

People v Hunter

2023 NY Slip Op 34822(U)

May 9, 2023

Supreme Court, Westchester County

Docket Number: Indictment No. 23-70310

Judge: Anne E. Minihan

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TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 5-9-2023
WESTCHESTER
COUNTY CLERK

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

-against-

JARIM HUNTER

Defendant.

DECISION & ORDER
Indictment No. 23-70310

-----X
MINIHAN, J.

Defendant, Jarim Hunter, is charged by Westchester County Indictment Number 23-70310 with Grand Larceny in the Fourth Degree (Penal Law § 155.30[1]) and Unauthorized Use of a Vehicle in the Second Degree (Penal Law § 165.06).¹

Defendant 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 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, *including that defendant took, operated, exercised control over, rode in, or otherwise used victim’s vehicle (see CPL 210.30[2])*. With respect to Count 2 of the indictment, Unauthorized Use of a Vehicle, defendant argues that the testimony before the Grand Jury was “general in nature and did not attribute any criminal actions” specifically to defendant. Defendant contends that the evidence was not legally sufficient to establish that he took, operated, exercised control over, rode in, or otherwise used the vehicle since he was not found in possession of the car keys, there was no damage to the car, and he did not commit any of the requisite acts in order to be charged with Unauthorized Use of a Vehicle. However, defendant need not have the means and intent to operate the vehicle or steal it; and in fact, the statute includes “otherwise used the

¹ By Special Information attached to the Indictment, defendant is alleged to have been previously convicted of the crime of Unauthorized Use of a Vehicle in the Third Degree (Penal Law § 165.05[1]) on or about January 29, 2021 in the Bronx County Criminal Court.

vehicle” as one of the ways in which a person violates the statute (*see People v Franov*, 17 NY3d 58 [2011]). In *People v Franov*, 17 NY3d at 64, the Court of Appeals held: “Whether denominated as exercising control over or otherwise using a vehicle, we conclude that a violation of the statute occurs when a person enters an automobile without permission and takes actions that interfere with or are detrimental to the owner's possession or use of the vehicle.” In that case, the Court found, “Defendant's unauthorized entry coupled with multiple acts of vandalism and the theft of a part unquestionably interfered with the owner's possession and use of the vehicle” (*People v Franov*, 17 NY3d at 65). Here, the evidence was sufficient to establish defendant exercised control over the victim's vehicle when he opened the door, entered inside without permission, and stole the victim's property, thereby interfering with the victim's use of his vehicle to store that property.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, 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]).

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.

² It is necessary for the Court to discuss specific testimony from the Grand Jury proceedings in deciding the instant motion (*see* CPL 190.25[4]).

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 PRECLUDE NOTICED IDENTIFICATION TESTIMONY CPL 710

Pursuant to CPL § 710.30(1)(b), the People served defendant with notice of two alleged identifications of defendant made by witnesses subsequent to the commission of the crime on August 6, 2022 at 10:25 A.M. at Nereid Avenue and Bronx River Road in Yonkers, New York. Defendant's motion to suppress testimony of these noticed identifications is granted to the limited extent of ordering a pre-trial *Wade* hearing (*see United States v Wade*, 388 US 218 [1967]). At the hearing, the People bear the initial burden of establishing the reasonableness of the police conduct and the lack of any undue suggestiveness (*see People v Chipp*, 75 NY2d 327, 335 [1990] *cert. denied* 498 US 833 [1990]; *People v Berrios*, 28 NY2d 361 [1971]). Once that burden is met, defendant bears the ultimate burden of proving that the procedure was unduly suggestive. Where suggestiveness is shown, the People must show the existence of an independent source by clear and convincing evidence. In defense counsel's Notice of Motion, she makes a Sixth Amendment claim to suppress the identifications but did not include any argument in support in her Affirmation or Memorandum of Law. Thus, defendant's motion to suppress on this basis is summarily denied.

IV.

