

People v Ayabaca

2022 NY Slip Op 34941(U)

July 29, 2022

County Court, Westchester County

Docket Number: Indictment No. 22-70295

Judge: Anne E. Minihan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK

-against-

MARTIN AYABACA

MINIHAN, J.

FILED
AND ENTERED
ON 7-29-2022
WESTCHESTER
COUNTY CLERK

FILED
AUG - 8 2022
TIMOTHY C. IDONE
COUNTY CLERK
COUNTY OF WESTCHESTER
Defendant

DECISION & ORDER
Indictment No. 22-70295

Defendant, Martin Ayabaca, charged by Westchester County Indictment Number 22-70295 with Driving While Intoxicated, as a D Felony¹ (Vehicle and Traffic Law § 1192[3]), Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree² (Vehicle and Traffic Law § 511[3][a][i]), and Improper Plates (Vehicle and Traffic Law § 402[4]), has filed an omnibus motion consisting of a Notice of Motion and an Affirmation in Support. 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

¹ By special informations 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 May 18, 2011, in the Bronx Supreme Court, Bronx County, New York and of Driving While Intoxicated (Vehicle and Traffic Law § 1192[3]), on or about December 19, 2014, in the Bronx Supreme Court, Bronx County, New York.

² 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[3]) and, as a result, defendant's license and privilege to operate a motor vehicle in the State of New York and defendant's privilege of obtaining a license issued by the Commissioner of Motor Vehicles was revoked on or about February 2, 2015 and, defendant, on or about February 17, 2021, knew or had reason to know of said revocation and said revocation was in effect at that time. By another special information attached to the indictment, defendant is alleged to have refused to submit to a chemical test pursuant to Vehicle and Traffic Law § 1194, and as such, defendant's license and privilege to operate a motor vehicle in the State of New York and defendant's privilege of obtaining a license issued by the Commissioner of Motor Vehicles was revoked on or about August 8, 2013 and, defendant, on or about February 17, 2021, knew or had reason to know of said revocation and said revocation was in effect at that time.

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 and clearly instructed the Grand Jury on the law, including with respect to defendant’s prior DWI convictions, 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]).

Moreover, as to defendant’s additional claims in his Affirmation, the Court finds that there were no unauthorized persons present in the Grand Jury, there was no hearsay testimony elicited, the prosecutor properly answered questions raised by the Grand Jurors, and the prosecutor did not summarize the testimony.

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 statements allegedly made by defendant to members of the Peekskill Police Department on February 17, 2021. Defendant moves to suppress these statements as involuntary, the product of an unlawful arrest, and made without *Miranda* warnings. 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 Fourth Amendment rights (see *Dunaway v New York*, 442 US 200 [1979]).

III.

MOTION to PRECLUDE UNNOTICED STATEMENTS

The People acknowledge the statutory requirements of CPL 710.30. To the extent the People choose to cross-examine defendant, should he elect to testify, the People are instructed to obtain a ruling from the trial court should they seek to impeach him with any unnoticed statements.

IV.

MOTION TO SUPPRESS PHYSICAL EVIDENCE and REFUSAL

Defendant moves for suppression of all evidence including his alleged refusal to submit to a chemical test. 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 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 on constitutional grounds, 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]).

Within this motion, defendant requests that the Court order the People to produce all physical evidence relating to defendant's alleged refusal to submit to a chemical test, including videotapes. 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* material³ and *Rosario* material, shall be provided forthwith. If the People have fulfilled their discovery obligations but have not yet filed a Certificate of Compliance, they are directed to do so forthwith 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.

V.

HEARINGS CONDUCTED PRIOR to TRIAL

Defendant requests that pre-trial hearings be scheduled sufficiently in advance of trial so that the hearing minutes may be transcribed in time for their use at trial. The hearings will be scheduled at a time that is convenient to the Court, upon due consideration of all its other cases and obligations.

³ 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.

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.

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
July 29, 2022


Honorable Anne E. Minihan
Acting Justice of the Supreme Court

To:
Hon. Miriam E. Rocah
District Attorney, Westchester County
111 Dr. Martin Luther King, Jr., Blvd.
White Plains, NY 10601
Attn: ADA Michael Callan
MCallan@westchesterda.net

Milton H. Florez, Esq.
40-50 Junction Boulevard
Corona, NY 11368
florezlegal@gmail.com
Attorney for defendant, Martin Ayabaca