

**People v Pantore**

2021 NY Slip Op 34118(U)

October 6, 2021

County Court, Westchester County

Docket Number: Indictment No. 21-0436

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

DECISION & ORDER  
Indictment No. 21-0436

DENNIS PANTORE,

TIMOTHY C. IDONI  
COUNTY CLERK  
County of WESTCHESTER

-----X  
MINIHAN, J.

Defendant, Dennis Pantore, charged by Westchester County Indictment Number 21-0436 with Aggravated Driving While Intoxicated, as a felony (Vehicle & Traffic Law § 1192-2-a[a]), Driving While Intoxicated, as a felony (Vehicle & Traffic Law § 1192[3]), and Unregistered Motor Vehicle (Vehicle & Traffic Law § 401(1)(a)<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

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<sup>1</sup>By special information, defendant is charged with having been convicted on or about September 13, 2018, of Driving While Intoxicated (Vehicle & Traffic Law 1192[3]) in the Peekskill City Court, Westchester County.

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]). 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]).

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, 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 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 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.

III.

MOTION to PRECLUDE IDENTIFICATION TESTIMONY  
CPL 710

Pursuant to CPL 710.30, the People served defendant with notice of an alleged identification. The court grants defendant’s motion to suppress any testimony as to the noticed identification to the

extent of granting a pretrial *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 identification 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 also address whether the identification was the product of an unlawful arrest without probable cause (see *Dunaway v New York*, 442 US 200 [1979]).

IV.

MOTION to STRIKE STATEMENT NOTICE and to  
PRECLUDE NOTICED STATEMENT TESTIMONY  
CPL 710

Defendant's motion to strike the CPL § 710.30(1)(a) statement notice is denied. The notice is in conformity with the statutory requirements of CPL 710.30.

Defendant moves to suppress evidence of the noticed 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 Fourth Amendment rights (see *Dunaway v New York*, 442 US 200 [1979]), or his Sixth Amendment right to counsel.

V.

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 any field sobriety tests and/or chemical 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]).

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.

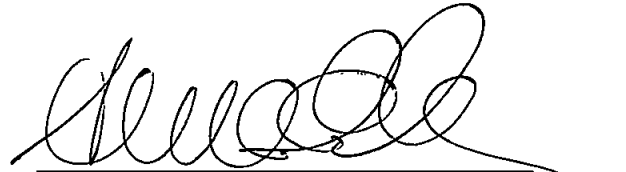
VII.

LEAVE TO MAKE ADDITIONAL MOTIONS

Defendant's motion for leave to make additional motions 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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