

People v White

2016 NY Slip Op 33017(U)

August 24, 2016

County Court, Dutchess County

Docket Number: 769/2016

Judge: Peter M. Forman

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Ind 769-2016

STATE OF NEW YORK: COUNTY OF DUTCHESS
COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

FRANK WHITE, JR.,

Defendant.

DECISION AND ORDER

Ind. No. 28/2016

William V. Grady,
District Attorney
By: Cindy Murphy, Esq.

Ryanne G. Konan, Esq.
Attorney for Defendant

HON. PETER M. FORMAN, County Court Judge

The following papers were read and considered in deciding this motion:

PAPERS NUMBERED

| | |
|--|-------|
| NOTICE OF OMNIBUS MOTION..... | 1 |
| AFFIRMATION IN SUPPORT..... | 2 |
| EXHIBITS..... | 3-6 |
| SUPPLEMENTAL DEMAND FOR DISCOVERY... | 7 |
| REQUEST FOR SUPPLEMENTAL BILL OF PARTICULARS..... | 8 |
| ANSWERING AFFIRMATION..... | 9 |
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Defendant stands accused by the Grand Jury of the County of Dutchess of the following crimes: two counts of Criminal Possession of a Controlled Substance in the Third Degree, a Class B Felony, in violation of §220.16(1) of the Penal Law; and one count of Criminal Possession of a Controlled Substance in the Fourth Degree, a Class C Felony, in violation of §220.09(1) of the Penal Law.

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By Omnibus Motion, Defendant seeks various forms of relief of which this Court will address in order:

GRAND JURY MINUTES AND INDICTMENT

With respect to Defendant's motion for inspection of the Grand Jury minutes and dismissal or reduction of the indictment, the same is granted to the extent that the Court has reviewed such minutes for the purpose of determining Defendant's motion to dismiss or reduce the charges to a lesser included offense upon the grounds that said inspection would allegedly show that the evidence upon which the indictment was based was legally incompetent, insufficiently corroborated or otherwise inadmissible. [CPL §190.65(1)]. In assessing the legal sufficiency of the evidence presented, it is noted that the applicable standard of review is proof of a *prima facie* case, not proof beyond a reasonable doubt. [*People v. Gordon*, 88 N.Y.2d 92 (1996)].

"In the context of a motion to dismiss an indictment, the sufficiency of the People's presentation 'is properly determined by inquiring whether the evidence viewed in the light most favorable to the People, if unexplained and uncontradicted, would warrant conviction by a petit jury.'" [*People v. Galatro*, 84 N.Y.2d 160, 163 (1994), quoting *People v. Jennings*, 69 N.Y.2d 103, 114 (1986)]. "The People are required to make out a *prima facie* case that the accused committed the crime charged by presenting legally sufficient evidence establishing all of the elements of the crime." [*Id.* at 164]. "The inquiry of the reviewing court is limited to ascertaining the 'legal sufficiency' of the evidence, and does not include weighing the proof or examining its adequacy at the grand jury stage." [*People v. Jensen*, 86 N.Y.2d 248, 252 (1995)]. CPL §70.10 defines "legally sufficient evidence" as 'competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant's commission thereof.'

Having examined the minutes of the testimony before the Grand Jury of Dutchess County, this Court determines that, viewing this evidence in the light most favorable to the People, the indictment is based upon evidence which is legally sufficient to establish that Defendant committed the offenses as set forth therein and competent and admissible evidence before the Grand Jury provides reasonable cause to believe that Defendant committed those offenses [CPL §190.65; People v. Jensen, 86 NY2d 248 (1995); People v. Jennings, 69 N.Y.2d 103 (1986); People v. Swamp, 84 N.Y.2d 725(1994); People v. Haney, 30 N.Y.2d 328 (1972)].

