

People v Rose

2023 NY Slip Op 34821(U)

July 5, 2023

County Court, Westchester County

Docket Number: Indictment No. 70153-23

Judge: Robert J. Prisco

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This opinion is uncorrected and not selected for official publication.

FILED 

AUG 03 2023

**TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER**

**COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER**

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

-against-

DECISION & ORDER

ANTHONY ROSE,

Indictment No: 70153-23

Defendant.

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

Defendant **ANTHONY ROSE** is charged by Indictment Number 70153-23 with two counts of Manslaughter in the Second Degree pursuant to Penal Law [PL] § 125.15 (1) [Counts One and Two], two counts of Criminally Negligent Homicide pursuant to PL § 125.10 [Counts Three and Four], one count of Assault in the Second Degree pursuant to PL § 120.05 (4) [Count Five], one count of Assault in the Third Degree pursuant to PL § 120.00 (3) [Count Six], and one count of Reckless Driving pursuant to Vehicle and Traffic Law [VTL] § 1212 [Count Seven]. The charges pertain to Defendant’s alleged reckless driving of an automobile in the eastbound lanes of the Cross County Parkway in the City of Mount Vernon, at approximately 5:23 a.m., on December 18, 2021, and the alleged resultant accident that caused the deaths of two of his passengers and the serious physical injury sustained by another.

On January 26, 2023, Defendant was arraigned in the Westchester County Court on the charges contained in Indictment Number 70153-23. Attached to the Indictment is the People’s Demand for a Notice of Alibi pursuant to CPL § 250.20.

During an appearance on April 28, 2023, the People served and filed a Certificate of Compliance pursuant to CPL § 245.50 (1), with an attached “Discovery Disclosure Index” and an “Addendum” thereto that identify the items, materials and information that have reportedly been disclosed or provided to defense counsel. Within the People’s Certificate of Compliance is a “Statement of Readiness,” wherein the People “confirm and announce their readiness for trial on all counts charged.” The People also confirmed their readiness for trial on the record when the Court made inquiry thereof pursuant to CPL § 30.30 (5).

During an appearance on June 9, 2023, defense counsel advised the Court that an omnibus motion would not be filed on behalf of Defendant. The matter was adjourned until July 7, 2023,

for the Court to receive and review the stenographic transcript of the Grand Jury proceeding.

After consideration of an unredacted certified copy of the stenographic transcript of the January 12, 2023 Grand Jury proceeding, the instructions on the law that were provided therein, and the Grand Jury exhibits that were received in evidence, the Court decides as follows:

INSPECTION OF THE GRAND JURY MINUTES AND PRESENTATION.

While not requested by Defendant, the Court has, *sua sponte*, conducted an in-camera review of the unredacted certified stenographic transcript of the January 12, 2023 Grand Jury proceeding, the legal instructions provided therein, and the Grand Jury exhibits that were received in evidence, to determine the propriety of the presentation and the legal sufficiency of the evidence presented and the instructions issued.

On January 12, 2023, prior to the commencement of the given sworn testimony, the People specifically inquired of and confirmed with the foreperson that eighteen (18) grand jurors were present. Prior to instructing the grand jurors on the applicable law, the People confirmed with the foreperson that the same eighteen (18) grand jurors were present throughout the presentation of the case. These measures by the People satisfy this Court that the eighteen (18) grand jurors who deliberated and voted on the charge contained in Indictment Number 70153-23 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 Edwards*, 36 NY3d 946, 947 [2020]; *People v Deleon*, 34 NY3d 965, 966 [2019]; *People v Bello*, 92 NY2d 523, 525 [1998]; *People v Booker*, 164 AD3d 819, 820 [2d Dept 2018]; *People v Pino*, 162 AD3d 910, 910-911 [2d Dept 2018]; *People v Hulslen*, 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 Deleon*, 34 NY3d at 966; *People v Mills*, 1 NY3d at 274; *People v Harwood*, 183 AD3d 1281, 1282 [4th Dept 2020]; *People v Booker*, 164 AD3d at 820; *People v*

