

People v Smith

2022 NY Slip Op 34888(U)

April 15, 2022

County Court, Westchester County

Docket Number: Indictment No. 22-70070

Judge: Anne E. Minihan

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FILED
AND ENTERED
ON April 15, 2022
WESTCHESTER
COUNTY CLERK

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

GARVIN SMITH

Defendant.

DECISION & ORDER
Indictment No. 22-70070

-----X
MINIHAN, J.

Defendant, Garvin Smith, charged by Westchester County Indictment Number 22-70070 with Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03[3]), Criminal Possession of a Weapon in the Third Degree (Penal Law § 265.02[1]), and Criminal Possession of a Firearm (Penal Law § 265.01-b), has filed an omnibus motion consisting of a Notice of Motion, an Affirmation in Support, and a Memorandum of Law. In response, the People filed an Affirmation in Opposition, a Memorandum of Law, two exhibits, and two certified transcripts. On April 1, 2022, defendant filed a Reply to the People's Affirmation in Opposition. On April 12, 2022, the People filed a Sur-Reply with two attached exhibits.

I.

MOTION for DISCOVERY, DISCLOSURE, and INSPECTION
CPL ARTICLE 245

To whatever extent material that is discoverable under CPL Article 245 has not already been provided to the defense by the People, the defendant's motion is granted and such discovery, including both *Brady* material¹ and *Rosario* material, shall be provided forthwith. Leave is granted for either party to seek a protective order (CPL Article 245). In his Memorandum of Law, dated March 1, 2022, defendant demands a copy of the Grand Jury minutes. The People, in their answer, have advised that the Grand Jury minutes were turned over to defendant on March 2, 2022, the date which the stenographer provided them to the People. The Court therefore finds defendant's demand for Grand Jury minutes moot. However, 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 the prosecutor's instructions and/or colloquies, the court denies that branch of the motion.

The People filed a Certificate of Compliance on or about January 13, 2022 and they are reminded of their continuing obligation to remain in compliance with the discovery mandates set forth in CPL Article 245 and to file supplemental Certificates of Compliance as the need arises.²

¹ The People have a continuing duty to disclose exculpatory material (*Brady v Maryland*, 373 US 83 [1963]; see *Giglio v United States*, 405 US 150 [1971]). If the People are or become aware of any such material which is arguably subject to disclosure under *Brady* and its progeny and CPL Article 245 which they are unwilling to consent to disclose, they are directed to bring it to the immediate attention of the court and to submit it for an in-camera inspection by the court and determination as to whether it constitutes *Brady* material discoverable by defendant.

² In fact, the People filed a supplemental Certificate of Compliance and Statement of Readiness on or about March 2, 2022.

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The People must disclose the terms of any deal or agreement made between the People and any prosecution witness at the earliest possible date (*see People v Steadman*, 82 NY2d 1 [1993]; *Giglio v United States*, 405 US 150 [1972]; *Brady v Maryland*, 373 US 83 [1963]; *People v Wooley*, 200 AD2d 644 [2d Dept 1994]).

II.

MOTION to STRIKE THE PEOPLE'S CERTIFICATE OF COMPLIANCE
AND STATEMENT OF READINESS

Defendant moves to strike the People's Certificate of Compliance ("COC") and Statement of Readiness ("SOR") filed on January 13, 2022 as illusory, arguing that their filing before Grand Jury minutes were disclosed was premature. The motion to strike is denied.

Defendant is in custody and therefore, pursuant to CPL 245.10(1)(a)(i), the prosecutor must perform his initial discovery obligations within 20 days after defendant's arraignment on the indictment. However, CPL 245.20(1)(b) allows for an additional 30 day grace period for turning over Grand Jury minutes,³ for a total of 50 allowable days to disclose after the date of arraignment. Here, defendant was arraigned on the indictment on January 18, 2022, making disclosure of the Grand Jury minutes due by March 9, 2022. The People provided the minutes to defendant on March 2, 2022, the date they were made available by the stenographer, which was clearly within the statutory allowable time frame. When the minutes were provided to defendant on March 2, 2022, the People filed a supplemental COC and a reaffirmation of readiness.

Defendant cites to *People ex rel Ferro v Brann*, 197 AD3d 787 [2d Dept 2021], arguing that in that case, the Court found that since the People failed to provide defendant with all discoverable material under CPL 245.20, their COC was not valid. However, this is not an accurate reiteration of the holding in that case. In *Brann*, the People inaccurately identified materials in their COC as having been provided to defendant but had not been. As such, the Court held that the COC could not be "deemed complete until all of the material and information *identified in the certificate as subject to discovery and electronically shared with the defendant* was actually produced to the defendant..." (*Id.* at 788). Here, the People advised defendant in their Discovery Disclosure Index that the Grand Jury minutes were not prepared yet and would be provided as soon as they were received. The People did not state that items of discovery had been turned over when in fact they had not as was the case in *Brann*.

