

People v Pino

2021 NY Slip Op 34090(U)

October 27, 2021

County Court, Westchester County

Docket Number: Indictment No. 20-0575

Judge: George E. Fufidio

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FILED

OCT 27 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
Indictment No.: 20-0575

RICHARD PINO,

Defendant.

-----X
FUFIDIO, J.

Defendant, RICHARD PINO, having been indicted on or about July 7, 2021 on one count of aggravated driving while intoxicated as a felony (Vehicle and Traffic Law § 1192 [2-a][b]), one count of driving while ability impaired by the combined influence of drugs (Vehicle and Traffic Law § 1192 [4a]); and one count of criminal possession of a controlled substance in the seventh degree (Penal Law § 220.03) 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. MOTION TO INSPECT AND THE GRAND JURY MINUTES
AND TO 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.

Pursuant to CPL §190.65(1), an indictment must be supported by legally sufficient evidence which establishes that the defendant committed the offenses charged. Legally sufficient evidence is competent evidence which, if accepted as true, would establish each and every element of the offense charged and the defendant's commission thereof (CPL §70.10[1]); *People v Jennings*, 69 NY2d 103 [1986]). "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 Bello*, 92 NY2d 523 (1998); *People v Ackies*, 79 AD3d 1050 (2nd Dept 2010). In rendering a determination, "[t]he reviewing court's inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of each element of the charged crimes and whether the grand jury could rationally have drawn the inference of guilt." *Bello, supra*, quoting *People v Boampong*, 57 AD3d 794 (2nd Dept 2008-- internal quotations omitted). 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]).

With respect to Defendant's claim that the Grand Jury proceeding was defective within the meaning of CPL §210.35, a review of the minutes supports a finding that a quorum of the

grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, that the grand jurors who voted to indict heard all the "essential and critical evidence" (see *People v Collier*, 72 NY2d 298 [1988]; *People v Julius*, 300 AD2d 167 [1st Dept 2002], *lv den* 99 NY2d 655 [2003]), and that the Grand Jury was properly instructed (see *People v Calbud*, 49 NY2d 389 [1980] and *People v Valles*, 62 NY2d 36 [1984]).

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.

B. MOTION FOR HEARING TWO WEEKS DAYS PRIOR TO TRIAL

This motion is denied. The hearings will be conducted immediately prior to trial. The defendant has shown no reason nor offered any authority why hearings should be held 14 days prior to trial.

C. 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]).

D. MOTION TO SUPPRESS PHYSICAL EVIDENCE

This branch of the defendant's motion is granted solely to the extent of conducting a *Mapp* hearing prior to trial to determine the propriety of any search resulting in the seizure of evidence (see *Mapp v Ohio*, 367 US 643[1961]) including the results of the chemical test to determine, *inter alia*, whether the defendant expressly consented to the chemical test (see eg, *People v Atkins*, 85 NY2d 1007, 1008 [1995] and/or that it was administered in accord with VTL §1194 (2)(a) (see *People v Atkins*, 85 NY2d 1007, 1008 [1995]). Notably, the two hour limit set forth in VTL §1194(2)(a)(1) has no application where a defendant expressly and voluntarily consents to a test as opposed to where a defendant is deemed to have consented (*People v Elysee*, 12 NY3d 100, 105 [2009])¹. In the event the court finds that the defendant was deemed to have

¹ Any person who operates a motor vehicle in this state shall be deemed to have given consent to a chemical test of . . . breath, blood, urine, or saliva, for the purpose of determining the alcoholic and/or drug content of the blood (*People v Elysee*, 12 NY3d 100, 105 [2009]).

consented, the court will then consider whether the two hour statutory criteria as set forth in VTL§ 1194(2)(a)(1) was followed. The hearing will also address whether any evidence was obtained in violation of the defendant's Fourth Amendment rights, including evidence seized from the defendant, the defendant's car and observations made of him (*see Dunaway v New York*, 442 US 200 [1979]).

E. MOTION TO SUPPRESS STATEMENTS

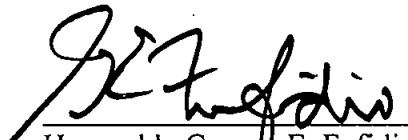
The Court grants the Defendant's motion to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the Defendant, which have been noticed by the People pursuant to CPL 710.30 (1)(a) were involuntarily made by the Defendant within the meaning 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]).

F. MOTION RESERVING THE RIGHT TO FILE ADDITIONAL MOTIONS

Defendant's motion reserving the right to file additional motions is denied. Should the Defendant file any other motions that were not raised in his *Omnibus* motion, then they will need to be in compliance with CPL 255.20(3).

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

Dated: White Plains, New York
October 27, 2021


Honorable George E. Fufidio
Westchester County Court Justice

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