high burden of demonstrating that the integrity of the grand jury proceedings was impaired by any error, let alone one that would render the proceedings defective and prejudicial to the Defendant (*People v Darby*, 75 NY2d 449 [1990], *People v Thompson*, 22 NY3d 687 [2014]), nor does the Court find that there was any such error. Among other things the minutes reveal a quorum of the grand jurors was present during the presentation of evidence, that the Assistant District Attorney presented the evidence fairly and properly instructed the grand jury on the law and only permitted those grand jurors who heard all the evidence to vote the matter. Accordingly, this prong of the defendant’s motion is also denied.

Furthermore, the portion of the defendant’s motion requesting dismissal of the indictment for facial insufficiency under CPL 200.50(7)(a) is also 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). In reading the language of the indictment on its own and in conjunction with the bill of particulars given to the defendant in consent discovery, it is clear that the indictment charges each and every element of the crimes and further meets the requirement that the defendant be given notice of the charges against him with respect to the time, place and manner in which the People allege the crimes were committed (*People v Albanese*, 45 AD3d 691 [2d Dept 2007], *People v Iannone*, 45 NY2d 589 [1978]).

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.

C. MOTION TO SUPPRESS NOTICED STATEMENTS

This branch of the Defendant’s motion seeking to suppress statements on the grounds that they were unconstitutionally obtained is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the Defendant, which have been noticed by the People pursuant to CPL 710.30 (1)(a) were involuntarily made by the Defendant within the meaning of CPL 60.45 (*see* CPL 710.20 (3); CPL 710.60 [3][b]; *People v Weaver*, 49 NY2d 1012 [1980]), 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]).

D. MOTION TO STRIKE CPL 710.30 NOTICES AND
SUPPRESS IDENTIFICATION TESTIMONY

The motion to strike is denied. Said notices are in conformity with the statutory requirements of CPL 710.30 in that they set forth the date, manner, location of the identification procedures employed (*People v Sumter*, 68 AD3d 1701 [4th Dept. 2009] and were served in the proper time frame (CPL 710.30). Finally, because the Defendant has filed a suppression motion based upon the notices that were served, he has waived his right to be heard on the sufficiency of the notices (*People v Kirkland*, 89 NY2d 903 [1996]).

Regarding the identification, the Court orders a hearing on whether it was unduly suggestive (*United States v Wade*, 388 US 218 [1967]). Specifically, the court shall determine whether the identifications were so improperly suggestive as to taint any in-court identification. In the event the identifications are found to be unduly suggestive, the court shall then go on to consider whether the People have proven by clear and convincing evidence that an independent source exists for such witness' proposed in-court identification (*People v Riley*, 70 NY2d 523 [1987]).

E. MOTION TO SUPPRESS EVIDENCE OF DEFENDANT'S BREATH TEST REFUSAL

Defendant moves to suppress the People's use of his breath test refusal as evidence at trial. The Court orders a hearing on the admissibility of any alleged breath test refusal by the Defendant (*People v Boone*, 71 AD2d 859 [2nd Dept. 1979]). The hearing will also address whether any evidence was obtained in violation of the defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

F. MOTION TO DISMISS ON SPEEDY TRIAL GROUNDS

Defendant's motion to dismiss the instant indictment on statutory grounds is denied. The Court agrees with the People's reasoning in their opposition for why this branch of the motion should be denied and with their time computation. However, the Executive Order tolling CPL 30.30 has expired as of May 23, 2021, but the time has stopped due to these motions (CPL 30.30(4)(a)).

G. 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:

I. 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

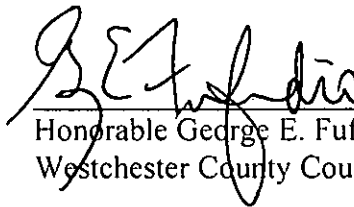
II. Defendant, at the ordered hearing, must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf (*see, People v. Malphurs*, 111 AD2d 266 [2nd Dept. 1985]).

H. MOTION FOR EXCULPATORY INFORMATION

As to the defendant's demand for exculpatory material, the People have acknowledged their continuing duty to disclose exculpatory material at the earliest possible date upon its discovery (*see, Brady v Maryland*, 373 US 83 [1963]; *Giglio v United States*, 405 US 150 [1972]). In the event that the People are, or become, aware of any material which is arguably exculpatory and they are not willing to consent to its disclosure to the defendant, they are directed to immediately disclose such material to the court to permit an *in camera* inspection and determination as to whether the material must be disclosed to the defendant.

The foregoing constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
July 16, 2021


Honorable George E. Fufidio
Westchester County Court Justice

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