

People v Barnes

2023 NY Slip Op 34851(U)

January 10, 2023

Supreme Court, Westchester County

Docket Number: Indictment No. 22-71884

Judge: Anne E. Minihan

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

JACARDI BARNES

Defendant.

-----X
MINIHAN, J.

FILED
AND ENTERED
ON 1-10 2023
WESTCHESTER
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DECISION & ORDER
Indictment No. 22-71884

Defendant, Jacardi Barnes, charged by Westchester County Indictment Number 22-71884 with Grand Larceny in the Fourth Degree (Penal Law § 155.30[1]) (2 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 INSPECT, DISMISS, and/or REDUCE
CPL ARTICLE 190

Defendant moves pursuant to CPL 210.20 to dismiss the indictment, on the grounds that the evidence before the Grand Jury is insufficient and the Grand Jury proceeding was defective within the meaning of CPL 210.20. In the absence of the People's 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*

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Bello, 92 NY2d 523, 526 [1998]). Here, the evidence presented, if accepted as true, is legally sufficient to establish every element of each offense 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 clearly and properly 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.

II.

MOTION for DISCOVERY, DISCLOSURE, and INSPECTION
CPL ARTICLE 245

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* material¹ and *Rosario* material, shall be provided forthwith. Leave is granted for either party to seek a protective order (CPL Article 245).

The People filed a Certificate of Compliance on or about October 4, 2022 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.

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]).

III.

MOTION to SUPPRESS NOTICED STATEMENT

The People, pursuant to CPL 710.30(1)(a), noticed a written statement allegedly made by defendant to members of the City of Yonkers Police Department on May 26, 2022 at

¹ 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. The Court has served a *Brady* Order on the People, dated November 7, 2022, which details the time period their disclosure must be made in accordance with the standards set for in the United States and New York State Constitutions and CPL Article 245.

approximately 3:40 P.M. while at the City of Yonkers Police Department. Defendant moves to suppress this noticed statement as involuntary, the product of an unlawful arrest, made without being apprised of *Miranda* warnings, and in violation of his 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.

IV.

MOTION to SUPPRESS PHYSICAL EVIDENCE

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 (see *Mapp v Ohio*, 367 US 643[1961]). Insofar as defendant challenges the seizure of evidence not obtained from his person, such as the two allegedly stolen mopeds/motorcycles, the pre-trial hearing will address whether defendant had a reasonable expectation of privacy in them to constitute standing to challenge their seizure (see *Rakas v Illinois*, 439 US 128 [1978]; *People v Ramirez-Portoreal*, 88 NY2d 99 [1996]; *People v Ponder*, 54 NY2d 160 [1981]; *People v White*, 153 AD3d 1369 [2d Dept 2017]; *People v Hawkins*, 262 AD2d 423 [2d Dept 1999]). 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]).

V.

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.

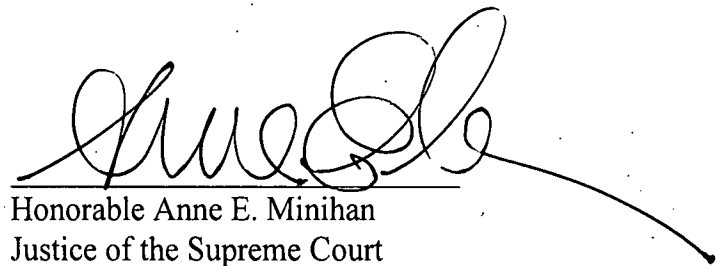
VI.

MOTION for a BILL OF PARTICULARS

Defendant's request for a bill of particulars is denied as untimely (CPL 200.95). Moreover, in accordance with CPL Article 245, defendant has received, or will receive, discovery and a copy of the Grand Jury minutes and exhibits which will allow him to prepare and conduct a defense. The People have also provided specific facts of the case in their Affirmation in Opposition. As such, defendant's motion for a bill of particulars is denied.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
January 10, 2023



Honorable Anne E. Minihan
Justice of the Supreme Court

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