MOTION to STRIKE THE PEOPLE'S CERTIFICATE of COMPLIANCE AND STATEMENT of READINESS AND MOTION for FURTHER DISCOVERY

To whatever extent material that is discoverable under CPL Article 245 has not already been provided to the defense by the People, defendant's motion is granted and such discovery, including both *Brady* material³ and *Rosario* material, shall be provided forthwith. Leave is granted for either party to seek a protective order (CPL Article 245).

The People must disclose the terms of any deal or agreement made between the People and any prosecution witness at the earliest possible date (*see People v Steadman*, 82 NY2d 1 [1993]; *Giglio v United States*, 405 US 150 [1972]; *Brady v Maryland*, 373 US 83 [1963]; *People v Wooley*, 200 AD2d 644 [2d Dept 1994]).

Defendant moves to strike the People's Certificate of Compliance ("COC") and Statement of Readiness ("SOR") filed on February 14, 2023 as illusory, arguing that their filing before police body-worn camera footage and complete CPL 245.20(1)(k) information was turned over was premature. The People filed a Supplemental COC and SOR on March 14, 2023 after the Grand Jury minutes had been obtained and provided to defendant.

The People indicate that CPL 245.20(1)(k) materials were provided to defendant on February 7, 2023, prior to the filing of the COC and SOR on February 14, 2023. As to any claim that the answers provided by the officers were incomplete, the People indicate that although officers may not have answered questions on a form given to them, the People turned over civil lawsuits and public integrity files for the officers in this case. With respect to police body-worn camera footage, the People state that the City of Yonkers Police Department has certified that no body-worn footage exists for this case. As such, defendant's claim that this discovery is still outstanding is moot. *If there are any discovery issues remaining unresolved within three business days of receipt of this order, counsel for defendant shall contact this Court to request an immediate compliance conference.*

In any event, perfect compliance is not required by statute before filing a COC. If the Legislature intended to require complete disclosure of every single discoverable item prior to filing a COC or SOR, it would have explicitly stated as such (*see People v Askin*, 68 Misc3d 372 [County Ct Nassau County April 28, 2020] [rejecting claim that complete disclosure of discovery is required before filing COC as "not reasonable" and "clearly not what the Legislature intended"]). In fact, CPL Article 245 allows for, and mandates, the filing of multiple Certificates of Compliance and such subsequent filings do not negate or vitiate the prior filing of the People if done in good faith and after diligent efforts were made to obtain the required materials (*see People v Cano*, 71 Misc3d 728, 739 [Sup Ct Queens County December 3, 2020]; *People v Percell*, 67 Misc3d 190 [Criminal Ct New York County February 10, 2020]).

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.

“By allowing for the possibility that the People be deemed ready even when some discovery is outstanding, the legislature acknowledged that unavoidable delays and unforeseen hurdles may prevent a diligent prosecutor from complying fully with their discovery obligations, despite their best efforts to obtain all the relevant material in a timely fashion” (*People v Aquino*, 72 Misc3d 518 [Criminal Ct Kings County May 7, 2021]; *see also People v Weston*, 66 Misc3d 785 [Criminal Ct Bronx County February 20, 2020]).

According to the People, they provided continued discovery in this matter on October 5, 2022 and on the following dates, all in 2023: January 27, February 7, February 14, March 7, and March 14. The People’s ongoing efforts to fulfill their discovery obligations demonstrate that they exercised due diligence and filed the COC and SOR on February 14, 2023 in good faith.

For these reasons, defendant’s motion to strike the People’s COC and SOR filed on February 14, 2023 is denied.

The People 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 two weeks in advance of 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.

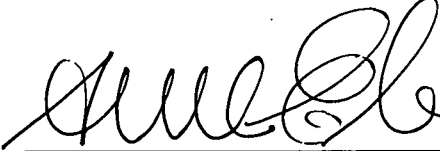
VI.

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
May 9, 2023


Honorable Anne E. Minihan
Justice of the Supreme Court

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