People v Hamilton
2018 NY Slip Op 33797(U)
March 12, 2018
County Court, Westchester County
Docket Number: 17-1304
Judge: Anne E. Minihan

[* 1]

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER
Indictment No. 17-1304

JAYVAHNE HAMILTON,

Defendant.

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MINIHAN, J.

Defendant, JAYVAHNE HAMILTON, having been indicted on or about December 14, 2017 for One Count of Burglary in the Second Degree (Penal Law § 140.25 [2]; and One Count of Robbery in the Second Degree (Penal Law § 160.10[1]) has filed an omnibus motion which consists of a Notice of Motion and an Affirmation in Support. In response, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Defendant has filed a Reply.

Upon consideration of these papers, the stenographic transcript of the grand jury minutes and the Consent Discovery Order entered in this case, this court disposes of this motion as follows:

I.

MOTION to SUPPRESS ARREST & PHYSICAL EVIDENCE

While the defendant moves to suppress evidence on the ground of illegal arrest, he offers no sworn allegations of fact in support of the conclusory statement of illegal seizure or arrest and thus, his motion is summarily denied as to this argument (*People v France*, 12 NY3d 790 [2009]; *People v Jones*, 95 NY2d 721 [2001]; CPL 710.60[3][b]; *see also People v Scully*, 14 NY3d 861 [2010]).

Defendant moves to suppress his arrest and the fruits of his arrest, including his statement to police and a DNA sample from a buccal swab, on the grounds that his arrest in North Carolina violated the "interstate compact relating to extradition" relying on North Carolina Statute 15A-734 and its New York counterpart CPL 570.34. The cited sections relate to warrantless arrests, and state "the arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year" (NCGS § 15A-734) and that "a police officer may arrest a person in this State without a warrant "upon reasonable information that the accused stands charged in the courts of another state with a crime punishable by death or imprisonment for a term exceeding one year" (CPL 570.34 [emphasis added]).

Defendant contends that the arrest was in contravention of the law as the local authorities should have first obtained a confirmed warrant from a North Carolina Magistrate to make an arrest on the misdemeanor warrants and relies on *People v Miranda-Hernandez*, (106 AD3d 838 [2d Dept 2013]). His reliance is misplaced since the court in that case held that a detective had no authority to arrest the defendant based on information that there was an out-of-state violation of probation warrant since a violation of probation was not a crime. Furthermore, since the defendant's guilt in that case hinged

solely upon the items seized after his arrest, the indictment was dismissed only since there was insufficient evidence to prove the defendant's guilt. Here, there appears to be other evidence other than his statements and his DNA sample should those items be suppressed after a hearing.

The People argue that the above statutes do not apply since the Goldsboro North Carolina Police Department effectuated the defendant's arrest based on the two warrants issued by the City of Mt. Vernon. Notably, on the day of his arrest, a fugitive arrest warrant for defendant was issued by the local North Carolina magistrate based upon the same charges as contained on the warrants issued by the Mt. Vernon City Court (a bench warrant issued on August 9, 2017 for bail jumping on pending charges of Criminal Possession of Stolen Property in the Fifth Degree [PL§ 165.40] and Possession of Burglar's Tools [PL § 140.35]; and an arrest warrant issued on September 26, 2017 for bail jumping based on the August 9, 2017 failure to appear for sentencing in Mt. Vernon City Court)[1]. The People contend that since the defendant does not move to controvert the Mt. Vernon warrants, a hearing to determine probable cause is not necessary.

This court has reviewed the four corners of the City of Mt. Vernon warrants, both attached to the consent discovery which has been provided to the defendant, and the court finds that the warrants were adequately supported by probable cause since the defendant without excuse failed to appear in court on August 9, 2017 through September 26, 2017 and thereafter (*see People v Keves*, 291 AD2d 571 [2d Dept 2002]; *see generally People v Badilla*, 130 AD3d 744 [2d Dept 2015]; *People v Elysee*, 49 AD3d 33 [2d Dept 2007]). In any event, defendant's prosecution is not barred, since an illegal arrest, without more, has never been envisioned as a bar to prosecution or as a defense to a valid conviction (*United States v Crews*, 445 US 463, 474 [1990]). The defendant cannot suppress his presence at trial for the reason that his arrest was illegal.

Notwithstanding, this branch of the defendant's motion is granted solely to the extent of conducting a *Mapp* hearing prior to trial to determine the propriety of any search resulting in the seizure of property including the defendant's DNA (*see Mapp v Ohio*, 367 US 643[1961]). The hearing will also address whether any evidence was obtained in violation of the defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

II.

