

People v Oakley

2024 NY Slip Op 34784(U)

April 19, 2024

Supreme Court, Westchester County

Docket Number: Ind. No. 73002-23

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. No. 73002-23

-against-

HOSANI OAKLEY,
Defendant.

**FILED
AND
ENTERED**
ON 4-23 X 2024
WESTCHESTER
COUNTY CLERK

FILED
APR 23 2024
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant, charged by indictment with burglary in the second degree (P.L. 140.52 (2)); strangulation in the second degree - causing physical injury (P.L. 121.12); menacing in the second degree (P.L. 120.14 (1)); criminal possession of a weapon in the fourth degree (P.L. 265.01 (2)); assault in the third degree (P.L. 120.00 (1)); three counts of endangering the welfare of a child (P.L. 260.10 (1)); two counts of criminal contempt in the second degree (P.L. 215.50 (3)); two counts of criminal contempt in the first degree (P.L. 215.51 (b)(iv)); burglary in the first degree (P.L. 140.30 (2)); four counts of assault in the second degree (two under P.L. 120.05 (6), one under 120.05 (2), and one under 120.05 (12)); two counts of aggravated criminal contempt (P.L. 215.52 (1)); criminal mischief in the fourth degree (P.L. 145.00 (1)); and petit larceny (P.L. 155.25), makes this omnibus motion seeking: 1) motion for further discovery and to strike the Certificate of Compliance; 2) 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; 3) a Sandoval/ Ventimiglia/ Molineux hearing; and 4) motion to strike the demand for an 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, and consent to a Sandoval/ Ventimiglia/ Molineux hearing, but otherwise oppose the motion. The Court now finds as follows.

1. MOTION FOR DISCOVERY / STRIKE CERTIFICATE OF COMPLIANCE

The defendant was indicted on the above noted charges on November 14, 2023, which indictment involves charges that are alleged to have taken place on four dates, May 30, 2023, May 31, 2023, August 12, 2023, and August 17, 2023. He was arraigned on the indictment before this Court on November 28, 2023. The People filed their Certificate of Compliance ("COC") and announced trial readiness on January 18, 2024, and later filed a Supplemental COC on March 22, 2024.

The defendant now challenges the COC filed as insufficient, for failing to provide many items of discovery. He contends that since the COC was insufficient, the People's declaration of trial readiness was illusory. The defendant contends that although many items of missing discovery were eventually provided with the Supplemental COC, these items nevertheless existed at the time the original COC was filed but were not provided at that time. The defendant also argues that the People have still not provided certain discoverable materials including missing pages 2, 4, 5, and 7 of the Domestic Incident Report from the August 12, 2023 incident, and the 1k materials for witness Jacquai Ganson. He argues that the COC should be deemed invalid because it was not filed in good faith¹.

The People respond that their initial COC and statement of trial readiness was filed in good faith and that they used due diligence in filing the initial COC. They argue that their later disclosure of a few missing discovery items, in their Supplemental COC,

1. The defendant is not alleging any outstanding items of discovery with respect to the May 31, 2023 incident.

does not invalidate their earlier filed COC which contained a large amount of discoverable materials. Lastly, the People are seeking an *in camera* review and guidance as to disclosure of 1k materials related to a witness Jacquai Ganson.

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... Although the relevant factors for assessing due diligence may vary from case to case, 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, 2023 WL 8629188, at 6 (Ct of Appeals, decided Dec. 14, 2023)).

The People's production of discovery materials will be specifically addressed as follows.

May 30, 2023 Incident

The charges pertaining to this date in the indictment are burglary in the second degree, strangulation in the second degree - causing physical injury, menacing in the second degree, criminal possession of a weapon in the fourth degree, assault in the third degree, and endangering the welfare of a child. The defendant contends that with respect to this incident, in the initial COC, the People failed to provide photographs of the knife taken into evidence and communications with the lab pertaining to the knife, body cam videos from two of the three officers on the scene, and the booking photos and report.

The People respond that at the time their initial COC was filed, there were no photographs of the knife that had been taken by the police in existence, nor had there been communications with the lab regarding the knife or DNA testing on it. They had not requested that the knife that was recovered be processed until after the filing of the COC. Both the photographs and the lab communications were later provided to the defendant as part of discovery, as indicated on the Supplemental COC. The People also represent that there is only one body worn camera video in existence which was already provided with their initial COC, and that there was no booking report. The People submit that although there was one booking photo that had not been provided, it was later provided with the Supplemental COC.

First, the Court accepts the People's representation that there are no additional body worn camera videos, or any booking report in existence to be produced to the defendant. With regard to the photographs and DNA testing of the knife, the People

represent that these items of discovery did not exist at the time of the filing of the initial COC. Thus, as the People have no obligation to produce discovery which does not exist (see People v Foster, 74 Misc3d 1225(A), Sup. Ct. NY Co. 2022), the People's initial COC is not invalidated on this basis. Moreover, they did provide these materials in their Supplemental COC after they were created. Lastly, with respect to the booking photo that was not provided with the initial COC, given the volume of discovery provided, and the fact that the booking photo was provided with the Supplemental COC, the initial COC will not be invalidated on this basis.

