

People v Knox

2024 NY Slip Op 34786(U)

March 27, 2024

Supreme Court, Westchester County

Docket Number: Ind. No. 73128-23

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.# 73128-23

-against-

JELANI KNOX,
Defendant.

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AND
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ON 4-2 20 24
WESTCHESTER
COUNTY CLERK

FILED
APR -2 2024
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant, charged by indictment with burglary in the first degree (P.L. 140.30(2)), robbery in the second degree (P.L. 160.10(2)(A)), two counts of assault in the second degree (P.L. 120.05(2) and 120.05(6)), and grand larceny in the fourth degree (P.L. 155.30 (5)), 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) further discovery, disclosure of Brady and Rosario material; 3) suppression of physical evidence recovered, on the ground he was arrested without probable cause, or a Mapp/Dunaway hearing; 4) suppression of statements alleged to have been made by the defendant to law enforcement authorities, or a Huntley hearing; 5) a Sandoval/Ventimiglia/Molineux hearing; and 6) a reservation of rights to make further pre-trial motions as necessary and to hold any hearing at least 20 days in advance of the trial.

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 Sandoval/Ventimiglia/Molineux hearing, and consent to discovery and disclosure of Brady material within the parameters of CPL article 245, 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]).

To the extent the defendant contends the indictment contains duplicitous counts, he has failed to specify any particular counts he is claiming are duplicitous. An indictment is duplicitous when a single count charges more than one offense (People v Alonzo, 16 NY3d 267 (2011)). The Court finds the dismissal of any counts on that basis to be unwarranted.

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, DISCLOSURE OF BRADY MATERIAL

Defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 245 and/or already provided by the People. If any items set forth in CPL Article 245 have not already been provided to Defendant pursuant to that Article,

said items are to be provided forthwith. Any party is granted leave, if required, to apply for a Protective Order in compliance with CPL Article 245, upon notice to the opposing party and any party affected by said Protective Order. The People are directed to file a Certificate of Compliance with CPL Article 245 and the instant Order upon completion of their obligations thereunder, if they have not already done so. 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. Similarly, the People acknowledge having provided any witness statements as required by CPL 245.20(1)(e) as part of discovery.

3. MOTION TO SUPPRESS PHYSICAL EVIDENCE/ PROBABLE CAUSE HEARING

The defendant seeks to suppress all physical evidence that was recovered as a result of his arrest, which he contends was effected without probable cause, or in the alternative, a Dunaway/Mapp hearing. He argues that the police placed him under arrest on August 17, 2023 without probable cause having been established for his commission of a crime. Any information they had about him on that date resulted from a radio transmission from another officer.

The People oppose the motion, asserting that no physical evidence was recovered from the defendant as a result of his arrest, and that in any event, there was ample probable cause for his arrest.

The defendant's motion for a Dunaway/Mapp hearing or suppression of physical evidence is denied. First, as stated by the People, no physical evidence was recovered

from the defendant in this case¹. Further, the incident for which the defendant was arrested and later indicted is alleged to have occurred on August 8, 2023, at the victim's apartment in White Plains, NY. On that date, she contacted the police and gave a statement identifying the defendant, who she knew well and has a child in common with, as having committed crimes against her. The defendant was not placed under arrest until August 17, 2023, when the police responded to a separate call of a disturbance at a different location in White Plains. During the initial police investigation of the August 17, 2023 disturbance, they learned the defendant's identity by taking his pedigree information, thus confirming him as the person who was involved in the August 8, 2023 incident.

The defendant's August 17, 2023 arrest was based upon information previously provided to police officers regarding the August 8, 2023 incident, 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)). Moreover, the defendant's identity is not subject to suppression as the fruit of an allegedly unlawful arrest (People v Tolentino, 14 NY3d 382 (2010)).

Lastly, the information conveyed to the arresting officer about the August 8, 2023 incident was sufficient to establish probable cause for the defendant's arrest. "Under the fellow officer rule, a police officer can make a lawful arrest even without personal

¹ Although the vehicle the defendant was driving at the time of his arrest was initially impounded and subjected to an inventory search, the People are not seeking to offer any evidence with respect to it.

knowledge sufficient to establish probable cause, so long as the officer is acting 'upon the direction of or as a result of communication with' a fellow officer . . . in possession of information sufficient to constitute probable cause for the arrest" (People v Ketcham, 93 NY2d 416, 419 (1999); People v Oglesby, 121 AD3d 818, 819 (2d Dept 2014)).

Accordingly, the defendant's motion for a hearing on the issue of probable cause and the subsequent recovery of evidence is denied (see People v Mendoza, 82 NY2d 415 (1993)).

4. MOTION TO SUPPRESS STATEMENTS

The People have served the defendant with three CPL 710.30 notices with respect to oral statements recorded electronically, alleged to have been made by him to members of the White Plains Police Department, on July 14, 2023, on August 17, 2023 at 75 S. Broadway in White Plains, NY, and on August 17, 2023 in transport to 77 South Lexington Avenue from 75 S. Broadway, in White Plains, NY. The defendant argues that these noticed statements should be suppressed as involuntarily made, and on the ground that they were each obtained as a result of his unlawful 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.

As more fully discussed in Point 3, infra, the defendant's motion for a hearing based upon his claim of unlawful arrest is denied.

5. 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]).

8. MOTION FOR A RESERVATION OF RIGHTS TO MAKE 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.

To the extent the defendant requests that any hearings in this case be held at least 20 days in advance of trial to allow transcription of the minutes, such request is denied. A request for any hearing minutes to be expedited, if necessary, will be considered at the time it is made.

This constitutes the Decision and Order of this Court

Dated: March 27, 2024
White Plains, New York



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