Moreover, perfect compliance is not required by statute before filing a COC. If the Legislature intended to require complete disclosure of every single discoverable item prior to filing a COC or SOR, it would have explicitly stated as such (*see People v Askin*, 68 Misc3d 372 [County Ct Nassau County April 28, 2020] [rejecting claim that complete disclosure of discovery is required before filing COC as "not reasonable" and "clearly not what the Legislature intended"]). In fact, CPL Article 245 allows for, and mandates, the filing of multiple Certificates of Compliance and such subsequent filings do not negate or vitiate the prior filing of the People if done in good faith and after diligent efforts were made to obtain the required materials (*see People v Cano*, 71 Misc3d 728, 739 [Sup Ct Queens County

³ The Legislature provided an extended deadline specifically for Grand Jury minutes, recognizing that their preparation may require more time compared to other discoverable materials since transcription service might be limited. In fact, Grand Jury testimony can be provided as late as thirty days before the first scheduled trial date (*see* CPL 245.20[1][b]).

December 3, 2020]; *People v Percell*, 67 Misc3d 190 [Criminal Ct New York County February 10, 2020]).

“By allowing for the possibility that the People be deemed ready even when some discovery is outstanding, the legislature acknowledged that unavoidable delays and unforeseen hurdles may prevent a diligent prosecutor from complying fully with their discovery obligations, despite their best efforts to obtain all the relevant material in a timely fashion” (*People v Aquino*, 72 Misc3d 518 [Criminal Ct Kings County May 7, 2021]; see also *People v Weston*, 66 Misc3d 785 [Criminal Ct Bronx County February 20, 2020]).

Here, only the disclosure of the Grand Jury minutes was delayed, and still turned over within the statutory timeframe. The People exercised due diligence and made defendant aware that the Grand Jury minutes were outstanding and would be provided when received. Even if the People’s disclosure was not timely under the statutory deadlines, a belated disclosure of this single item would not provide a basis for invalidating the People’s COC filed on January 13, 2022, which was filed in good faith.

In his Reply, defendant contends that he was prejudiced by the delay of the disclosure of the Grand Jury minutes because he was forced to file an omnibus motion without the benefit of having the Grand Jury minutes to review. This is not the case. Defendant’s omnibus motion was due on March 7, 2022, but defendant chose to file it early on March 1, 2022. If he had waited one more day, he would have had the benefit of having the Grand Jury minutes to review. Moreover, defendant was given an opportunity to Reply, as he did, one month after the minutes were received. Defendant had ample time to review the Grand Jury minutes and make any arguments or motions necessary.

For these reasons, defendant’s motion to strike the People’s COC and SOR filed on January 13, 2022 is denied.

III.

MOTION to DISMISS for LACK of SPEEDY TRIAL

Defendant seeks to dismiss the indictment based upon a violation of his right to a speedy trial pursuant to CPL 30.30(1)(a). A felony complaint was filed on this matter in the City of Mount Vernon Court on June 28, 2021 and both parties correctly agree that this is the date the speedy trial clock began to run.

Since this is a felony, the People must announce their readiness for trial within six months of the commencement of the criminal action, here, June 28, 2021 (CPL 30.30[1][a]; *People v Beasley*, 69 AD3d 741, 742 [2d Dept 2010]), after subtracting periods of excludable time enumerated in CPL 30.30(4).

June 28, 2021 – July 2, 2021 [4 days chargeable to the People]

At the arraignment on this matter in the Mount Vernon City Court on June 28, 2021, defendant demanded a felony hearing which was scheduled for July 2, 2021. Both parties correctly agree that these 4 days are chargeable to the People.

July 2, 2021 – August 9, 2021 [excludable time]

The People provided the Court and defense counsel with certified transcripts of two appearances held in this matter in the Mount Vernon City Court on July 2, 2021 and July 19, 2021. These minutes show that on July 2, 2021, defendant, through counsel, withdrew his request for a felony hearing and requested an all-purpose adjournment to July 19, 2021. On July 19, 2021, defendant, through counsel, again requested an all-purpose adjournment to August 9, 2021, stating that defendant was “trying to work out a resolution” of the case with the prosecutor. It is clear in the minutes that defendant did not just agree to a date for scheduling convenience, but specifically requested the dates and purpose of the next proceeding. Defendant argues in his papers that although he chose the adjourned dates, he did not specifically state that he was waiving 30.30 time and therefore the adjournments should be chargeable to the People. However, this is not required. Any continuance granted at defendant’s request, or on his consent, is excluded from speedy trial calculations (*see* CPL 30.30[4][b]; *People v Worley*, 66 NY2d 523 [1985]) and therefore, the time from July 2, 2021 through August 9, 2021, in which defendant unequivocally requested specific dates for all-purpose appearances, is excluded from the People’s speedy trial time.

