

People v Bradshaw

2022 NY Slip Op 34937(U)

August 8, 2022

County Court, Westchester County

Docket Number: Indictment No. 70563-22

Judge: Robert J. Prisco

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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-

DECISION & ORDER

HEYWARD BRADSHAW,

Indictment No: 70563-22

Defendant.

-----X
ROBERT J. PRISCO, J.

Defendant **HEYWARD BRADSHAW** is charged by Indictment Number 70563-22 with Murder in the Second Degree pursuant to Penal Law [PL] § 125.25 (1) [Count One], Criminal Possession of a Weapon in the Second Degree pursuant to PL § 265.03 (3) [Count Two], Criminal Possession of a Controlled Substance in the Third Degree pursuant to PL § 220.16 (1) [Count Three], and Criminal Possession of a Controlled Substance in the Fourth Degree pursuant to PL § 220.09 (1) [Count Four]. In sum and substance, Counts One and Two pertain to Defendant's alleged intentional shooting of an individual with a 9mm pistol in the vicinity of East 3rd Street and South 3rd Avenue in the City of Mount Vernon on March 4, 2022, and the resultant death of that individual. Counts Three and Four pertain to Defendant's alleged possession of an aggregate weight of one-eighth ounce or more of cocaine in Apartment 12C of 23 East 3rd Street in the City of Mount Vernon on March 5, 2022, and his intent to sell such.

On March 25, 2022, Defendant was arraigned by this Court on the charges contained in Indictment Number 70563-22 in the presence of an attorney from the Legal Aid Society. Attached to the indictment are two (2) Criminal Procedure Law [CPL] § 710.30 (1) (a) Notices regarding the People's intent to offer evidence of statements allegedly made by the defendant to members of the Westchester County FBI Safe Streets Task Force at approximately 5:00 p.m. on March 6, 2022, and to members of the Mount Vernon Police Department at approximately 5:20 p.m. on that same date. Also attached is the People's Demand for a Notice of Alibi pursuant to CPL § 250.20.

On April 8, 2022, Defendant was produced, a conference was held, and eight (8) CPL § 710.30 (1) (b) Notices signifying the People's intent to offer testimony of observations of the defendant either at the time or place of the commission of the offenses or upon some other relevant

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COUNTY OF WESTCHESTER

occasion by witnesses who have previously identified him as such,¹ were served upon an attorney with the Legal Aid Society and filed with this Court.

On May 20, 2022, Defendant was produced, the Legal Aid Society was relieved as Defendant's attorney based upon a conflict, and Russell B. Smith, Esq., was assigned to represent the defendant.

On July 5, 2022, Defendant filed a Notice of Motion, an Attorney's Affirmation in Support of Omnibus Motion (hereinafter "Attorney's Affirmation"), and a Memorandum of Law in Support of Defendant's Omnibus Motion (hereinafter "Memorandum of Law"), all dated July 3, 2022, seeking various forms of judicial intervention and relief.

On July 15, 2022, the People filed an Affirmation in Opposition and a Memorandum of Law. The People have also provided the Court with an unredacted certified copy of the stenographic transcript of the March 16, 2022 Grand Jury proceeding, along with copies of the Grand Jury Exhibits that were received into evidence.

After consideration of the above referenced submissions and the unredacted certified stenographic transcript of the March 16, 2022 Grand Jury proceeding, the Court decides Defendant's Motion as follows:

1. MOTION FOR INSPECTION OF GRAND JURY MINUTES AND DISMISSAL OF INDICTMENT NUMBER 70563-22 DUE TO THE LEGAL INSUFFICIENCY OF THE EVIDENCE PRESENTED.

Defendant requests that the Court inspect the minutes of the Grand Jury proceeding and dismiss Indictment 70563-22 on the ground that the evidence before the Grand Jury was legally insufficient to support the offenses charged (*see* Point I, Page 1, of Defendant's Memorandum of Law). Defendant also requests "transcription and an inspection of the Grand Jury minutes" to determine if, among other things, the provided instructions were legally sufficient and proper and whether the Grand Jury proceeding was defective (*see* Point 1 (a) - (t), Pages 1-4, of Defendant's Memorandum of Law).

In their response, the People consent to an in-camera inspection of the Grand Jury minutes by the Court (*see* Point A, Pages 7-8, of the People's Memorandum of Law), contend that the

¹ The CPL § 710.30 (1) (b) notices pertain to three (3) video identifications and five (5) single photo identifications that allegedly occurred at Mount Vernon Police Department Headquarters.

indictment is supported by legally sufficient evidence (*see* Point A, Page 8, of the People's Memorandum of Law), and assert that "Defendant has failed to meet his high burden of showing the existence of any error in the grand jury proceeding which rendered it defective" (*see* Point A, Pages 9-10, of the People's Memorandum of Law).

