

People v Carr

2018 NY Slip Op 33609(U)

April 9, 2018

County Court, Dutchess County

Docket Number: 144/2017

Judge: Peter M. Forman

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2017/2925

STATE OF NEW YORK: COUNTY OF DUTCHESS
COUNTY COURT

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THE PEOPLE OF THE STATE OF NEW YORK,

DECISION AND ORDER
Ind. No. 144/2017

Plaintiff,

William V. Grady,
District Attorney
By: Sinead M. McLoughlin, Esq.

- against -

JAMES CARR,

Beth Gibson, Esq.
Counsel for Defendant

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
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Defendant stands accused by the Grand Jury of the County of Dutchess of three counts of Criminal Sale of a Controlled Substance in the Third Degree, a Class B Felony, in violation of §220.39(1) of the Penal Law; and three 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.

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

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, these counts of the indictment are based upon evidence which is legally sufficient to establish that Defendant committed the offenses as set forth therein, and the 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.

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.

The People's motion for reciprocal discovery is granted to the extent that Defendant is directed to make available to the People any and all property and information required to be disclosed pursuant to CPL 240.30.

SUPPRESSION OF IDENTIFICATION

The People have served a CPL §710.30 notice stating that an undercover officer was shown a photograph of Defendant on May 19, 2017. The undercover identified the person depicted in that photo as the same person who sold cocaine to the undercover in the City of Poughkeepsie approximately one hour earlier.

SUPPRESSION OF EVIDENCE

Defendant seeks suppression of all evidence that the police obtained on the grounds that this evidence was obtained as a result of an unlawful search and seizure.

It is well settled that suppression hearings “are not automatic or generally available for the asking by boilerplate allegations.” [*People v. Mendoza*, 82 N.Y.2d 415, 422 (1993). See also *People v. Wright*, 54 A.D.3d 695 (2d Dept. 2008); *People v. Dash*, 50 A.D.3d 914, 915 (2d Dept. 2008)]. Defendant’s motion to suppress evidence is denied because it fails to allege grounds constituting a legal basis for that motion, and because it fails to set forth factual allegations sufficient to warrant such a hearing. [CPL §710.60(3); *People v. Cartwright*, 65 A.D.3d 973 (1st Dept. 2009) (suppression hearing not warranted based upon “defendant’s assertion that he was ‘committing no visible crime’ at the time of his confrontation with police”); *People v. France*, 50 A.D.3d 266, 267 (1st Dept. 2008), aff’d 12 N.Y.3d 790 (2009) (“it was not enough for defendant to deny that he had committed the crime and to state that he was doing nothing unlawful at the time of his arrest”); *People v. Doyle*, 273 A.D.2d 69, 69 (1st Dept. 2000) (defendant’s “conclusory assertion that he had not committed a crime was insufficient to warrant a hearing”); *People v. Marte*, 207 A.D.2d 314, 316 (1st Dept. 1994 (“the bare assertion of innocence and the conclusory allegation that evidence has been illegally recovered are insufficient to warrant a hearing”))].

Defendant moves to prevent the undercover from making an in-court identification on the grounds that the out-of-court identification procedures used by law enforcement authorities were unduly suggestive. That motion is summarily denied because the identification was merely confirmatory in nature and was not unduly suggestive. [*People v. Twitty*, 36 A.D.3d 723 (2d

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Dept. 2007); People v. Andrews, 30 A.D.3d 434 (2d Dept. 2006); People v. Soto, 22 A.D.3d 511 (2d Dept. 2005)].

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)].

Defendant's motion for production of exculpatory information also includes a request for information regarding any cooperation agreements that any witnesses have entered into, or may enter into, with the District Attorney's Office. Any cooperation agreement relating to the testimony that a witness will provide at Defendant's trial is Brady material. [People v. Steadman, 82 N.Y.2d 1 (1993)]. Therefore, in the event that any such agreement exists or is entered into during the pendency of this matter, the People shall disclose the full terms of that agreement to Defendant sufficiently in advance of the cooperating witness' testimony so as to provide Defendant with a meaningful opportunity to use the allegedly exculpatory material to cross-examine the cooperating witness. [People v. Leavy, 290 A.D.2d 516 (2d Dept. 2002)].

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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 to supply Defendant with notice of 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.

PRE-TRIAL HEARINGS

Defendant's request that any pre-trial hearings be conducted at least seven (7) days prior to trial is denied. All pre-trial hearings will be scheduled at the convenience of the Court and the


parties herein, and transcripts will be made available to the defense prior to the commencement of trial testimony.

LEAVE TO FILE ADDITIONAL MOTIONS

Leave to file additional motions beyond the statutory 45-day time limit will only be granted upon an application that meets the requirements of CPL §255.20(3).

So Ordered.

Dated: Poughkeepsie, NY
April 9, 2018



PETER M. FORMAN
COUNTY COURT JUDGE

TO: WILLIAM V. GRADY, ESQ.
Dutchess County District Attorney
Sinead M. McLoughlin, Esq.
236 Main Street
Poughkeepsie, New York 12601

THOMAS ANGELL, ESQ.
Dutchess County Public Defender
Beth Gibson, Esq.
22 Market Street
Poughkeepsie, New York 12601