

People v Price

2023 NY Slip Op 34886(U)

September 1, 2023

Supreme Court, Westchester County

Docket Number: Indictment No. 23-71523-01

Judge: Anne E. Minihan

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SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 9/6 2023
WESTCHESTER
COUNTY CLERK

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

-against-

JACK PRICE

Defendant.

DECISION & ORDER
Indictment No. 23-71523-01

-----X
MINIHAN, J.

Defendant, Jack Price, is charged by Westchester County Indictment Number 23-71523-01 with Criminal Possession of a Controlled Substance in the Third Degree (Penal Law § 220.16[1]) and Criminal Possession of a Controlled Substance in the Fourth Degree (Penal Law § 220.09[1]). Defendant is charged together with codefendant Patrick Pilgrim 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, an Affirmation in Support, and a Memorandum of Law. In response, the People filed an Affirmation in Opposition together with a Memorandum of Law.

FILED
Sept 8 2023
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

I.

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 defendant¹ (*see Mapp v Ohio*, 367 US 643 [1961]). 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]).

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, and contained a material misrepresentation by omission of the affiant. Alternatively, defendant moves for *Darden* and *Franks* hearings.

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***

¹ Defendant, however, lacks standing to contest the seizure of anything from the person of his codefendant, Patrick Pilgrim.

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.

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, including that defendant intended to sell cocaine and knowingly possessed packaging materials and scales in concert with codefendant (*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]).

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 to SUPPRESS NOTICED STATEMENT
and to PRECLUDE UNNOTICED STATEMENTS

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.

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.

IV.

MOTION for PRODUCTION of INFORMANT

The motion for disclosure and production of the informant is denied. Defendant moves for disclosure of the identify of the informant without stating what relevant testimony such witness would have on the issue of his innocence or guilt (see *People v Goggins*, 34 NY2d 163 [1974]; *People v Pena*, 37 NY2d 642 [1975]; *People v Chavis*, 113 AD2d 896, 897 [2d Dept 1985]). Similarly, defendant's request for an unredacted copy of the search warrant affidavit is denied.

As indicated *supra*, the Court will conduct a *Darden* hearing on this matter.

V.

MOTION for DISCLOSURE of AGREEMENTS

The People indicate that no cooperation agreement, plea agreement, plea offer, understanding, or the like has been made to any witness expected to testify in this matter. If this changes, the People must disclose the terms of any deal or agreement made between them 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]).

VI.

MOTION for SEVERANCE and for a SEPARATE TRIAL

Defendant moves to sever his trial from that of his codefendant on the basis that a joint trial would be unduly prejudicial to him. Defendant claims that antagonistic defenses may exist between him and his codefendant.

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 each say that the drugs and paraphernalia were not theirs 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.

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

VII.

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.

VIII.

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.

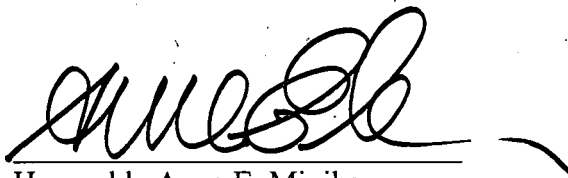
IX.

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 1, 2023



Honorable Anne E. Minihan
Justice of the Supreme Court

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