Pino, 162 AD3d at 911; *People v Arcila*, 152 AD3d 783, 784 [2d Dept 2017], *lv. denied* 30 NY3d 978 [2017]; *People v Hulsén*, 150 AD3d at 1262; *People v Franov*, 146 AD3d 978, 979 [2d Dept 2017]). “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 Gaworecki*, 37 NY3d 225, 230 [2021], quoting *People v Grant*, 17 NY3d 613, 616 [2011]; see *People v Mills*, 1 NY3d at 274; *People v Bello*, 92 NY2d at 526; see *People v Holloway*, 210 AD3d 1007, 1008 [2d Dept 2022]; *People v Castro*, 202 AD3d 815, 816 [2d Dept 2022]; *People v Booker*, 164 AD3d at 820). 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 Castro*, 202 AD3d at 816; *People v Booker*, 164 AD3d at 821; *People v Pino*, 162 AD3d at 911; *People v Arcila*, 152 AD3d at 784).

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 charges contained in Indictment Number 70153-23.

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 Jimenez*, 39 NY3d 74 [2022]; *People v Elmore*, 211 AD3d 1536, 1539 [4th Dept 2022]; *People v Palma*, 208 AD3d 801, 802 [2d Dept 2022]; *People v Sealy*, 181 AD3d 893, 894 [2d Dept 2020], *lv. denied* 35 NY3d 1070 [2020]; *People v Arevalo*, 172 AD3d 891, 892 [2d Dept 2019]; *People v Williams*, 171 AD3d 804, 805 [2d Dept 2019]). “The exceptional remedy of dismissal of an indictment is warranted only where prosecutorial misconduct, fraudulent conduct or errors created a possibility of prejudice” (*People v Palma*, 208 AD3d at 802, quoting *People v Addimando*, 197 AD3d 106, 121 [2d Dept 2021]; see *People v Huston*, 88 NY2d 400, 409 [1996]; *People v Sealy*, 181 AD3d at 894; *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]). Here, the Court finds that no such misconduct, conduct or errors occurred.

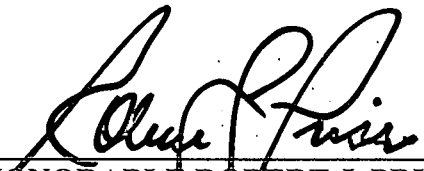
Further, while a prosecutor is required to instruct the grand jury on the law with respect to matters before it (*People v Valles*, 62 NY2d 36, 38 [1984]; *People v Tunit*, 149 AD3d 1110, 1110 [2d Dept 2017]; *People v Samuels*, 12 AD3d 695, 698 [2d Dept 2004]; see CPL § 190.25 (6)), “a Grand Jury need 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 at 394; 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 Ruvalcaba*, 187 AD3d 1553, 1554 [4th Dept 2020], *lv. denied* 36 NY3d 1053 [2021]; *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 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 January 12, 2023, this Court determines that the Grand Jury proceeding was not defective and that the instructions given during the presentation were legally sufficient and proper.

Finally, regarding the offenses charged in Indictment No. 70153-23, each count contains plain and concise factual statements which, without allegations of an evidentiary nature, assert facts supporting every element of the particular offense charged and the Defendant’s commission thereof with sufficient precision to clearly apprise him of the conduct which is the subject of the accusation (see CPL § 200.50 (7) (a); *People v Grega*, 72 NY2d 489, 498 [1988]; *People v Iannone*, 45 NY2d 589, 598 [1978]; *People v Nunez-Garcia*, 178 AD3d 1087, 1088 [2d Dept 2019], *lv. denied* 35 NY3d 943 [2020]) and the date upon which the conduct is alleged to have occurred (see CPL § 200.50 (6); *People v Henry*, 183 AD3d 607 [2d Dept 2020]); *People v Atta*, 126 AD3d 713, 715 [2d Dept 2015], *lv. denied* 25 NY3d 1159 [2015]).

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
July 5, 2023



HONORABLE ROBERT J. PRISCO
County Court Judge

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