

People v Joseph

2024 NY Slip Op 34616(U)

February 20, 2024

Supreme Court, Westchester County

Docket Number: Ind. No. 72428-23

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,

DECISION AND ORDER
Ind. #72428-23

-against-

ROSAIRE JOSEPH,

Defendant

FILED
AND
ENTERED
ON 2-26-2024
WESTCHESTER
COUNTY CLERK

FILED TR
FEB 26 2024
JUSTICE C. L. LONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant, charged by indictment with burglary in the second degree (P.L. 140.25 (2)), and two counts of aggravated criminal contempt (P.L. 215.52 (3)), 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) motion for further discovery, disclosure of Brady material, and to strike the Certificate of Compliance; 3) motion to dismiss counts 2 & 3 of the indictment as multiplicitous; 4) a Sandoval/ Ventimiglia/ Molineux hearing; and 5) motion to strike the People's alibi notice.

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 provide Brady material, and consent to a Sandoval/ Ventimiglia/ Molineux hearing, 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 regard to the defendant's specific claim that the evidence was insufficient to establish Count 1 of the indictment, charging him with burglary in the second degree,

because he did not have the intent to commit a crime upon his entry into the victim's dwelling, the Court finds there was sufficient evidence presented upon which the Grand Jury could indict the defendant on this charge. A defendant's intent to commit a particular offense "may be inferred from [his or her] conduct and from the surrounding circumstances" (People v Knox, 137 AD3d 1330, 1331 [2016]; People v Ward, 141 AD3d 853, 854 (3d Dept 2016)).

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], *iv 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 FOR FURTHER DISCOVERY/ BRADY/ STRIKE COC

The defendant moves to strike the People's Certificate of Compliance ("COC"), filed in this case on November 2, 2023, contending that the People have not provided all of the complaining witness's statements, which includes a statement made prior to her Grand Jury testimony, and that they have failed to provide the full Ring doorbell video

clip. The People respond that they have provided four discovery packages to the defendant which included the Ring doorbell video and the victim's statements, among other items. The People have consented to provide any Brady material to the defendant should it exist, as part of their ongoing obligation to provide such material to the defendant.

CPL 245.20 (1) requires the People to disclose "all items and information that relate to the subject matter of the case and are in the possession, custody or control of the prosecution or persons under the prosecution's direction or control." Further, in satisfying their automatic discovery obligations, the People must "make a diligent, good faith effort to ascertain the existence" of discoverable material and to cause such material "to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control" (CPL 245.20 [2]).

Based upon the People's representations, which the Court accepts, they have complied with full disclosure of the witness statements, and Ring doorbell video in their possession, to the defendant. Moving forward, the People are directed to comply with their obligations to disclose any Brady material in this case, as well as any further discovery, if they have not already done so, including any remaining statements of the complaining witness if they exist. Based upon the People's representations that they have complied with their full discovery obligations, the Court finds no basis upon which to invalidate the COC.

3. MOTION TO DISMISS COUNTS 2 & 3 OF THE INDICTMENT AS MULTIPLICITOUS

The defendant seeks to dismiss Counts 2 & 3 of the indictment, each charging

him with aggravated criminal contempt under Penal Law 215.52 (3)), contending that the charges are multiplicitous as they are each based on the same conduct and same incident.

The People respond that the two counts of aggravated criminal contempt are valid, based on the fact the defendant was previously convicted of two separate crimes of criminal contempt in the first degree (the underlying offense) within the preceding five years, as documented by the Certificates of conviction marked and entered into the Grand Jury as exhibits.

"An indictment is multiplicitous when two separate counts charge the same crime" (People v Saunders, 290 AD2d 461, 463 (2d Dept 2002); see also People v Senisi, 196 AD2d 376 (2d Dept 1994)). "Multiplicity does not exist where each count requires proof of an additional fact that the other does not," or where "a conviction on one count would not be inconsistent with acquittal on the other" (People v Saunders, supra at 463). "If an indictment is multiplicitous it creates the risk that a defendant will be punished for, or stigmatized with a conviction of, more crimes than he actually committed" (People v Alonzo, 16 NY3d 267, 269 [2011]; People v O'Brien, 186 AD3d 1406, 1408 (2d Dept 2020)).

A person is guilty of aggravated criminal contempt, under the subsection the defendant stands charged with in the indictment, when: "3. he or she commits the crime of criminal contempt in the first degree...and has been previously convicted of the crime of criminal contempt in the first degree...within the preceding five years" (P.L. § 215.52 (3)). Based upon the People's contention, as supported by the proof submitted

to the Grand Jury, that the defendant had been previously convicted of two separate incidents of the underlying crime of criminal contempt in the first degree within the preceding five years, the Court will not dismiss the two counts of aggravated criminal contempt as multiplicitous on this pre-trial motion.

"[W]here the evidence reasonably permits a Grand Jury to find that either one or two crimes occurred, an indictment charging two should not be dismissed. When the case is tried, the court can reevaluate the evidence and decide how many crimes the trial jury should consider" (People v Alonzo, 16 NY3d 267, 271 (2011)).

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 TO STRIKE THE PEOPLE'S ALIBI DEMAND

The defendant contends that the People's alibi demand should be stricken since the statute it is based on, CPL 250.20, is unconstitutional pursuant to Wardius v Oregon (412 US 470 (1973)). He claims the statute improperly requires the defense to supply names of alibi witnesses in advance of the People's requirement to provide names of rebuttal witnesses to the defense.

The defendant's motion is denied. New York State courts have specifically found this statute to be constitutional following the United States Supreme Court decision in Wardius v Oregon, *supra* (People v Dawson, 185 AD2d 854 (2d Dept 1992); People v Gill, 164 AD2d 867 (2d Dept 1990)).

This constitutes the Decision and Order of this Court.

Dated: February 20, 2024
White Plains, New York



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

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