

People v Hammonds

2023 NY Slip Op 34929(U)

October 11, 2023

Supreme Court, Westchester County

Docket Number: Ind. No. 71961-23

Judge: Susan M. Capeci

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

HORACE HAMMONDS,

Defendant.

-----X

FILED
OCT 12 2023
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER
DECISION AND ORDER
Ind. #71961-23

**FILED
AND
ENTERED**
ON 10-12 2023
WESTCHESTER
COUNTY CLERK

The defendant, charged by indictment with criminal possession of a weapon in the third degree (P.L. 265.02 (1)), two counts of criminal contempt in the first degree (P.L. 215.51(1)(c), and P.L. 215.51(b)(i)), menacing in the second degree (P.L. 120.14 (1)), resisting arrest (P.L. 205.30), and obstructing governmental administration in the second degree (P.L. 195.05), makes this omnibus motion seeking: 1) inspection of the Grand Jury minutes by the Court and the defendant, and thereafter, for the dismissal of the indictment and/or reduction of the charges contained therein; 2) suppression of the statements alleged to have been made by him, or in the alternative, for a Huntley hearing; 3) suppression of physical evidence on the ground that it was recovered as the result of his unlawful arrest based upon a lack of probable cause, or a Mapp/Dunaway hearing; 4) a Sandoval/Ventimiglia/Molineux hearing; 5) disclosure of Brady material, and 6) a reservation of rights to make further pre-trial motions as necessary.

The People consent to an *in camera* review by the Court of the Grand Jury minutes for legal sufficiency and the release of the grand jury testimony to the defendant, consent to a Huntley hearing, Sandoval/Ventimiglia/Molineux hearing, and consent to provide Brady material, but otherwise oppose the motion. The Court now

finds as follows.

1. MOTION TO INSPECT THE GRAND JURY MINUTES
AND TO DISMISS AND/OR REDUCE THE INDICTMENT

Defendant moves pursuant to CPL §210.20(1)(b) and [c] to dismiss the indictment, or counts thereof, on the grounds that the evidence before the Grand Jury was legally insufficient and that the Grand Jury proceeding was defective within the meaning of CPL 210.35. The Court has reviewed the minutes of the proceedings before the Grand Jury.

Pursuant to CPL §190.65(1), an indictment must be supported by legally sufficient evidence which establishes that the defendant committed the offenses charged. Legally sufficient evidence is competent evidence which, if accepted as true, would establish each and every element of the offense charged and the defendant's commission thereof (CPL §70.10[1]); People v Jennings, 69 NY2d 103 [1986]). "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 Bello, 92 NY2d 523 (1998); People v Ackies, 79 AD3d 1050 (2nd Dept 2010)). In rendering a determination, "[t]he reviewing court's inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of each element of the charged crimes and whether the grand jury could rationally have drawn the inference of guilt" (Bello, supra, quoting People v Boampong, 57 AD3d 794 (2nd Dept 2008-- internal quotations omitted).

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)). Accordingly, Defendant's motion to dismiss or reduce for lack of sufficient evidence is denied.

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 supports a finding that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, that the grand jurors who voted to indict heard all the "essential and critical evidence" (see People v Collier, 72 NY2d 298 [1988]; People v Julius, 300 AD2d 167 [1st Dept 2002], *lv den* 99 NY2d 655 [2003]), and that the Grand Jury was properly instructed (see People v Calbud, 49 NY2d 389 [1980] and People v Valles, 62 NY2d 36 [1984]).

In making this determination, the Court does not find that release of such portions of the Grand Jury minutes as have not already been disclosed pursuant to CPL Article 245 to the parties was necessary to assist the Court.

2. MOTION TO SUPPRESS STATEMENTS

The defendant has been served with a CPL 710.30 notice, with respect to oral statements recorded electronically made by him on May 7, 2023, to a member of the Mount Vernon Police Department in front of 34 South 14th Avenue, in Mount Vernon, NY. The defendant argues that the noticed statement should be suppressed as involuntarily made.

The defendant's motion for suppression of the above statements as set forth in the CPL 710.30 notice is granted to the extent that the Court will conduct a Huntley hearing prior to trial concerning the noticed statements allegedly made by the defendant

for the purpose of determining whether Miranda warnings were necessary and, if so, whether he was so advised and made a knowing, intelligent and voluntary waiver thereof, or whether the statements were otherwise involuntarily made within the meaning of CPL 60.45.

3. MOTION TO SUPPRESS PHYSICAL EVIDENCE/PROBABLE CAUSE

The defendant moves to suppress any physical evidence recovered in this case on the ground that he was arrested without probable cause, or in the alternative, a Dunaway/Mapp hearing. The People oppose the motion, arguing that the defendant has not asserted any factual allegations in support of the motion, and that in any event, there was ample probable cause for his arrest. Moreover, no physical evidence was recovered in this case.

The defendant's motion for suppression of physical evidence or for a Dunaway/Mapp hearing is denied as he has not asserted any specific factual allegations, sworn or otherwise, in support of his claim of illegal arrest (People v Mendoza, 82 NY2d 415 (1993)). In any event, the defendant was arrested based upon information provided to police officers by an identified citizen, the victim, which was presumed reliable (People v Boykin, 187 AD2d 661 (2d Dept 1992); People v Newton, 180 AD2d 764 (2d Dept 1992)). Generally, such information is sufficient to provide the police with probable cause to arrest (see People v Williams, 301 AD2d 543 (2d Dept 2003); People v Phillips, 301 AD2d 495 (2d Dept 2001)). In addition, the police officers who arrived on the scene observed the defendant in front of the victim's home in violation of an order of protection. Moreover, the People have not indicated that any

physical evidence was recovered from his person.

4. MOTION FOR SANDOVAL/VENTIMIGLIA/MOLINEUX HEARING

Granted, solely to the extent that Sandoval/Ventimiglia/Molineux hearings, as the case may be, shall be held immediately prior to trial, as follows:

A. Pursuant to CPL §245.20, the People must notify the Defendant, not less than fifteen days prior to the first scheduled date for trial, of all specific instances of Defendant=s uncharged misconduct and criminal acts of which the People have knowledge and which the People intend to use at trial for purposes of impeaching the credibility of the Defendant, or as substantive proof of any material issue in the case, designating, as the case may be for each act or acts, the intended use (impeachment or substantive proof) for which the act or acts will be offered; and

B. Defendant, at the ordered hearing, must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf (see People v Malphurs, 111 AD2d 266 [2nd Dept. 1985]).

5. MOTION FOR DISCLOSURE OF BRADY MATERIAL

The People acknowledge their continuing obligation to disclose Brady material and are directed to disclose any such information to the defense in accordance with CPL article 245 (Brady v Maryland (373 US 83 (1963))).

6. MOTION FOR A RESERVATION OF RIGHTS TO FILE FURTHER PRE-TRIAL MOTIONS

The defendant requests leave to make further motions as necessary. The defendant's motion is denied. CPL 255.20 is controlling with respect to the time frame

for making pre-trial motions and there have been no allegations of good cause for making further motions outside of those time constraints. Any such request will be considered at the time it is made.

This constitutes the Decision and Order of this Court.

Dated: October 11, 2023
 White Plains, New York



HON. SUSAN M. CAPECI
A.J.S.C.

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