August 9, 2021 – January 13, 2022 [158 days chargeable to the People]

On August 9, 2021, defendant demanded a felony hearing and the case was adjourned, at the People’s request, numerous times. It was not until January 13, 2022, when the People filed their COC and SOR that the speedy trial clock stopped (CPL 30.30[5]). Therefore, the 158 days between defendant demanding a felony hearing and the People announcing ready is chargeable to the People.

While defendant argues that the People’s SOR was illusory on January 13, 2022 for failure to comply with their CPL Article 245 discovery obligations in failing to turn over the Grand Jury minutes, the Court has already found the SOR valid and thus, the People were indeed ready for trial as of January 13, 2022, thereby stopping the speedy trial clock.

Based on the foregoing, the People were ready on the instant case in 162 days, clearly within the six month statutory timeframe and thus defendant’s motion to dismiss for violation of statutory speedy trial is denied.

IV.

BRADY MATERIAL

The People acknowledge their continuing duty to disclose exculpatory material (*Brady v Maryland*, 373 US 83 [1963]; *see Giglio v United States*, 405 US 150 [1971]). Again, if the People are or become aware of any such material which is arguably subject to disclosure under *Brady* and its progeny and Criminal Procedure Law Article 245 which they are unwilling to consent to disclose, they are directed to bring it to the immediate attention of the court and to submit it for the Court’s in camera inspection and determination as to whether it constitutes *Brady* material discoverable by the defendant.

The Court has served a *Brady* Order on the People, dated January 24, 2022, which details the time period their disclosure must be made in accordance with the standards set for in the United States and New York State Constitutions and CPL Article 245.

The People also acknowledge that they have or will comply with their obligations under CPL 245.20(1) (k), (l), and (p).

V.

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 charged against him, 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 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 reveals 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]).

As stated in Point I *supra*, 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 the prosecutor's instructions and/or colloquies, the court denies that branch of the motion.

VI.

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 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 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 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*. 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. 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]).

If the People determine that they will seek to introduce evidence at trial of any prior uncharged misconduct and criminal acts of 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.

VII.

MOTION to SUPPRESS PHYSICAL EVIDENCE

This branch of 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 property, including the pistol recovered from defendant's fanny pack and the loaded magazine recovered from the vehicle defendant was driving (*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]).

VIII.

MOTION to SUPPRESS NOTICED STATEMENTS

The People, pursuant to CPL 710.30(1)(a), noticed one statement allegedly made by defendant to a member of the City of Mount Vernon Police Department on June 26, 2021 at approximately 8:55 P.M. at 36 East 3rd Street in Mount Vernon, NY. Defendant moves to suppress this noticed statement as involuntary, the product of an unlawful arrest, made without being apprised of *Miranda* warnings, and in violation of his right to counsel. Defendant's motion to suppress is granted to the extent that a pre-trial *Huntley* hearing shall be held, on consent of the People, to determine whether the alleged statement was involuntarily made 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 defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]), or his Sixth Amendment right to counsel.

IX.

MOTION to STRIKE ALIBI NOTICE

Defendant's motion to strike the People's alibi notice is denied. Contrary to defendant's contentions, it is well-settled that CPL 250.20 is indeed in compliance with the constitutional requirements (*see People v Dawson*, 185 AD2d 854 [2d Dept 1992]; *People v Cruz*, 176 AD2d 751 [2d Dept 1991]; *People v Gill*, 164 AD2d 867 [2d Dept 1990]) and provides equality in the required disclosure (*People v Peterson*, 96 AD2d 871 [2d Dept 1983]; *see generally Wardius v Oregon*, 412 US 470 [1973]).

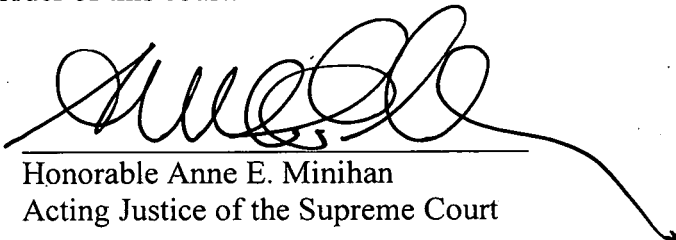
X.

LEAVE TO MAKE ADDITIONAL MOTIONS

Defendant's motion for leave to make additional motions is denied. Although defendant filed his omnibus motion one day prior to receiving the Grand Jury minutes in this matter, he had an opportunity to file a reply and did so, in which he could have addressed any additional motions necessitated from the receipt of those minutes. As such, 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
April 15, 2022



Honorable Anne E. Minihan
Acting Justice of the Supreme Court

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