To the extent that Defendant is requesting the Grand Jury minutes in their entirety, this Court notes that CPL § 245.20 (1) (b) provides for automatic discovery of "[a]ll transcripts of the *testimony* of a person who has testified before a grand jury" (emphasis added). Similarly, CPL § 210.30 (3), which addresses motions to inspect grand jury minutes, speaks only to the release of "grand jury *testimony* (emphasis added)." Accordingly, as there exists no statutory authority for the release to Defendant of those portions of the Grand Jury minutes that constitute colloquy or instructions and as the People have complied with the discovery mandate of CPL § 245.20 (1) (b) by providing the defendant with the transcript of the testimony of the fourteen (14) witnesses who testified before the Grand Jury,² the defendant's request for the Grand Jury minutes in their entirety is denied.

The Court has conducted an in-camera review of the entirety of the Grand Jury proceeding, having examined an unredacted certified copy of the stenographic transcript of the March 16, 2022 presentation.

On March 16, 2022, prior to the commencement of the given sworn testimony, the People specifically inquired of and confirmed with the foreperson that twenty-three (23) grand jurors were present. Thereafter, upon the completion of the evidentiary presentation and prior to instructing the grand jurors, the People specifically inquired of and confirmed with the foreperson that twenty-three (23) grand jurors had been present throughout the presentation. These inquiries satisfy this Court that the grand jurors who deliberated and voted on the charges contained in Indictment Number 70563-22, were present throughout the one-day presentation of the case.

"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 [2003], quoting *People v Carroll*, 93 NY2d 564, 568 [1999]; *see People v Bello*, 92 NY2d 523, 525 [1998]; *People v Jensen*, 86 NY2d 248, 251 [1995]; *People*

² The Court is in receipt of a Discovery Package Transmittal Notice which indicates that the People provided Russell B. Smith, Esq., with copies of the Grand Jury minutes and exhibits in a pdf format on June 23, 2022.

v Jennings, 69 NY2d 103, 114 [1986]; *People v Booker*, 164 AD3d 819, 820 [2d Dept 2018]; *People v Hulsen*, 150 AD3d 1261, 1262 [2d Dept 2017], *lv. denied* 30 NY3d 950 [2017]; *People v Flowers*, 138 AD3d 1138, 1139 [2d Dept 2016]). Legally sufficient evidence is “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 Mills*, 1 NY3d at 274; *People v Franov*, 146 AD3d 978, 979 [2d Dept 2017]; *People v Wisey*, 133 AD3d 799, 800 [2d Dept 2015]; *People v Ryan* 125 AD3d 695, 696 [2d Dept 2015], *lv. denied* 25 NY3d 1077 [2015]). “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 Grant*, 17 NY3d 613, 616 [2011], quoting *People v Bello*, 92 NY2d at 526; *see People v Gaworecki*, 37 NY3d 225, 230 [2021]; *People v Gordon*, 88 NY2d 92, 95-96 [1996]; *People v Castro*, 202 AD3d 815, 816 [2d Dept 2022]; *People v Addimando*, 197 AD3d 106, 121 [2d Dept 2021]; *People v Ryan*, 125 AD3d at 696; *People v Woodson*, 105 AD3d 782, 783 [2d Dept 2013]; *People v Jessup*, 90 AD3d 782, 783 [2d Dept 2011])). This 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’” (*People v Bello*, 92 NY2d at 526, quoting *People v Deegan*, 69 NY2d 976, 979 [1987]; *see People v Gaworecki*, 37 NY3d at 230; *People v Pino*, 162 AD3d 910, 911 [2d Dept 2018]; *People v Arcila*, 152 AD3d 783, 784 [2d Dept 2017], *lv. denied* 30 NY3d 978 [2017]).

Here, the evidence presented to the Grand Jury, when viewed in the light most favorable to the People, was legally sufficient to establish and support the four (4) charges contained in Indictment Number 70563-22.

A Grand Jury proceeding is “defective,” warranting dismissal of the indictment, only where the “proceeding . . . fails to conform to the requirements of CPL Article 190 to such degree that the integrity thereof is impaired and prejudice to the defendant may result” (CPL § 210.35 (5); *see People v Arevalo*, 172 AD3d 891, 892 [2d Dept 2019]; *People v Williams*, 171 AD3d 804, 805 [2d Dept 2019]). Dismissal of an indictment under CPL § 210.35 (5) is an “exceptional remedy” that “should . . . be limited to those instances where prosecutorial wrongdoing, fraudulent conduct or errors potentially prejudice the ultimate decision reached by the Grand Jury” (*People v Huston*, 88 NY2d 400, 409 [1996]; *see People v Addimando*, 197 AD3d at 121; *People v Williams*, 171 AD3d at 805; *People v Burch*, 108 AD3d 679, 680 [2d Dept 2013], *lv. denied* 22 NY3d 1087 [2014];

People v Thompson, 81 AD3d 670, 671 [2d Dept 2011], *aff'd* 22 NY3d 687 [2014]). In the case at bar, the Court finds that no such wrongdoing, conduct or errors occurred.

