

People v Mills

2021 NY Slip Op 34099(U)

February 11, 2021

County Court, Westchester County

Docket Number: Indictment No. 20-0288

Judge: George E. Fufidio

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

JAMIEK MILLS, JAMES JOHNSON &
COURTNEY STANLEY

Defendant.

-----X
FUFIDIO, J.

DECISION & ORDER
Indictment No.: 20-0288

FILED 11

FEB 11 2021

TIMOTHY G. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, COURTNEY STANLEY, having been indicted on or about September 17, 2020, for acting in concert with James Johnson and Jamiek Mills for one count of attempted gang assault in the first degree (Penal Law § 110/120.07), one count of attempted assault in the first degree (Penal Law § 110/120.10[1]); one count of one count of assault in the second degree (Penal Law § 120.05[2]); and individually in the same indictment with one count of criminal possession of a weapon in the third degree (Penal Law § 265.02[1]) 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&G. MOTION TO STRIKE CPL 710.30 NOTICES

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 or the date, location and substance of the statements they intend to offer against the Defendant (*People v Sumter*, 68 AD3d 1701 [4th Dept. 2009][pertaining to identifications]; *People v Lopez*, 84 NY2d 425[1994][pertaining to statements]) 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]).

B. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY
CPL ARTICLE 710

The Court orders a hearing on whether the noticed identification 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]).

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 STRIKE PREJUDICIAL LANGUAGE

The defendant moves to strike certain language from the indictment on the grounds that it is surplusage, irrelevant or prejudicial. The language concluding the indictment merely identifies the defendant's acts as public, rather than private wrongs and such language should not be stricken as prejudicial. This motion is denied (*see, People v Gill*, 164 AD2d 867 [2d Dept 1990]; *People v Winters*, 194 AD2d 703 [2d Dept 1993]; *People v Garcia*, 170 Misc. 2d 543 [Westchester Co. Ct. 1996]).

E. 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]). Accordingly, Defendant's motion to dismiss or reduce for lack of sufficient evidence is denied.

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.

F. MOTION TO SUPPRESS PHYSICAL EVIDENCE

The Court grants the Defendant's motion solely to the extent that *Mapp* and *Dunaway* hearings are directed to be held prior to trial to determine the propriety of any search resulting in the seizure of property (see, *Mapp v Ohio*, 367 US 643 [1961]) and whether any evidence was obtained in violation of the defendant's Fourth Amendment rights (see, *Dunaway v New York*, 442 US 200 [1979]) and whether there was probable cause to arrest the defendant. To the extent that he is arguing to suppress evidence seized from his co-defendant, Maliek Mill's, home; he has not demonstrated standing to challenge that search and thus is unable to challenge that search.

H. 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]).

I. MOTION FOR SEVERANCE

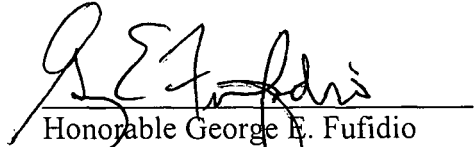
When charges against co-defendants are properly joined in a single indictment, motions for separate trials are addressed to the discretion of the trial court (see *People v Mahboubian*, 74 NY2d 174, 183 [1989]). Where, as here, the proof against all defendants is supplied by the same evidence, "only the most cogent reasons warrant a severance" (*People v Bornholdt*, 33 NY2d 75, 87 [1973]; *People v Kevin Watts*, 159 AD2d 740 [2d Dept 1990]), and, ". . . a strong public policy favors joinder, because it expedites the judicial process, reduces court congestion, and avoids the necessity of recalling witnesses. . . ." In this case, the defendant was properly joined in the same indictment (CPL 200.40[1]). Here, the charges all arise from each of the defendant's

participation in the events of June 17, 2020 and each of the defendant's actions are connected in time, space and circumstance.

Nevertheless, the Court may, for good cause shown, order that defendant be tried separately. Good cause includes a showing that defendant would be "unduly prejudiced by a joint trial" (CPL 200.40[1]), however, the Defendant has not made a showing that a joint trial would be unduly prejudicial to him. Regarding the Defendant's *Bruton* claim, the Court finds it to be premature (*Bruton v United States*, 391 US 123 [1968]). The Defendant may revive this issue should it become live at a point closer to trial.

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

Dated: White Plains, New York
February 11, 2021


Honorable George E. Fufidio
Westchester County Court Justice

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