

People v Cabello

2022 NY Slip Op 34947(U)

August 1, 2022

County Court, Westchester County

Docket Number: Indictment No. 22-70981

Judge: Anne E. Minihan

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TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

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ON 8-1-2022
WESTCHESTER
COUNTY CLERK

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

EDGAR VILLALBA CABELLO

Defendant.

-----X
MINIHAN, J.

DECISION & ORDER
Indictment No. 22-70981

Defendant, Edgar Villalba Cabello, charged by Westchester County Indictment Number 22-70981 with Grand Larceny in the Third Degree (Penal Law § 155.35[1]) (three counts), Grand Larceny in the Fourth Degree (Penal Law § 155.30[1]), and Petit Larceny (Penal Law § 155.25) (three counts), 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 SUPPRESS NOTICED STATEMENT

The People, pursuant to CPL 710.30(1)(a), noticed one statement allegedly made by defendant to members of the New Rochelle Police Department on April 5, 2021. Defendant denies making any incriminating statements to the police. However, if the Court finds such statement was made, defendant moves to suppress that statement 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 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. If the statement is suppressed, the court will then determine whether any evidence obtained as a result of or due to that statement should be suppressed.

Defendant also moves to preclude any unnoticed statements. 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.

II.

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.

III.

MOTION to STRIKE PREJUDICIAL LANGUAGE

Defendant moves to strike certain language from the indictment on the grounds that it is irrelevant and potentially prejudicial. The language contained in the indictment merely identifies defendant's acts as public, rather than private wrongs and such language need not be stricken on the ground that it is prejudicial. This motion is denied (see *People v Gill*, 164 AD2d 867 [2d Dept 1990]; *People v Winters*, 194 AD2d 703 [2d Dept 1993]; *People v Garcia*, 170 Misc. 2d 543 [Westchester Co. Ct. 1996]).

IV.

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]).

V.

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 [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 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]).

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 her personal opinions or beliefs or vouch for the credibility of witnesses, oaths were properly administered, there was no unsworn testimony, 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.

VI.

HEARINGS TWENTY DAYS BEFORE TRIAL

Defendant requests that pre-trial hearings be scheduled at least twenty days before 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 of its other cases and obligations.

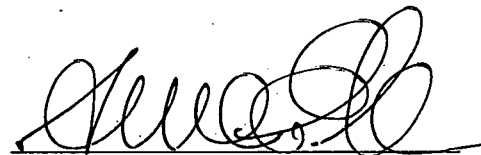
VII.

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
August 1, 2022



Honorable Anne E. Minihan
Acting Justice of the Supreme Court

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