

People v Pilgrim

2023 NY Slip Op 34885(U)

September 5, 2023

Supreme Court, Westchester County

Docket Number: Indictment No. 23-71523-02

Judge: Anne E. Minihan

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COUNTY CLERK

SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 9-5 2023
WESTCHESTER
COUNTY CLERK

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

-against-

PATRICK PILGRIM

Defendant.

DECISION & ORDER
Indictment No. 23-71523-02

-----X
MINIHAN, J.

Defendant, Patrick Pilgrim, is charged by Westchester County Indictment Number 23-71523-02 with Criminal Possession of a Controlled Substance in the Third Degree (Penal Law § 220.16[1]), Criminal Possession of a Controlled Substance in the Fourth Degree (Penal Law § 220.09[1]), Criminally Using Drug Paraphernalia in the Second Degree (Penal Law § 220.50[2]), and Criminally Using Drug Paraphernalia in the Second Degree (Penal Law § 220.50[3]).

Defendant is charged together with codefendant Jack Price with Criminally Using Drug Paraphernalia in the Second Degree (Penal Law § 220.50[2]) and Criminally Using Drug Paraphernalia in the Second Degree (Penal Law § 220.50[3]).

Defendant has filed an omnibus motion consisting of a Notice of Motion and an Affirmation in Support. In response, the People filed an Affirmation in Opposition together with a Memorandum of Law.

I.

MOTION to DISMISS for FACIAL INSUFFICIENCY
and DUPLICITOUS COUNTS¹

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]).

Defendant's motion to dismiss Counts 7 and 8 as duplicative of Counts 3 and 4 is denied. Each count of an indictment may charge only one offense (CPL 200.30[1]) and if a count charges more than one offense, the count is duplicitous (*see People v Smith*, 113 AD2d 905 [2d Dept 1985]). Defendant argues that Counts 7 and 8 contain the same allegations as Counts 3 and 4,

¹ It should be noted that the People did not submit an answer with respect to these motions by defendant.

except that Counts 7 and 8 charge defendant acting in concert with his codefendant for the same conduct. This is not the case. Counts 3 and 4 charge defendant with Criminally Using Drug Paraphernalia in the Second Degree for the items seized from his bedroom, Ziploc baggies and empty capsules (Count 3) and a scale (Count 4). Counts 7 and 8 charge defendant acting in concert with codefendant Jack Price with Criminally Using Drug Paraphernalia in the Second Degree for the empty capsules (Count 7) and scales (Count 8) the police seized from the living room, the common shared area of the apartment, in which defendants both resided. The counts are not duplicitous since the facts of one would not support a conviction under the other.

II.

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 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 specific claims in paragraph 28(a)-(v) of his Affirmation, the Court finds there were no unauthorized persons present in the Grand Jury, oaths were properly administered, no hearsay testimony was admitted, 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 answered questions raised by the Grand Jurors, the prosecutor did not inject his personal opinions or beliefs or vouch for the credibility of witnesses, and the prosecutor did not summarize the testimony.

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 prosecutors' instructions and/or colloquies, the Court denies that branch of the motion.

III.

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.

IV.

MOTION to SUPPRESS PHYSICAL EVIDENCE and MOTION to CONTROVERT the SEARCH WARRANT

The Court orders a *Mapp* hearing prior to trial to determine the propriety of any search resulting in the seizure of property from defendant² (*see Mapp v Ohio*, 367 US 643 [1961]). The

² Defendant, however, lacks standing to contest the seizure of anything from the person of his codefendant, Jack Price.

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]).

Defendant moves this Court to controvert the search warrant for the first floor of 111 South Fulton Avenue in Mount Vernon, New York and to suppress any evidence obtained as a result, alleging that the warrant was overbroad, based upon a confidential informant whose reliability was not established, contained false statements, and was executed beyond its authorized scope. Alternatively, defendant moves for a *Darden* hearing.

With the People's consent, the Court orders a *Darden* hearing since probable cause for the issuance of the search warrant was established based upon information imparted by a confidential informant (*see People v Darden*, 34 NY2d 177 [1974]; *see also People v Edwards*, 95 NY2d 486 [2000][finding defendant is not required to make any threshold showing in order to be entitled to a *Darden* hearing]). As such, this Court will conduct a *Darden* hearing and ***defendant is to submit any questions which he desires the Court to inquire in writing within 4 business days of this Decision and Order (People v Greco*, 187 AD2d 151 [3d Dept 1993]).**

After the *Darden* hearing is held, the Court will issue a Decision and Order with respect to defendant's specific arguments for suppression.

