People v Minhala-Cajamarca
2018 NY Slip Op 33924(U)
July 30, 2018
County Court, Westchester County
Docket Number: 18-0329
Judge: George E. Fufidio

[* 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.: 18-0329

MIGUEL MINHALA-CAJAMARCA, A/K/A
LUIS GUAMAN

Defendant.

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FUFIDIO, J.

The Defendant, MIGUEL MINCHALA-CAJAMARCA, having been indicted on or about April 19, 2018 for two counts of driving while intoxicated, as a felony (Vehicle and Traffic Law § 1192[3]); aggravated unlicensed operation of a motor vehicle in the first degree (Vehicle and Traffic Law § 511[3][a][i]); circumvention of an interlock device (Vehicle and Traffic Law § 1198 [9][d]); vehicular assault in the first degree (Penal Law § 120.04[2][b]); vehicular assault in the first degree (Penal Law § 120.04[3]); assault in the third degree (Penal Law § 120.00[3]), criminal mischief in the fourth degree (Penal Law § 145.00[3]) and a violation of Vehicle and Traffic Law § 1128 has filed an omnibus motion which consists of a Notice of Motion, an Affirmation in Support and a Memorandum of Law. In response thereto, the People have 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 entered in this case, this court disposes of this motion as follows:

A, B, & C 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. The 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 the 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.

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]).

D. MOTION TO STRIKE STATEMENT NOTICES
CPL ARTICLE 710

The motion to strike is denied. Said notices are in conformity with the statutory requirements of CPL 710.30 in that they set forth the date, manner, location of the identification procedures employed (*People v Sumter*, 68 AD3d 1701 [4th Dept. 2009]) and were served in the proper time frame (CPL 710.30). Finally, because the Defendant has filed a suppression motion based upon the notices that were served, he has waived his right to be heard on the sufficiency of the notices (*People v Kirkland*, 89 NY2d 903 [1996]).

E. 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, and/or obtained in violation of the Defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

F. MOTION TO SUPPRESS IDENTIFICATION EVIDENCE

This motion is granted to the limited extent of that a hearing shall be held prior to trial to determine whether the identifying witnesses had a sufficient prior familiarity with the Defendant as to render them impervious to police suggestion (*People v Rodriguez*, 79 NY 2d 445 [1992]). In the event the court finds that there was not a sufficient prior familiarity with the Defendant on the part of the witness, the court will then consider whether or not the noticed identifications were unduly suggestive (*United States v Wade*, 388 US 218 [1967]). Specifically, the court shall determine whether the identifications were so improperly suggestive as to taint any in-court identification. 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 witness' proposed in-court identification.

G. MOTION TO SUPPRESS EVIDENCE OF
A REFUSAL TO SUBMIT TO A BREATH TEST

Defendant moves for suppression of all evidence, specifically his refusal to submit to a chemical test. With respect to the defendant's allegation that his alleged refusal to submit to a breathalyzer should be suppressed on constitutional grounds, this Court directs that a Refusal Hearing regarding any breath test/breathalyzer test shall be conducted prior to trial.

H. MOTION TO SUPPRESS EVIDENCE OF FILED SOBRIETY TESTS

The Defendant's motion to suppress the results of the field sobriety tests that were administered to him is granted to the extent that the Court has ordered a *Dunaway* hearing, however, to the extent that he is challenging the results under a Fifth Amendment theory, that part of the Defendant's motion is denied (*see*, *People v Hager*, 69 NY2d 141 [1987] (*Miranda* warning are not required prior to the administration of field sobriety tests)).

I. MOTION TO SUPPRESS PHYSICAL EVIDENCE

The Defendant moves to suppress any evidence obtained as a result of the arrest and search and seizure of evidence. In addition to the *Dunaway* hearing that has been ordered. 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 evidence (*see Mapp v Ohio*, 367 US 643[1961]).

G. MOTION TO SEVER CHARGES

The Defendant's motion to sever Count two from the rest of the indictment is denied. The Defendant has not shown that severing this count is in the interests of justice or that there is good cause for such severance, more particularly he has not made a convincing showing that he has important testimony to give with respect to one of the charges of DWI, but not the other (*People v Lane*, 56 NY2d 1 [1982]) nor has he shown this to be a situation where the evidence for each of the cases is so disproportionate that there is a substantial likelihood that a jury would not be able to separately consider the proof as it relates each case (CPL 200.20[3][a]), *see for example, People v Ramos*, 186 Misc. 2d 885 [Bronx Sup. Ct. 2001]).

H. 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.

Initally, 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.

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]).

The Defendant has moved the Court to dismiss counts 1 and 3-9. Parsing the Defendant's position it seems that he is arguing, one, that the grand jury was not presented with sufficient evidence of intoxication or the degree of injury required to indict on the assault charges, and, two, that the grand jury was not presented with what the defendant feels is exculpatory evidence of his intoxication.

The Defendant argues that Ossining Police Officer Chavez's testimony is the only evidence of intoxication that the grand jury could have heard regarding his state of intoxication on February 11, 2018 and he contends Officer Chavez lied about the manner in which the field sobriety tests were performed by the Defendant when he testified at a felony hearing held in the Ossining Village Court on March 12, 2018. He says that Officer Chavez testified that the he failed three field sobriety tests in certain specific ways that, in his opinion, was not borne out by body camera footage from another Ossining police officer who was present when the tests were being administered and which was admitted as an exhibit at the felony hearing.[1] He also now seemingly implies that Officer Chavez did not administer the tests at all, but that he was merely observing them and that the body camera video that was presented at the felony hearing contradicts Officer Chavez's testimony of his observations and conclusions, and that in any event, if the grand jury was not presented with the video or did not hear about this contradiction then they could not have been presented with sufficient evidence of intoxication.

