

People v Then

2024 NY Slip Op 34725(U)

March 11, 2024

Supreme Court, Westchester County

Docket Number: Ind. 72849-23

Judge: Susan M. Capeci

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

DECISION AND ORDER
Ind. #72849-23

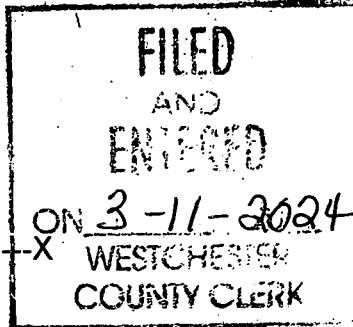
FILED π

-against-

MAR 11 2024

DAVID THEN,

LIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER
Defendant.



-----X

The defendant, charged by indictment with robbery in the first degree (P.L. 160.15(3)), robbery in the third degree (P.L. 160.05), unlawful imprisonment in the first degree (P.L. 135.10), unlawful imprisonment in the second degree (P.L. 135.05), criminal possession of a weapon in the fourth degree (P.L. 265.01(2)), menacing in the second degree (P.L. 120.14(1)), and petit larceny (P.L. 155.25), 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, on the ground they were involuntarily made and obtained following his unlawful arrest, or in the alternative, for a Huntley/Dunaway hearing; 3) a Sandoval/Ventimiglia/Molineux hearing; 4) compelling the People to comply with their discovery obligations and striking the Certificate of Compliance as invalid; and 5) a reservation of rights to file further pretrial 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, and to a Sandoval 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 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 two CPL 710.30 notices, one with respect to an oral statement made to a member of the Yonkers Police Department on January 13, 2023 at approximately 8:39 a.m., in the vicinity of 120 Odell Avenue, and the second with respect to oral statements recorded electronically made by him on March 3, 2023, at approximately 11:10 a.m., at 140 South Broadway, Yonkers, NY to a member of the Yonkers Police Department. The defendant argues that the noticed statements should be suppressed as involuntarily made, and on the ground there was no probable cause for his arrest.

The defendant's motion for suppression of the above statements as set forth in the CPL 710.30 notices 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.

The defendant's motion for suppression of the above statements based upon his claim they were obtained as the result of his unlawful arrest 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)). Further, the defendant was arrested based on an arrest warrant.

3. 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]).

2. MOTION FOR FURTHER DISCOVERY/ STRIKE COC

The defendant moves to strike the People's Certificate of Compliance ("COC"), filed in this case on December 21, 2023, contending that it was invalid, as they filed it without having provided required discovery. Specifically, he seeks disclosure of: 1) DV aid notes of William Durecut uploaded in unreadable format on 12/21/23; 2) all DV aid notes since May 2023; 3) body camera recordings of a phone call to defendant by officers on Jan. 13, 2023; 4) video recordings of statements made by William Durecut and Gabriella Irizarry; 5) slack messages sent by Yonkers police or law enforcement agencies related to this case; 6) messages between Yonkers Police and the NYC Police; 7) any reports or body camera footage from March 3, 2023, while picking up defendant from the psychiatric hospital to return on the arrest warrant; 8) statements, district attorney notes, and 1k material related to Dr. Jessica Pearson; 9) reports or body camera footage from Jan. 13, 2023, resulting in the defendant's psychiatric hospitalization; 10) any memos, reports, etc. relating to the Yonkers Police learning of

the defendant's psychiatric hospitalization; and 11) the complete arrest warrant.

The People respond that they provided all discovery in their possession in filing their initial COC, and have served a supplemental COC as of February 27, 2024. The People state they have complied with their discovery obligations and that their initial COC should not be invalidated as it was filed in good faith.

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]). "An analysis of whether the People made reasonable efforts sufficient to satisfy CPL article 245 is fundamentally case-specific, as with any question of reasonableness, and will turn on the circumstances presented" (People v Bay, 2023 WL 8629188, at 6 (Court of Appeals decided Dec. 14, 2023)).

In reviewing the People's responses to each of the defendant's specifically requested items of discovery, the Court notes that the People have represented that they have diligently searched, and that many of the requested items do not exist. The items the People represent do not exist include items, as numbered above: 3) body camera recordings of a phone call to defendant by officers on Jan. 13, 2023; 4) video recordings of statements made by William Durecout and Gabriella Irizarry; 5) slack

messages sent by Yonkers police or law enforcement agencies related to this case; 6) messages between Yonkers Police and the NYC Police; 7) any reports or body camera footage from March 3, 2023, while picking up defendant from the psychiatric hospital to return on the arrest warrant; 8) statements, district attorney notes, and 1k material related to or with Dr. Jessica Pearson; and 9) reports or body camera footage from Jan. 13, 2023, resulting in the defendant's psychiatric hospitalization.

With regard to items as numbered above 1) and 2), the People indicate that these were each provided in advance of the filing of their COC, and that the DV aid notes of William Durecout were uploaded in Word format which was readable. They also re-sent these notes in any event. The People also indicate no DV aid notes exist apart from those previously provided.

With respect to item numbered above 10) [any memos, reports, etc. relating to the Yonkers Police learning of the defendant's psychiatric hospitalization], the People state that they did not possess any such information at the time they filed their initial COC. The People later did receive information, on February 8, 2024, of the defendant's dates of admission and discharge to the psychiatric hospital, and that this information was disclosed to the defendant on February 9, 2024. Lastly, the People indicate they also did not have the defendant's arrest warrant (item numbered above 12) at the time they filed their initial COC. They later made inquiry and received a copy of the arrest warrant on February 9, 2024, which was produced to the defendant on that same date.

In determining whether the People have exercised due diligence in satisfying their discovery obligations, "courts should generally consider, among other things, the

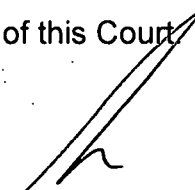
efforts made by the prosecution and the prosecutor's office to comply with the statutory requirements, the volume of discovery provided and outstanding, the complexity of the case, how obvious any missing material would likely have been to a prosecutor exercising due diligence, the explanation for any discovery lapse, and the People's response when apprised of any missing discovery" People v Bay, supra at 6; People v Williams, 2024 WL 479408, at 1 (3d Dept Feb. 8, 2024). In consideration of all the above factors, the Court finds no basis upon which to invalidate the COC. The People have made diligent efforts to comply with their discovery obligations and have now provided all such discovery as requested by the defendant, with the filing of the supplemental COC,

5. 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: March 11, 2024
White Plains, New York



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

To: Hon. Miriam E. Rocah
Westchester County District Attorney
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601
Att: Daniela Parra, Esq.
Assistant District Attorney

Legal Aid Society
Attorneys for Defendant
150 Grand Street, Suite 100
White Plains, New York 10601
Att: Julie Schecter, Esq.