

People v Irizarry

2022 NY Slip Op 34945(U)

September 27, 2022

Supreme Court, Westchester County

Docket Number: Ind. No. 71313-22

Judge: Susan M. Capeci

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK,

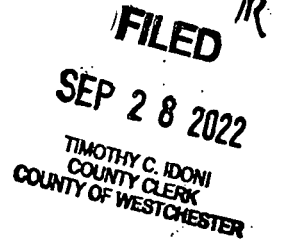
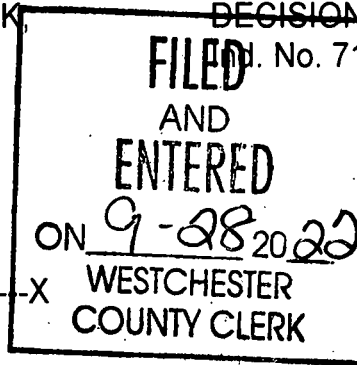
-against-

BRYANT IRIZARRY,

Defendant.
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DECISION AND ORDER

Ind. No. 71813-22



The defendant, charged by indictment with four counts of burglary in the first degree (P.L. 140.30 (2); P.L. 140.30 (4); and two counts under P.L. 140.30 (3)), unlawful imprisonment in the second degree (P.L. 135.05), menacing in the second degree (P.L. 120.14 (1)), two counts of criminal mischief in the fourth degree (P.L. 145.00 (4)(a); 145.00 (1)), criminal possession of a weapon in the fourth degree (P.L. 265.01 (2)), assault in the second degree (P.L. 120.05 (2)), assault in the third degree (P.L. 120.00 (1)), burglary in the second degree (P.L. 140.25 (2)), criminal mischief in the second degree (P.L. 145.10), and obstructing governmental administration in the second degree (P.L. 195.05), makes this omnibus motion seeking: 1) inspection of the grand jury minutes by the Court and the defendant, and thereafter, for the dismissal of the indictment and/or reduction of the charges contained therein; 2) suppression of the statements alleged to have been made by her, or in the alternative, for a Huntley hearing; and 3) a Sandoval/Ventimiglia/Molineux hearing.

The People consent to an *in camera* review by the Court of the Grand Jury minutes for legal sufficiency and the release of the grand jury testimony to the defendant, consent to a Sandoval/Ventimiglia/Molineux hearing, and consent to a Huntley hearing, but otherwise oppose the motion. The Court now finds as follows.

1. MOTION TO INSPECT THE GRAND JURY MINUTES
AND TO DISMISS AND/OR REDUCE THE INDICTMENT

Defendant moves pursuant to CPL §§210.20(1)(b) and [c] to dismiss the indictment, or counts thereof, on the grounds that the evidence before the Grand Jury was legally insufficient and that the Grand Jury proceeding was defective within the meaning of CPL §210.35. The Court has reviewed the minutes of the proceedings before the Grand Jury.

Pursuant to CPL §190.65(1), an indictment must be supported by legally sufficient evidence which establishes that the defendant committed the offenses charged. Legally sufficient evidence is competent evidence which, if accepted as true, would establish each and every element of the offense charged and the defendant's commission thereof (CPL §70.10[1]); People v Jennings, 69 NY2d 103 [1986]). "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 Bello, 92 NY2d 523 (1998); People v Ackies, 79 AD3d 1050 (2nd Dept 2010)). In rendering a determination, "[t]he reviewing court's inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of each element of the charged crimes and whether the grand jury could rationally have drawn the inference of guilt" (Bello, supra, quoting People v Boampong, 57 AD3d 794 (2nd Dept 2008-- internal quotations omitted).

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]). Accordingly, Defendant's motion to dismiss or reduce for lack of sufficient evidence is denied.

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 supports a finding that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, that the grand jurors who voted to indict heard all the "essential and critical evidence" (see People v Collier, 72 NY2d 298 [1988]; People v Julius, 300 AD2d 167 [1st Dept 2002], *lv den* 99 NY2d 655 [2003]), and that the Grand Jury was properly instructed (see People v Calbud, 49 NY2d 389 [1980] and People v Valles, 62 NY2d 36 [1984]).

In making this determination, the Court does not find that release of such portions of the Grand Jury minutes as have not already been disclosed pursuant to CPL Article 245 to the parties was necessary to assist the Court.

2. MOTION TO SUPPRESS STATEMENTS

The defendant has been served with a CPL 710.30 notice, with respect to an oral statement, recorded electronically, alleged to have been made by him on March 27, 2022, at 12:37 a.m., to members of the Yonkers Police Department. The defendant was also noticed with any statements made by him on body worn camera records, which the People indicate they have provided to him. The defendant argues that the noticed statements should be suppressed as involuntarily made.

The defendant's motion for suppression of the above statements as set forth in the CPL 710.30 notice is granted to the extent that the Court will conduct a Huntley

hearing prior to trial concerning the noticed statements allegedly made by the defendant for the purpose of determining whether Miranda warnings were necessary and, if so, whether he was so advised and made a knowing, intelligent and voluntary waiver thereof, or whether the statements were otherwise involuntarily made within the meaning of CPL 60.45.

3. MOTION FOR SANDOVAL/VENTIMIGLIA/MOLINEUX HEARING


Granted, solely to the extent that Sandoval/Ventimiglia/Molineux hearings, as the case may be, shall be held immediately prior to trial, as follows:

A. Pursuant to CPL §245.20, the People must notify the Defendant, not less than fifteen days prior to the first scheduled date for trial, of all specific instances of Defendant's uncharged misconduct and criminal acts of which the People have knowledge and which the People intend to use at trial for purposes of impeaching the credibility of the Defendant, or as substantive proof of any material issue in the case, designating, as the case may be for each act or acts, the intended use (impeachment or substantive proof) for which the act or acts will be offered; and

B. Defendant, at the ordered hearing, must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf (see People v Malphurs, 111 AD2d 266 [2nd Dept. 1985]).

This constitutes the Decision and Order of this Court.

Dated: September 27, 2022
White Plains, New York



HON. SUSAN M. CAPECI
A.J.S.C.

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