GRAND JURY PROCEEDINGS

“A grand jury proceeding is defective warranting dismissal of the indictment [pursuant to CPL 210.35(5)] only where the proceeding fails to conform with the requirements of CPL article 190 to such degree that the integrity thereof is impaired and prejudice to the defendant may result.” [People v. Burch, 108 A.D.3d 679, 680 (2d Dept. 2013). See also People v. Moffitt, 20 A.D.3d 687, 688 (3d Dept. 2005)]. “The exceptional remedy of dismissal under CPL 210.35(5) should be limited to those instances where prosecutorial wrongdoing, fraudulent conduct or errors potentially prejudice the ultimate decision reached by the Grand Jury.” [People v. Miles, 76 A.D.3d 645, 645 (2 Dept. 2010), quoting People v. Huston, 88 N.Y.2d 400, 409 (1996). See also People v. Reed, 71 A.D.3d 1167, 1168 (2d Dept. 2010); People v. Ramirez, 298 A.D.2d 413 (2d Dept. 2002)].

This Court finds nothing that would render this indictment defective. Accordingly, Defendant’s motion to dismiss the indictment on the grounds that the Grand Jury proceedings were defective is denied.

Defendant also moves to dismiss the indictment on the grounds that the members of the Grand Jury did not include any blacks or other minorities. Defendant argues that “it could be inferred” from the composition of the Grand Jury that “black and any other minorities were excluded.”

In order to mount a successful challenge to the composition of a Grand Jury, a defendant must demonstrate either: (1) that persons belonging to a distinctive, substantial, and identifiable group were not fairly represented in the venire from which the Grand Jury was selected; or (2) that a recognizable and distinct class that has historically received different treatment under the law has been substantially underrepresented in the Grand Jury pool over a significant period of time. [*People v. Taylor*, 191 Misc.2d 672, 674 (Sup. Ct., Queens County 2002)]. “The first suggests a fair cross-section violation, the second a violation of equal protection.” [*id.* at 674].

“Underrepresentation, alone, however, will not establish a constitutional violation.” [*id.* at 674]. “To make out a prima facie showing requiring the government to respond, a defendant must demonstrate that the underrepresentation actually resulted from the selection process.” [*id.* at 674].

Here, Defendant has not presented any information regarding the composition of the venire from which the Grand Jury was selected. Defendant also has not presented any information regarding the composition of the Grand Jury pool over a significant period of time. Finally, Defendant has not identified any defects in the selection process. Therefore, notwithstanding Defendant’s assertion that discrimination “could be inferred” from the composition of the Grand Jury that indicted him, Defendant has failed to make the requisite *prima facie* showing that any alleged underrepresentation in the venire for this Grand Jury, or in

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the Grand Jury pool over a significant period of time, actually resulted from the selection process. Therefore, Defendant's motion to dismiss the indictment on these grounds is denied.

GRAND JURY INSTRUCTIONS AND MINUTES

This Court has also reviewed the instructions given by the Assistant District Attorney to the Grand Jury and finds that the same satisfy the applicable standards [*People v. Calbud, Inc.*, 49 NY2d 389(1980)]. Accordingly, Defendant's motion to dismiss or reduce the indictment is denied.

Defendant's motion to be provided with a copy of the Grand Jury minutes is denied in the exercise of discretion. Defendant's motion to be provided with a copy of the legal instructions given to the Grand Jury is also denied in the exercise of discretion.

DISCOVERY

Defendant's motion for discovery is granted solely to the extent that the District Attorney is directed to make available to Defendant's attorney any and all property and information required to be disclosed pursuant to CPL 240.20.

Defendant's discovery motion also seeks disclosure of *Rosario* material that is in the possession of the People. The People are under no obligation to disclose these materials at this stage of the proceedings. Therefore, Defendant's motion seeking production of this material is denied, subject to the People's compliance with their obligations under CPL §240.43 and §240.45, and with their continuing obligations under *Brady v. Maryland* and its progeny.