While a prosecutor is required to instruct the grand jury on the law with respect to matters before it (*People v Valles*, 62 NY2d 36, 38 [1984]; *People v Tunit*, 149 AD3d 1110, 1110 [2d Dept 2017]; *People v Samuels*, 12 AD3d 695, 698 [2d Dept 2004]; *see* CPL § 190.25 (6)), “a Grand Jury need not be instructed with the same degree of precision that is required when a petit jury is instructed on the law” (*People v Calbud, Inc.*, 49 NY2d 389, 394 [1980]; *see People v Caracciola*, 78 NY2d 1021, 1022 [1991]; *People v Batashure*, 75 NY2d 306, 311 [1990]; *People v Goetz*, 68 NY2d 96, 115 [1986]; *People v Valles* 62 NY2d 36, 38 [1984]; *People v Tunit*, 149 AD3d at 1110; *People v Castaldo*, 146 AD3d 797, 798 [2d Dept 2017]; *People v Burch*, 108 AD3d at 680; *People v Malan-Pomaeyna*, 72 AD3d 988 [2d Dept 2010]). It is well settled that such instructions are sufficient so long as they provide “enough information to enable [the grand jury] intelligently to decide whether a crime has been committed and to determine whether there exists legally sufficient evidence to establish the material elements of the crime” (*People v Calbud, Inc.*, 49 NY2d at 394-395; *see People v Valles* 62 NY2d at 38; *People v Ruvalcaba*, 187 AD3d 1553, 1554 [4th Dept 2020], *lv. denied* 36 NY3d 1053 [2021]; *People v Tunit*, 149 AD3d at 1110-1111; *People v Patterson*, 73 AD3d 1215, 1215 [2d Dept 2010], *lv. denied* 15 NY3d 776 [2010]; *People v Malan-Pomaeyna*, 72 AD3d at 988).

Here, after an in-camera review of the unredacted certified copy of the stenographic transcript of the Grand Jury presentation on March 16, 2022, this Court determines that the Grand Jury proceeding was not defective and that the instructions given during the presentation were legally sufficient and proper.

Accordingly, for the reasons set forth above, Defendant’s motion to dismiss Indictment Number 70563-22 is denied.

2. MOTION TO SUPPRESS STATEMENTS.

Defendant seeks suppression of the statements noticed pursuant to CPL § 710.30 (1) (a) on the grounds that “all statements made by the defendant were involuntary and were taken in violation of his constitutional rights pursuant to *Miranda v Arizona*” (*see* Point II, Page 5, of

Defendant's Memorandum of Law).³ In the alternative, Defendant requests "a pretrial hearing pursuant to *People v Huntley*" (*see* Point II, Page 6, of Defendant's Memorandum of Law).

In their response, the People contend that *Miranda* warnings were not required as Defendant was not subject to custodial interrogation when he made the noticed statements, and that his statements were given voluntarily and not in violation of his right to counsel (*see* Point B, Pages 13–17, of the People's Memorandum of Law). In addition, the People consent only to a *Huntley* hearing as to Defendant's alleged Fifth Amendment claim of involuntariness as they aver that he has not set forth any facts in support of the claimed violation of his right to counsel under the Sixth Amendment (*see* Point B, Pages 13–17, of the People's Memorandum of Law).

Upon the issues raised by the parties, Defendant's motion to suppress is granted to the extent that hearings pursuant to *People v Huntley*, 15 NY2d 72 [1965], and CPL § 710.60 (4), will be conducted to determine the voluntariness and admissibility of the noticed statements allegedly made by Defendant to members of the Westchester County FBI Safe Streets Task Force at approximately 5:00 p.m. on March 6, 2022, and to members of the Mount Vernon Police Department at approximately 5:20 p.m. on that same date.

