

**People v Blair**

2018 NY Slip Op 33785(U)

June 18, 2018

County Court, Westchester County

Docket Number: 18-0310

Judge: Anne E. Minihan

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FILED  
AND ENTERED  
ON 6-18-2018  
WESTCHESTER

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

-against-

**FILED**

JUN 20 2018

DECISION & ORDER  
Indictment No. 18-0310

DONTA BLAIR,

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER  
Defendant.

-----X  
MINIHAN, J.

Defendant, DONTA BLAIR, by Westchester County Indictment No. 18-0310, is charged with Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03[3]), and has filed this omnibus motion consisting of a Notice of Motion, an Affirmation in Support, and a Memorandum of Law. The People filed an Affirmation in Opposition together with a Memorandum of Law. Upon consideration of these papers, the stenographic transcript of the grand jury minutes and the Consent Discovery Order dated April 17, 2018, the court disposes of this motion as follows:

A.

MOTION to INSPECT, and to DISMISS or REDUCE  
CPL ARTICLE 190

The court grants defendant's motion to the limited extent that the court has conducted, with the consent of the People, an *in camera* inspection of the stenographic transcription of the grand jury proceedings. Upon such review, the court finds no basis upon which to grant defendant's application to dismiss or reduce the indictment.

The grand jury was properly instructed (*see People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]). The evidence presented, if accepted as true, is legally sufficient to establish every element of each offense charged (CPL 210.30[2]). "Courts assessing the sufficiency of the evidence before a grand jury must evaluate whether the evidence, viewed most favorably to the People, if unexplained and uncontradicted--and deferring all questions as to the weight or quality of the evidence--would warrant conviction" (*People v Mills*, 1 NY3d 269, 274-275 [2002]). Legally sufficient evidence means competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant's commission thereof (CPL 70.10[1]; *see People v Flowers*, 138 AD3d 1138, 1139 [2d Dept 2016]). "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 Jessup*, 90 AD3d 782, 783 [2d Dept 2011]). "The reviewing court's inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of every element of the charged crimes, and whether the Grand Jury could rationally have drawn the guilty inference. That other, innocent inferences could possibly be drawn from those facts is irrelevant to the sufficiency inquiry as long as the Grand Jury could rationally have drawn the guilty inference" (*People v Bello*, 92 NY2d 523, 526 [1998]).

Additionally, the minutes reveal a quorum of the grand jurors was present during the presentation of evidence, that the Assistant District Attorney properly instructed the grand jury on the law, and only permitted those grand jurors who heard all of the evidence to vote the matter. Based on the foregoing, defendant's challenge to the propriety of the grand jury proceeding and the sufficiency of the evidence presented to the grand jury is baseless.

B.

MOTION to INSPECT, DISMISS and/or REDUCE  
CPL ARTICLE 190

The court grants the defendant's motion to the limited extent that the court has conducted, with the consent of the People, an *in camera* inspection of the stenographic transcription of the grand jury proceedings. Upon such review, the court finds no basis upon which to grant defendant's application to dismiss or reduce the indictment.

The indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's commission thereof with sufficient precision as to clearly apprise the defendant of the conduct which is the subject of the indictment (CPL 200.50). The indictment charges each and every element of the crimes, and alleges that the defendant committed the acts which constitute the crimes at a specified place during a specified time period and, therefore, is sufficient on its face (*People v Cohen*, 52 NY2d 584 [1981]; *People v Iannone*, 45 NY2d 589 [1978]).

The defendant, who bears the burden of refuting with substantial evidence the presumption of regularity which attaches to official court proceedings (*People v Pichardo*, 168 AD2d 577 2d Dept 1990]), has offered no sworn factual allegations, in support of his argument that the grand jury proceedings were defective. The minutes reveal a quorum of the grand jurors was present during the presentation of evidence, that the Assistant District Attorney properly instructed the grand jury on the law, and only permitted those grand jurors who heard all the evidence to vote the matter (*see People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]).

The evidence presented, if accepted as true, is legally sufficient to establish every element of each offense charged (CPL 210.30[2]). "Courts assessing the sufficiency of the evidence before a grand jury must evaluate whether the evidence, viewed most favorably to the People, if unexplained and uncontradicted--and deferring all questions as to the weight or quality of the evidence--would warrant conviction" (*People v Mills*, 1 NY3d 269, 274-275 [2002]). Legally sufficient evidence means competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant's commission thereof (CPL 70.10[1]; *see People v Flowers*, 138 AD3d 1138, 1139 [2d Dept 2016]). "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 Jessup*, 90 AD3d 782, 783 [2d Dept 2011]). "The reviewing court's inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of every element of the charged crimes, and whether the Grand Jury could rationally have drawn the guilty inference. That other, innocent inferences could possibly be drawn from those facts is irrelevant to the sufficiency inquiry as long as the Grand Jury could rationally have drawn the guilty inference" (*People v Bello*, 92 NY2d 523, 526 [1998]).