Defendant's request for an unredacted copy of the search warrant affidavit is denied.

V.

MOTION to PRECLUDE NOTICED IDENTIFICATION TESTIMONY
CPL 710

The People have not noticed any identifications of defendant. As such, defendant's motion is moot or premature and is denied.

VI.

MOTION to SUPPRESS NOTICED STATEMENT

The People, pursuant to CPL 710.30(1)(a), noticed one statement allegedly made by defendant to a member of the Mount Vernon Police Department on December 22, 2022. Defendant moves to suppress that statement as the product of an arrest made without probable cause, involuntarily 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 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.

VII.

BRADY MATERIAL

The People acknowledge their continuing duty to disclose exculpatory material (*Brady v Maryland*, 373 US 83 [1963]; see *Giglio v United States*, 405 US 150 [1971]). The People also acknowledge that they have or will comply with their obligations under CPL 245.20(1) (k), (l), and (p). If the People are or become aware of any such material which is arguably subject to disclosure under *Brady* and its progeny and Criminal Procedure Law 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 the Court's in camera inspection and determination as to whether it constitutes *Brady* material discoverable by defendant.

VIII.

MOTION for SEVERANCE and for a SEPARATE TRIAL

Defendant was properly joined in the indictment (CPL 200.40[1]). The allegations against defendant and codefendant stem from execution of the same search warrant, consist of crimes committed within the same location on the same date and time, and involve criminal activity of the same nature. Moreover, defendants are charged as accomplices in two counts of the indictment for their alleged joint possession of drug paraphernalia in the apartment they both lived in.

While this Court may, in its discretion, and for good cause shown, order that defendant be tried separately, defendant fails to demonstrate good cause for severance. Good cause includes a showing that defendant would be "unduly prejudiced by a joint trial" (CPL 200.40[1]). Where the proof against all defendants "is supplied by the same evidence, only the most cogent reasons warrant a severance" (*People v Bornholdt*, 33 NY2d 75, 87 [1973]; *People v Watts*, 159 AD2d 740 [2d Dept 1990]). "[A] strong public policy favors joinder, because it expedites the judicial process, reduces court congestion, and avoids the necessity of recalling witnesses..." (*People v Mahboubian*, 74 NY2d 174, 183 [1989]).

Defendant's speculation that he and codefendant would have antagonistic defenses is an insufficient basis to proceed with separate trials (*People v Seeley*, 22 AD3d 225 [1st Dept 2005])[holding severance properly denied where defenses of defendant and codefendant were not in irreconcilable conflict with each other since each asserted that they were not involved in the drug transaction and jury could conclude actual seller was not defendant and that codefendant did not assist the unknown, unapprehended actual seller]; see *People v Bostic*, 217 AD3d 678, 680 [2d Dept 2023])[holding severance properly denied where codefendants' counsel "took adversarial stances" against defendant, but did not elicit new evidence against defendant that the jury would not otherwise have heard had defendant been granted a separate trial]). "Severance is compelled only where the core of each defense is in irreconcilable conflict with the other and where there is a significant danger that the conflict alone would lead the jury to infer a defendant's guilt" (*People v Martins*, 306 AD2d 423 [2d Dept 2003]). Here, besides defendant and codefendant, six others were arrested and charged during the search warrant execution, allowing the possibility for the jury to conclude that the drugs and paraphernalia belonged to neither defendant or codefendant but one or some of the other individuals not charged under the instant indictment.

Defendant's motion to sever on the ground that there would be potential prejudice arising from a *Sandoval* ruling is denied as premature, with leave to renew after a *Sandoval* ruling, and upon a showing that a joint trial will result in unfair prejudice to him and substantially impair his defense.

Based on the foregoing, defendant's motion to sever is denied.

IX.

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]).

X.

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.

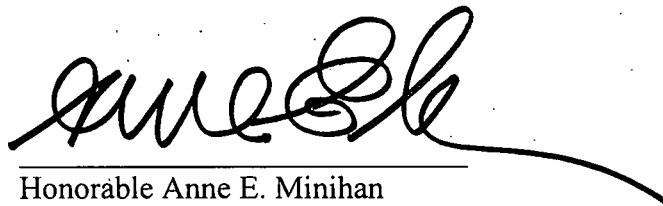
XI.

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
September 5, 2023


Honorable Anne E. Minihan
Justice of the Supreme Court

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