3. MOTION FOR *SANDOVAL* AND *VENTIMIGLIA* HEARINGS.

Relying on *People v Sandoval*, 34 NY2d 371 [1974], and *People v Ventimiglia*, 52 NY2d 350 [1981], Defendant requests pretrial hearings to determine the scope and admissibility of "so-called acts of misconduct" during cross-examination of the defendant and of "so-called uncharged crimes and/or prior similar acts...which the People intend to introduce on their direct case or case-in-chief" (*see* Point III, Page 7, of Defendant's Memorandum of Law). Citing repealed CPL § 240.43, Defendant also requests timely notification of the acts of misconduct or criminality which the People intend to use for such purposes (*see* Point III, Page 7, of Defendant's

³ While Defendant references that he will also move to suppress his statements as violative of his Fourth Amendment rights (*see* Page 2, Paragraph (b), of Defendant's Notice of Motion), no factual allegations or arguments in support of such ground are made in his Memorandum of Law and, therefore, that contention is not addressed by the Court.

Memorandum of Law).⁴

In response, the People acknowledge their supplementary disclosure obligations pursuant to CPL §§ 245.10 (1) (b) and 245.20 (3), and consent to *Sandoval* and *Ventimiglia* hearings on such if disclosure is made (*see* Point C, Page 18, of the People's Memorandum of Law). The People also indicate that should they "seek to introduce defendant's prior bad acts on their direct case, [they] will inform defense counsel and the Court and request a hearing [pursuant to *People v Molineux*, 168 NY 264 [1901] before introducing such...evidence" (*see* Point C, Page 18, of the People's Memorandum of Law).

CPL § 245.20 (3) (a) provides, in substance and pertinent part, that "[t]he prosecution shall disclose to the defendant a list of all misconduct and criminal acts of the defendant not charged in the indictment, which the prosecution intends to use at trial for purposes of impeaching the credibility of the defendant." To the extent that the People seek to use any of Defendant's prior acts of misconduct or criminality on their direct case as substantive proof of any material issue in the case, CPL § 245.20 (3) (b) likewise obligates "[t]he prosecution [to] disclose to the defendant a list of all misconduct and criminal acts of the defendant not charged in the indictment, which the prosecution intends to use at trial [for such purpose]." Lastly, CPL § 245.20 (3) further requires that "the prosecution shall designate whether it intends to use each listed act for impeachment and/or as substantive proof."

As the People have concededly not yet disclosed to the defendant a list of his acts of misconduct and criminality which the prosecution intends to use at trial for purposes of impeaching his credibility or as substantive proof of any material issue in the case, or designated their intended use thereof, this Court will not order the requested *Sandoval* and *Ventimiglia* hearings at the present time. Should the People seek to use at trial any prior acts of misconduct or criminality of the defendant for CPL § 245.20 (3) (a) or (b) purposes, they are directed to disclose to Defendant a list of all such acts of misconduct and criminality and to designate the intended purpose of each listed act. Pursuant to CPL § 245.10 (1) (b), the People "shall perform [these] supplemental discovery obligations *as soon as practicable* but not later than fifteen (15) calendar days prior to

⁴ This portion of Defendant's motion is interpreted as having been made pursuant to CPL Article 245, which replaced CPL Article 240, effective January 1, 2020.

the first scheduled trial date” (emphasis added). If the People do so, Defendant may renew his application to preclude the People’s use of such acts of misconduct or criminality at trial or, in the alternative, request a hearing thereon to determine the admissibility thereof. If the People fail to do so, no use of such acts will be permitted at trial.

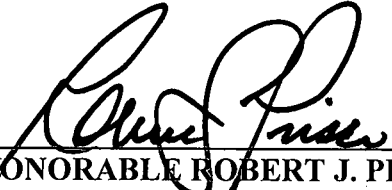
4. RESERVATION OF RIGHTS TO MAKE ADDITIONAL PRE-TRIAL MOTIONS.

While not addressed in his Memorandum of Law, Defendant’s demand for reservation of his right to make further motions (see Page 2 of Defendant’s Notice of Motion) is granted to the extent that, if sought, he will be required to serve and file an Order to Show Cause detailing the reason(s) why said motions were not brought in conformity with the time provisions and motions practice set forth in CPL § 255.20 (1) and (2), respectively.

However, notwithstanding the provisions of CPL § 255.20 (1) and (2), this Court will “entertain and decide on its merits, at any time before the end of the trial, any appropriate pre-trial motion based upon grounds of which the defendant could not, with due diligence, have been previously aware, or which, for other good cause, could not reasonably have been raised within the period specified in [CPL § 255.20 (1)] or included within the single set of motion papers as required by [CPL § 255.20 (2)]” (CPL § 255.20 (3); see *People v Wisdom*, 23 NY3d 970, 972 [2014]; *People v Marte*, 197 AD3d 411, 413 [1st Dept 2021]; *People v Burke*, 174 AD3d 915, 915 [2d Dept 2019]; *People v Milman*, 164 AD3d 609, 610 [2d Dept 2018]).

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
August 8, 2022


HONORABLE ROBERT J. PRISCO
County Court Judge

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