Defendant's request to dismiss the indictment in furtherance of justice is denied. The defendant has cited no persuasive or compelling factor, consideration or circumstances under CPL 210.40 warranting dismissal of this indictment. In reaching a decision on the motion, the court has examined the factors listed in CPL 210.40, which include, in relevant part, the seriousness and circumstances of the offense; the extent of harm caused by the offense; the evidence of guilt; the history, character and condition of the defendant; any exceptionally serious misconduct of law enforcement personnel; the purpose and effect of imposing upon the defendant a sentence authorized for the charged offenses; the potential impact of a dismissal on public confidence in the judicial system; the potential impact of dismissal upon the safety and welfare of the community; and other relevant facts suggesting that a conviction would not serve a useful purpose. Having done so, the court has discerned no compelling factor, consideration or circumstance which clearly demonstrates that further prosecution or conviction of the defendant would constitute or result in injustice.

Based upon the *in camera* review, since this court does not find release of the grand jury minutes or any portion thereof necessary to assist it in making any determinations and as the defendant has not set forth a compelling or particularized need for the production of the grand jury minutes, defendant's application for a copy of the grand jury minutes is denied (*People v Jang*, 17 AD3d 693 [2d Dept 2005]; CPL 190.25[4][a]).

C.

#### MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

Defendant moves for a pre-trial hearing to determine whether, at trial, the People may cross-examine him, if he elects to testify, about his prior criminal convictions, and prior uncharged criminal, vicious, or immoral conduct. On the People's *consent*, the motion for a *Sandoval* hearing is granted (*see People v Sandoval* (34 NY2d 371[1974])). At the hearing, the People must notify defendant of all specific instances of his criminal, and prior uncharged criminal, vicious, or immoral conduct of which they have knowledge and which they intend to use to impeach defendant's credibility if he testifies at trial (CPL 240.43). At the hearing, defendant shall bear the burden of identifying any instances of his prior misconduct which he submits the People should not be permitted to use to impeach his credibility. Defendant shall be required to identify the basis of his belief that each event or incident may be unduly prejudicial to his ability to testify as a witness on his own behalf (*see People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266, 269 [2d Dept 1985]).

To the extent that defendant's motion seeks a hearing pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]), that branch of the motion is denied as premature because the People have not indicated an intention to use in their case in chief any evidence of prior bad acts or uncharged crimes by defendant (*see People v Molineux*, 168 NY 264 [1901]). If the People move to introduce such evidence, defendant may renew that branch of the motion.

D.

#### MOTION to STRIKE PREJUDICIAL LANGUAGE

Contrary to defendant's contention, the language concluding the indictment merely identifies defendant's acts as public wrongs, as opposed to private wrongs, and such language should not be stricken as irrelevant or potentially prejudicial (*see People v Gill*, 164 AD2d 867 [2d Dept 1990]; *People*

*v Winters*, 194 AD2d 703 [2d Dept 1993]; *People v Garcia*, 170 Misc. 2d 543 [Westchester Co. Ct. 1996]). The defendant's remaining contention as to prejudicial language in the indictment is equally without merit and his application to strike that language is denied.

E.

MOTION to SUPPRESS PHYSICAL EVIDENCE

Defendant's motion to suppress on the ground of illegal arrest is not supported with sworn allegations of fact and his request for a hearing based on conclusory statements of illegal seizure and arrest are summarily denied (*People v France*, 12 NY3d 790 [2009]; *People v Jones*, 95 NY2d 721 [2001]; *People v Anderson*, 253 AD2d 636 [1<sup>st</sup> Dept 1998]; CPL 710.60[3][b]; *see also People v Scully*, 14 NY3d 861 [2010]).

The defendant has not set forth any facts to suggest that he had a legitimate expectation of privacy in the area where he abandoned the firearm in the parking lot located at 10 Hudson Street when being chased by police (*People v Ramirez-Portoreal*, 88 NY2d 99 [1996]; *see also Rakas v Illinois*, 439 US 128 [1978]; *People v Ponder*, 54 NY2d 160 [1981]). Consequently, this branch of the defendant's motion is granted solely to the extent of conducting a hearing to address whether the defendant had a reasonable expectation of privacy as to the location searched to constitute standing to challenge the seizure of any physical evidence including the area where the gun was recovered, in plain view in public after it was discarded and/or to address whether the discarding of the firearm was a result or was linked to any illegal police conduct that would have invoked Fourth Amendment issues (*People v White*, 153 AD3d 1369 [2d Dept 2017]; *People v Hawkins*, 262 AD2d 423 [2d Dept 1999]).

F.

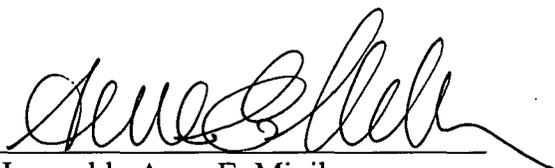
MOTION to STRIKE STATEMENT NOTICES and  
to SUPPRESS NOTICED STATEMENTS

This motion is denied. Said notice is in conformity with the statutory requirements of CPL 710.30.

This branch of the defendant's motion seeking to suppress statements on the grounds that they were unconstitutionally obtained is granted to the extent that a *Huntley/Dunaway* hearing shall be held prior to trial to determine whether any statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL 710.30 (1)(a), were involuntarily made by the defendant within the meaning of CPL 60.45 (*see* CPL 710.20(3); CPL 710.60[3][b]; *People v Weaver*, 49 NY2d 1012 [1980]), obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

The foregoing constitutes the opinion, decision and order of this court.

Dated: White Plains, New York  
June 18, 2018

  
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Honorable Anne E. Minihan  
Acting Justice of the Supreme Court

To:

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