August 12, 2023 Incident

The charges pertaining to this date are two counts of criminal contempt in the first degree. In his Reply, the defendant asserts that upon review, the disclosure materials relating to the charges on this date were in fact provided prior to the filing date of the initial COC. However, the defendant maintains that there are still certain missing pages of the Domestic Incident Report [pages 2, 4, 5 and 7], and that 1k material for witness Jacquai Ganson has not been provided.

As noted above, the People are seeking an *in camera* review and guidance as to disclosure of 1k materials related to a witness Jacquai Ganson. This is a civilian witness, who is the father of the victim.

CPL 245.20(1)(k) states that the prosecution shall disclose to the defendant 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, including but not limited to:

"All evidence and information, including that which is known to police or other law enforcement agencies acting on the government's behalf in the case, that tends to: (i) negate the defendant's guilt as to a charged offense; (ii) reduce the degree of or mitigate the defendant's culpability as to a charged offense; (iii) support a potential defense to a charged offense; (iv) impeach the credibility of a testifying prosecution witness; (v) undermine evidence of the defendant's identity as a perpetrator of a charged offense; (vi) provide a basis for a motion to suppress evidence; or (vii) mitigate punishment. Information under this subdivision shall be disclosed whether or not such information is recorded in tangible form and irrespective of whether the prosecutor credits the information..." (CPL 245.20(1)(k)).

Although the People are seeking *in camera* review as to disclosure of 1k materials related to Jacquai Ganson, the Court finds it more appropriate for the People to move for a Protective Order pursuant to CPL 245.70 if they are seeking nondisclosure of any 1k evidence regarding this witness. The People are directed to either move for a Protective Order or to disclose the evidence at issue within 10 days of the date of this Order.

Lastly, the People assert they have provided the full Domestic Incident Report with respect to this incident. The People and the defense counsel shall confer, and the People shall provide another copy if the defense does not in fact have all the pages of the report.

August 17, 2023

The charges pertaining to this incident are burglary in the first degree, assault in the second degree, aggravated criminal contempt, criminal mischief in the fourth degree, and petit larceny. The defendant contends that the People failed to provide disclosure prior to filing their initial COC, of the following with respect to these charges: 1k material for 2 police witnesses, the arrest warrant issued for defendant, the missing

pages of the Domestic Incident Report, EMT medical reports for Kylah Ganson's treatment at the scene, the June 20, 2023 Order of Protection referenced in the Grand Jury and admitted into evidence, booking photos and report, September 5, 2023 arrest report for the defendant, and communications and reports from Det. Love regarding the outstanding warrant for the defendant.

The People respond that with respect to the above materials, no arrest report exists for September 5, 2023, and that they are not calling those two officers as witnesses so did not provide 1k materials as to them for that reason. They assert the arrest warrant, once executed, was no longer maintained by the White Plains Police Department, but rather the White Plains City Court, and was later produced along with the Supplemental COC, as was the booking card. The People maintain that the medical reports of Kylah Ganson's treatment at the scene are not in their possession, but that they agree to subpoena such materials. The People state that overall, they provided voluminous disclosure materials, and their failure to provide full pages of the Domestic Incident Report, and the copy of the June 20, 2023 order of protection [they provided 2 copies of the May 30, 2023 order of protection] was an inadvertent scanning error, later rectified by production of these items in the Supplemental COC.

The Court finds that the People's initial COC was filed in good faith, after the exercise of due diligence, and was reasonable under the circumstances, and that the errors in scanning documents were remedied in providing these documents with the Supplemental COC. As noted by the People, the arrest warrant was not initially in their possession but was obtained by them, and was later provided with the Supplemental

COC. Nevertheless, the People are required to attempt to obtain disclosure of the complaining witness's medical records relating to the charged incidents, which would include her treatment at the scene (see People v Hall, 76 Misc3d 804, 809 (N.Y. Crim. Ct. 2022); People v Askin, 68 Misc3d 372, 380-81 (County Ct., Nassau Co. 2020)). The Court will not invalidate the filed COC on this basis, but the People shall attempt to obtain the above noted discovery, and upon doing so, shall file a supplemental COC if further disclosure is obtained.

2. 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 the charge of burglary in the second degree with regard to the May 30, 2023 incident, because he did not enter the dwelling unlawfully, the Court finds no merit to this contention. A defendant's unlawful entry can be established circumstantially (People v Mosley, 200 AD3d 1664 (4th Dept 2021)), and his prior relationship with the complainant alone does not provide a basis to conclude he entered the location lawfully (see People v Diaz, 173 AD2d 554 (2d Dept 1991)).

The defendant also asserts that the evidence was insufficient to establish the charge of strangulation, because the complainant did not sustain a loss of consciousness or a physical injury. Physical injury is defined as "impairment of physical condition or substantial pain" (Penal Law § 10.00[9]). Based upon the testimony, the Court finds there was sufficient evidence upon which the complainant could be found to

have sustained a physical injury as a result of the strangulation and bruising (see People v Rahman, 84 AD3d 1119 (2d Dept 2011)).

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.

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]).

4. 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: April 19, 2024
White Plains, New York



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

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