Addressing, first, the sufficiency of the evidence claim. Officer Chavez's testimony was not the only testimony that the grand jury heard with respect to the Defendant's intoxication. Based on the totality of evidence from all of the witnesses regarding both the defendant's intoxication and degree of the victim's injuries, the Court finds that the evidence on all of the counts 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 [2nd 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 [2nd 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]). Moreover, 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]).

Moving on to the Defendant's claim that the People failed to present exculpatory information. As a general rule, the People enjoy wide latitude when presenting their case to a grand jury (*People v Rockwell*, 97 AD2d 853 [3rd Dept. 1983]) and they do not have the same disclosure obligations at the grand jury phase of a case than they do at the trial phase (*see, Brady v Maryland*, 373 US 83 [1963], *People v Hill*, 122 Misc2d 895 [N.Y. County Criminal Court 1984]). Pertinent to this case, although such evidence would likely enable a grand jury to make a *more* informed decision, prosecutors are not required to search for evidence that favors the defendant and may decide not to present exculpatory

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[1]The Defendant provided a transcript of the March 12, 2018 felony hearing as an exhibit to his *Omnibus* motion, but did not provide the Court with the video of the field sobriety tests in question, nor did counsel, in her cross examination of Officer Chavez at the felony hearing develop any line of questioning with respect to what she felt were discrepancies in his testimony versus what was exhibited on the body camera video. Notably, based on the evidence of the DWI in question that was presented at the felony hearing, including Officer Chavez's testimony and the body camera video in question, The Ossining Village Court, Reisman, J., found that there was reasonable cause to hold the matter for the grand jury.

material. This decision must be balanced by the grand jury's right to hear the full story so that they can make an independent decision to indict (*People v Isla*, 96 AD2d 789 [1st Dept. 1983], *see also, People v Mitchell* 82 NY2d 509 [1993] *and People v Townsend*, 127 AD2d 505 [1st Dept. 1987]). Ordinarily the defendant, exercising his right to testify or to call witnesses and present evidence before a grand jury, brings such evidence to the grand jury for its consideration (*People v Lancaster*, 69 NY2d 20 [1986]). Despite this, the People always have an obligation of dealing fairly with the accused and of candor to the courts (*People v Pelchat*, 62 NY2d 97 [1984]). Nevertheless, the Court does not find that the People were under any obligation to disclose to the grand jury the defendant's opinion that the video of the field sobriety tests might differ from that of one of the witnesses descriptions of how the field sobriety tests were conducted. Had he wished to make the grand jury aware of this information, he was afforded the opportunity to do so under CPL 190.50.

Finally, the portion of the defendant's motion requesting dismissal of the indictment for facial insufficiency under CPL 200.50(7)(a) is also 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). In reading the language of the indictment on its own and in conjunction with the bill of particulars given to the defendant in consent discovery, it is clear that the indictment charges each and every element of the crimes and further meets the requirement that the defendant be given notice of the charges against him with respect to the time, place and manner in which the People allege the crimes were committed (*People v Albanese*, 45 AD3d 691 [2d Dept 2007], *People v Iannone*, 45 NY2d 589 [1978]).

I. MOTION FOR *SANDOVAL* AND *VENTIMIGLIA* HEARINGS

The 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 act, and vicious or immoral conduct (see, *People v Sandoval,* 34 NY2d 371[1974]). The People have consented to, and it is now ordered that immediately prior to trial the court will conduct a *Sandoval* hearing.

At the hearing, the People are required to notify the Defendant of all specific instances of his criminal, prior uncharged criminal acts and 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). The Defendant shall then 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 him should he decide testify as a witness on his own behalf and thereby prevent him from exercising this right (*see*, *People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

The Defendant's application for a *Ventimiglia* hearing is denied as premature, because the People have not indicated an intention to use any evidence of prior bad act or uncharged crimes of the Defendant in its case in chief (*see, People v Molineaux*, 168 NY2d 264 [1901]; *People v Ventimiglia*, 52 NY2d 350 [1981]). The People have stated that if they do intend to use any *Molineaux* evidence that

they will inform the defense and the court of their intention and at that point the Defendant may renew this aspect of his motion.

I. MOTION TO STRIKE ALIBI NOTICE

The Defendant's motion to strike the alibi notice is denied. Contrary to the Defendant's contentions, it is well-settled that CPL 250.00 is indeed in compliance with the constitutional requirements (*see People v Dawson,* 185 AD2d 854 [2d Dept 1992]; *People v Cruz*, 176 AD2d 751 [2d Dept 1991]; *People v Gill*, 164 AD2d 867 [2d Dept 1990]) and provides equality in the required disclosure (*People v Peterson*, 96 AD2d 871 [2d Dept 1983]; *see generally Wardius v Oregon*, 412 US 470 [1973]).

J. MOTION RESERVING THE RIGHT TO FILE ADDITIONAL MOTIONS

Defendant's motion reserving the right to file additional motions is denied. Should the Defendant file any other motions that were not raised in his *Omnibus* motion, then they will need to be in compliance with CPL 255.20(2).

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

Dated: White Plains, New York
July 30, 2018

Honorable George E. Rufidio, J.C.C.

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