MOTION to SUPPRESS NOTICED STATEMENTS

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* 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

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[1]On October 12, 2017, defendant waived extradition proceedings and was returned to New York. On October 13, 2017, a felony complaint was filed with the Scarsdale Village Court and the Court (Alemany, J) issued an arrest warrant for the defendant for one count of Burglary in the Second Degree (Penal Law § 140.25 [2]).

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]).

III.

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 pursuant to CPL 210.20 and pursuant to 210.40 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]).

IV.

MOTION for DISCOVERY, DISCLOSURE and INSPECTION
CPL ARTICLE 240

The parties have entered into a stipulation by way of a Consent Discovery Order consenting to the enumerated discovery in this case. Defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 240. If there any further items discoverable pursuant to Criminal Procedure Law Article 240 which have not been provided to defendant pursuant to the Consent Discovery Order, they are to be provided forthwith.

As to the defendant's demand for exculpatory material, the People have acknowledged their continuing duty to disclose exculpatory material at the earliest possible date upon its discovery (*see Brady v Maryland*, 373 US 83 [1963]; *Giglio v United States*, 405 US 150 [1972]). The People have also acknowledged their duty to comply with *People v Rosario*, (9 NY2d 286 [1961]). In the event that the People are or become aware of any material which is arguably exculpatory and they are not willing to consent to its disclosure to the defendant, they are directed to immediately disclose such material to the Court to permit an *in camera* inspection and determination as to whether such must be disclosed to the defendant.

As to the defendant's demand for scientific related discovery, the People have acknowledged their continuing duty to disclose any written report or document concerning a physical or mental examination or test that the People intend to introduce, or the person who created them, at trial pursuant to CPL 240.20 (1)(c).

Defendant's motion for a further Bill of Particulars is denied. The Bill of Particulars set forth in the Consent Discovery Order provided to the defendant has adequately informed the defendant of the substance of her alleged conduct and in all respects complies with CPL 200.95.

Except to the extent that the defendant's application has been specifically granted herein, it is otherwise denied as seeking material or information beyond the scope of discovery (*see People v Colavito*, 87 NY2d 423 [1996]; *Matter of Brown v Grosso*, 285 AD2d 642 [2d Dept 2001]; *Matter of Brown v Appelman*, 241 AD2d 279 [2d Dept 1998]; *Matter of Catterson v Jones*, 229 AD2d 435 [2d Dept 1996]; *Matter of Catterson v Rohl*, 202 AD2d 420 [2d Dept 1994]).

V.

MOTION to REDACT VIDEO STATEMENTS

Defendant's motion to redact or limit the admission of the "highly prejudicial" portions of his videotaped statements is denied without prejudice to renew, since this court has not yet determined the admissibility of defendant's statements, this application is premature.

VI.

MOTION for *SANDOVAL* and *VENTIMIGLIA* HEARINGS

Defendant has moved for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into the defendant's prior criminal convictions, prior uncharged criminal, vicious or immoral conduct. The People have consented to a *Sandoval* hearing. Accordingly, it is ordered that immediately prior to trial a hearing shall be conducted pursuant to *People v Sandoval* (34 NY2d 371[1974]). At said hearing, the People shall be required to notify the defendant of all specific instances of his criminal, prior uncharged criminal, vicious or immoral conduct of which they have knowledge and which they intend to use in an attempt to impeach the defendant's credibility if he elects to testify at trial (CPL 240.43).

At the hearing, the defendant shall bear the burden of identifying any instances of his prior misconduct that he submits the People should not be permitted to use to impeach his credibility. The 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 [2d Dept 1985]).

Defendant's application for a hearing, pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]) is denied since the People have not indicated an intention to use evidence of any prior bad act or uncharged crimes of the defendant during its case in chief (*see People v Molineaux*, 168 NY2d 264 [1901]). If the People move to introduce such evidence, the defendant may renew this aspect of his motion.

VII.

MOTION for TIME to FILE FUTURE MOTIONS

This motion is denied. Any future motion must be brought by way of order to show cause setting forth reasons as to why said motion was not brought in conformity with CPL 255.20.

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

Dated: White Plains, New York
March 12, 2018

Honorable Anne E. Minihan
Acting Justice of the Supreme Court

To:

HON. ANTHONY A. SCARPINO, JR.
District Attorney, Westchester County
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601
BY: Virginia Marciano, Esq.
Assistant District Attorney

John Raimondo, Esq.
Attorney for Defendant Hamilton
5 Old Road
Elmsford, New York 10523-3321