SUPPRESSION OF STATEMENTS

Defendant's motion to suppress the statements identified in the CPL §710.30 notice served by the People is granted to the extent that a Huntley hearing will be held prior to trial. [CPL§710.60[4]; People v. Huntley, 15 N.Y.2d 72 (1965)]. Defendant's motion papers also adequately plead a legal basis for suppression as required by CPL §710.60(1). [People v. Frank, 65 A.D.3d 461 (1st Dept. 2009); People v. Moore, 186 A.D.2d 591 (2d Dept. 1992); People v. Huggins, 162 A.D.2d 129 (1st Dept. 1990)]. Those allegations do not permit summary determination of the motion as authorized by CPL §710.60(2) or CPL §710.60(3). Accordingly, Defendant's motion to suppress those statements as the product of an unlawful search and seizure is granted to the extent that a hearing on the motion will take place prior to trial. [Dunaway v. New York, 422 U.S. 200 (1979); People v. Burton, 6 N.Y.3d 584 (2006)].

SUPPRESSION OF PHYSICAL EVIDENCE

Defendant's motion papers adequately plead a legal basis for suppression of physical evidence as required by CPL §710.60(1). [People v. Frank, 65 A.D.3d 461 (1st Dept. 2009); People v. Moore, 186 A.D.2d 591 (2d Dept. 1992); People v. Huggins, 162 A.D.2d 129 (1st Dept. 1990)]. Those allegations do not permit summary determination of the motion as authorized by CPL §710.60(2) or CPL §710.60(3). Accordingly, Defendant's motion to suppress physical evidence as the product of an unlawful search and seizure is granted to the extent that a hearing on the motion will take place prior to trial. [Dunaway v. New York, 422 U.S. 200 (1979); People v. Burton, 6 N.Y.3d 584 (2006)].

BRADY AND IMPEACHING MATERIAL

Defendant's motion to be provided with all Brady and impeaching material is granted to the extent that the People shall provide Defendant with any evidence in their possession or control which is favorable to him as provided in Brady v. Maryland, 373 US 83 (1963) and United States v. Bagley, 473 US 667 (1985). The People are reminded of their continuing obligation pursuant to Brady with respect to the delivery of any materials now in their possession and/or control or which may hereafter come into their possession and/or control or which may tend to exculpate Defendant or which is otherwise favorable to Defendant. This obligation includes any "evidence of a material nature favorable to the defense which, if disclosed, could effect the ultimate decision on a suppression motion." [People v. Williams, 7 N.Y.3d 15, 19 (2006), quoting People v. Geaslen, 54 N.Y.2d 510 (1981)].

SANDOVAL

The Court grants Defendant's motion for a Sandoval hearing to the extent that a hearing is ordered which will be held immediately prior to trial to determine which, if any, bad acts or convictions may be used as impeachment in the event that the Defendant elects to testify at trial. See People v. Sandoval, 34 NY2d 371 (1974). The District Attorney has provided Defendant's attorney with a true copy of Defendant's Division of Criminal Justice Services Summary Case History. The Court orders the District Attorney to disclose to Defendant's attorney any and all acts upon which it intends to impeach Defendant, including without limitation all prior instances of Defendant's alleged prior uncharged criminal, vicious or immoral conduct that the People intend to use at trial for the purposes of impeaching Defendant's credibility. [CPL §240.43].

VENTIMIGLIA

Defendant has requested that the People supply Defendant with all specific instances of prior uncharged conduct which the People will seek to offer against Defendant at trial upon its direct case.

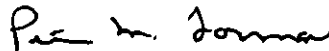
The People have not made any application to offer evidence of any specific instances of uncharged crimes which they intend to offer in their direct case pursuant to People v Ventimiglia, 52 N.Y.2d 350 (1981). If the People intend to make an application pursuant to People v Ventimiglia, they should do so prior to the Sandoval hearing ordered herein .

LEAVE TO FILE ADDITIONAL MOTIONS

Defendant's request for leave to file additional motions is granted to the extent that Defendant may file any motion that Defendant deems fit within the forty-five (45) day time limit. Subsequent to the forty-five (45) day time limit, Defendant may make further motions only upon a showing of good cause.

So Ordered.

Dated: Poughkeepsie, NY
August 24, 2016



PETER M. FORMAN
COUNTY COURT JUDGE