

**People v Rose**

2021 NY Slip Op 34092(U)

October 6, 2021

County Court, Westchester County

Docket Number: Indictment No. 20-0576

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

FILED  
AND ENTERED  
ON 10-6 2021  
WESTCHESTER

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

**FILED**

-against-

OCT 07 2021

CATHERINE ROSE,

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

DECISION & ORDER  
Indictment No. 20-0576

-----X  
MINIHAN, J.

Defendant, Catherine Rose, charged by Westchester County Indictment Number 20-0576 with Driving While Intoxicated, as a felony (Vehicle & Traffic Law § 1192[2]), and Driving While Intoxicated, as a felony (Vehicle & Traffic Law § 1192[3])<sup>1</sup>, 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

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<sup>1</sup>By special information, defendant is charged with having been convicted on or about March 12, 2013, of Aggravated Driving While Intoxicated (Vehicle & Traffic Law 1192.2a[a]), in North Castle Town Court, County of Westchester, State of New York.

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]).

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 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]).

To the extent that defendant’s motion seeks disclosure of portions of the Grand Jury minutes beyond the disclosure directed by CPL Article 245, such as release of the prosecutor’s instructions and/or colloquies, the court denies that branch of the motion.

II.

MOTION to PRECLUDE NOTICED STATEMENT TESTIMONY  
CPL 710

The People served defendant with notice 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 her Fifth, Sixth and Fourteenth Amendment rights. On the People’s consent, the court orders a pre-trial *Huntley* hearing to determine whether the alleged statement was 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 statement was obtained in violation of the defendant’s Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]), or her Sixth Amendment right to counsel.

III.

MOTION to SUPPRESS PHYSICAL EVIDENCE

Defendant’s motion to suppress physical evidence 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, including the results of any field sobriety or Breathalyzer test (*see 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]).

IV.

MOTION to PRECLUDE IDENTIFICATION TESTIMONY  
CPL 710

Pursuant to CPL 710.30, the People served defendant with notice of an alleged identification of her. Insofar as defendant’s motion seeks to suppress testimony of that alleged identification, the motion 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, the 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.

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 her 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 she 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 her prior misconduct that she submits the People should not be permitted to use to impeach her credibility. The defendant shall be required to identify the basis of her belief that each event or incident may be unduly prejudicial to her ability to testify as a witness on her 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  
October 6, 2021

  
Honorable Anne E. Minihan  
Acting Justice of the Supreme Court

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