

People v Lomax

2022 NY Slip Op 34906(U)

December 20, 2022

County Court, Westchester County

Docket Number: Indictment No. 22-72258

Judge: Anne E. Minihan

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FILED

DEL 22 2022

BY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 12-20-2022
WESTCHESTER
COUNTY CLERK

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

RICHARD LOMAX

Defendant.

DECISION & ORDER
Indictment No. 22-72258

-----X
MINIHAN, J.

Defendant, Richard Lomax, charged by Westchester County Indictment Number 22-72258 with Driving While Intoxicated, as an E Felony¹ (Vehicle and Traffic Law § 1192[3]), Unsafe Lane Change (Vehicle and Traffic Law § 1128[a]), and Failing to Signal (Vehicle and Traffic Law § 1163[a]), 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 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 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

¹ By special information attached to the indictment, defendant is alleged to have been previously convicted of the crime of Driving While Intoxicated (Vehicle and Traffic Law § 1192[2]), on or about October 30, 2017, in the Bronx Supreme Court, Bronx County, New York.

[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 the offenses 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 and clearly 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 the prosecutor’s instructions and/or colloquies, the Court denies that branch of the motion.

II.

MOTION to DISMISS for FACIAL INSUFFICIENCY

Defendant moves to dismiss the indictment pursuant to CPL 210.25(1) on the ground that it is facially insufficient. This motion is denied. The indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offenses charged and defendant’s commission thereof with sufficient precision as to clearly apprise him of the conduct which is the subject of the indictment (CPL 200.50). The indictment charges each and every element of the crimes and alleges that defendant committed the acts which constitute the crimes at a specified place during a specified time period and, therefore, is sufficient on its face (*People v Cohen*, 52 NY2d 584 [1981]; *People v Iannone*, 45 NY2d 589 [1978]).

III.

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.

IV.

MOTION to STRIKE STATEMENT NOTICE and SUPPRESS
NOTICED STATEMENT

The People, pursuant to CPL 710.30(1)(a), noticed a statement allegedly made by defendant to members of the New York State Police on February 11, 2022 at approximately 9:15 P.M. in the vicinity of Interstate 87 in the City of Yonkers. Defendant's motion to strike the notice is denied as the notice is in conformity with the statutory requirements of CPL 710.30 and informed defendant of the time and place of the statement as well as the sum and substance of same (*People v Lopez*, 84 NY2d 425, 428 [1994]).

Defendant also moves to suppress the noticed statement as involuntary, the product of an unlawful arrest, made without proper *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.

V.

MOTION TO SUPPRESS PHYSICAL EVIDENCE and REFUSAL

Defendant moves for suppression of all evidence including the open liquor bottle seized from his motor vehicle, the results of the Standardized Field Sobriety Tests, and his alleged refusal to submit to a chemical test. The Court grants a *Mapp* hearing prior to trial to determine the propriety of any search resulting in the seizure of property, including the Standardized Field Sobriety Tests (*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]).

With respect to defendant's allegation that his alleged refusal to submit to a chemical test should be suppressed, this Court directs that a Refusal Hearing be conducted prior to trial to determine, among other things, that the DWI refusal warnings were provided in accordance with VTL 1194 (see *People v Smith*, 18 NY3d 544, 547 [2012]; *People v Williams*, 99 AD3d 955 [2d Dept 2012]).

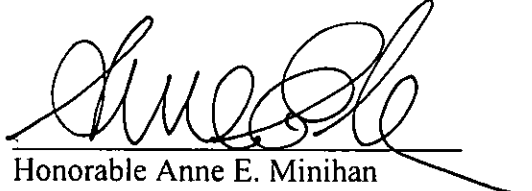
VI.

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
December 20, 2022



Honorable Anne E. Minihan
Acting Justice of the Supreme Court

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