People v Tillotson
2018 NY Slip Op 33798(U)
October 25, 2018
County Court, Westchester County
Docket Number: 17-1331
Judge: Anne E. Minihan

[* 1]

FILED
AND ENTERED
ON 10-26-2018
WESTCHESTER

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

FILED

-against-

OCT 26 2018

DECISION & ORDER
Indictment No.: 17-1331

CLIFFORD TILLOTSON,

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant.

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MINIHAN, J.

Defendant, CLIFFORD TILLOTSON, having been indicted on or about June 25, 2018, for Criminal Mischief in Second Degree (Penal Law § 145.10); Illegal Possession of a Vehicle Identification Number (Penal Law § 170.70 [2]); Defacing Property with Graffiti (Penal Law § 145.60) and Possession of Graffiti Instruments (Penal Law § 145.65) has filed an omnibus motion consisting of a Notice of Motion and an Affirmation in Support thereof.

In response thereto, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Defendant has filed a Reply Affirmation. Upon consideration of these papers, the stenographic transcript of the grand jury minutes and the Consent Discovery Order dated August 18, 2018 entered in this case, this court disposes of this motion as follows:

A.

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 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. Defendant's request to dismiss the indictment in the interests of justice is denied.

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 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 the evidence to vote the matter.

Defendant challenges the prosecutor's failure to present unidentified exculpatory evidence. The People maintain broad discretion in presenting their case to the Grand Jury and need not seek out evidence favorable to the defendant or present all of their evidence tending to exculpate the accused (*People v Mitchell*, 82 NY2d 509, 515 [1993]). After a review of the Grand Jury minutes, it appears that no material was withheld that would have materially influenced the determination of the Grand Jury (*People v Williams*, 298 AD2d 535 [2d Dept 2002]). The defendant has failed to demonstrate that the indictment should be dismissed or that the proceeding was impaired by his admissions made as a result of the alleged coercion by a persons acting as law enforcement or by the introduction of items alleged to have been used to commit the crimes. So too, defendant's claim that the proceeding was impaired by a prejudicial statement calling the defendant a "fucking asshole[s]" (made by the person filming the damage to the course) which video was presented to the Grand Jury is without merit since the People aver that the video was muted during the presentation. Defendant's argument that the proceeding was impaired by 3 privileged conversations that he had with his wife is without merit since the transcript is devoid of the presentation of any privileged conversations. The introduction of what defendant characterizes as "inaccurate and overly inflated estimation of damages" was not so prejudicial to impair the integrity of the proceedings since the evidence, when viewed in the light most favorable to the People, was legally sufficient to establish an element of Criminal Mischief in Second Degree (Penal Law § 145.10)(to prove damage to property in excess of $1,500). As such, the evidence presented to prove an element of the charge is not so prejudicial that it impaired the integrity of the proceeding nor is it a ground to dismiss the indictment (*People v Jimenez*, 47 NYS3d 730 [2d Dept 2017]; *People v Jessup*, 90 AD3d 782, 783 [2d Dept 2011]).

B.

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.

Notably, the People have a continuing duty to disclose the terms of any deal or agreement made between the People and any prosecution witness at the earliest possible date (*see People v Steadman*, 82 NY2d 1 [1993]; *Giglio v United States*, 405 US 150 [1972]; *Brady v Maryland*, 373 US 83 [1963]; *People v Wooley*, 200 AD2d 644 [2d Dept 1994]).

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 his 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]).

C.

MOTION to PRECLUDE IDENTIFICATION TESTIMONY
CPL 710

Defendant's motion is granted to the limited extent of conducting a hearing prior to trial to determine whether the noticed identifications were unduly suggestive as to taint any in-court identification (*United States v Wade*, 388 US 218 [1967]). In the event the identifications are found to be unduly suggestive, the court shall then go on to consider whether the People have proven by clear and convincing evidence that an independent source exists for such witnesses' proposed in-court identification.

D.

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 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, obtained in violation of the defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]) and whether the security guards were state actors to determine whether defendant's claims that they violated his rights are legally cognizable (*see People v Ray*, 65, NY2d 282 [1985]).

E.

MOTION to PRECLUDE UNNOTICED STATEMENTS & IDENTIFICATIONS

Defendant moves to preclude the People from introducing statements and identifications at trial that were not noticed. Although, the People acknowledge the statutory requirements of CPL 710.30, the trial court will determine whether any statements or identifications sought to be admitted should be precluded if the issue arises.

F.

MOTION to SUPPRESS PHYSICAL EVIDENCE

Defendant's motion to suppress all evidence seized pursuant to the search warrants for his vehicle, 2 cell phones, and the hotel room where he stayed (as issued by a New Jersey Criminal Court) is denied. The results of a search conducted pursuant to a facially sufficient search warrant are not subject to a suppression hearing (*People v Arnau*, 58 NY2d 27 [1982]). Upon review of the four corners of the search warrant affidavits, the warrants were adequately supported by probable cause (*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]). The defendant fails to make a substantial preliminary showing that the warrants were based upon affidavits containing false statements made knowingly or intentionally, or with reckless disregard for the truth (*People v McGeachy*, 74 AD3d 989 [2d Dept 2010]) to merit a hearing (*People v Novick*, 293 AD2d 692 [2d Dept 2002]). The information provided by security guards at the golf course coupled with the observations of the Briarcliff Police officers as well as the other facts set forth in the affidavits provided the signing magistrates with probable cause to believe that evidence could be located at the locations described in the warrants. As such, the motion to controvert the warrants and suppress the evidence is summarily denied (*see People v Lassiter,* 57 NYS3d 194 [2d Dept 2017]; *People v Tordella*, 37 AD3d 500 [2d Dept 2007]).

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 (from his person or elsewhere *not pursuant to the search warrants*)(*see Mapp v Ohio*, 367 US 643[1961]). Notably, the defendant has not set forth any facts to suggest that he

had a legitimate expectation of privacy in the golf course green where some of the evidence was recovered (*see Rakas v Illinois*, 439 US 128 [1978]; *People v Ramirez-Portoreal*, 88 NY2d 99 [1996]; *People v Ponder*, 54 NY2d 160 [1981]; *People v White, 153* AD3d 1369 [2d Dept 2017]; *People v Hawkins*, 262 AD2d 423 [2d Dept 1999]). Consequently, the hearing should determine whether defendant has standing to challenge the suppression of any physical evidence seized from the golf course or any other surrounding public areas (*see People v McCullum, 159 AD3d 8* [2d Dept 2018]; *People v Oliver*, 39 AD3d 880 [2d Dept 2007]). If it is determined that defendant has standing then a *Mapp/Dunaway* hearing will be conducted prior to trial to determine the propriety of the search resulting in the seizure of the property (*Mapp v Ohio*, 367 US 643 [1961]). The hearing will also address whether any evidence was obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

G.

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]).

To the extent defendant's application is for a hearing pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]), it 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.

H.

MOTION for LEAVE to FILE FUTURE MOTIONS

This motion is denied. Should defendant intend to bring further motions for omnibus relief, he must do so by order to show cause setting forth reasons as to why his motion was not and could not have been brought in conformity with CPL 255.20.

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

Dated: White Plains, New York
October 25, 2018

Honorable Anne E. Minihan
Acting Supreme Court Justice

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