

People v Strange

2022 NY Slip Op 34934(U)

June 7, 2022

County Court, Westchester County

Docket Number: Indictment No. 22-70380

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 6-7-2022
WESTCHESTER
COUNTY CLERK

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

-against-

JUN - 7 2022

JASON STRANGE

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER
Defendant.

DECISION & ORDER
Indictment No. 22-70380

-----X
MINIHAN, J.

Defendant, Jason Strange, is charged by Westchester County Indictment Number 22-70380 with Criminal Possession of Stolen Property in the Fourth Degree (Penal Law § 165.45[1]), Criminal Possession of Stolen Property in the Fourth Degree (Penal Law § 165.45[5]), Criminal Possession of Stolen Property in the Fifth Degree (Penal Law § 165.40) (four counts), Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree (Vehicle and Traffic Law § 511[1][a]), and Unlicensed Operation (Vehicle and Traffic Law § 509).

Defendant 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]). Additionally, *whether defendant had knowledge that the vehicle was stolen can be inferred from the evidence presented to the Grand Jury including the video footage of the incident depicting the conduct, statements made by defendant, and surrounding circumstances* (see *People v Zorcik*, 109 AD2d 860 [2d Dept 1985]). 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 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 instructed the Grand Jury on the law, including with respect to hearsay evidence, 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]). Defendant argues that testimony elicited in the Grand Jury from Police Officer Reyes was “prejudicial and was not necessary to substantiate any of the alleged charges.” Defendant argues that for this reason, the presentation was defective, and the indictment should be dismissed. The Court finds that this testimony, that defendant had prior arrests and a mugshot photo on file, was not responsive to the prosecutor’s question. The question asked of Police Officer Reyes was if he learned at a certain point whether Jason Strange had a license. The response, which included testimony that defendant had prior arrests and a mugshot photograph on file, was not responsive to that simple question. Although this happened, the prosecutor provided a curative instruction to the Grand Jurors that they were to draw no adverse inference against the defendant from those facts. As such, the Court does not find the Grand Jury proceeding defective.

Moreover, as to defendant’s additional claims in his Memorandum of Law, the Court finds that there were no unauthorized persons present in the Grand Jury, the indictment was not voted by an extended term of the Grand Jury, the presentation of evidence was not withdrawn prior to a vote being taken and then re-submitted, the prosecutor properly answered questions raised by the Grand Jurors, the prosecutor did not inject his personal opinions or beliefs or vouch for the credibility of witnesses, and the prosecutor’s legal instructions were understandable.

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 SUPPRESS NOTICED STATEMENTS

The People, pursuant to CPL 710.30(1)(a), noticed two statements allegedly made by defendant to members of the Village of Mamaroneck Police Department on February 6, 2022. Defendant moves to suppress these statements as involuntary, made without *Miranda* warnings, and in violation of defendant’s 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 statements were 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 statements were obtained in violation of defendant's Sixth Amendment right to counsel. If the statements are suppressed, the court will then determine whether any evidence obtained as a result of or due to those statements should be suppressed.

III.

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 (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 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.

V.

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
June 7, 2022



Honorable Anne E. Minihan
Acting Justice of the Supreme Court

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