People v Corines
2018 NY Slip Op 33944(U)
September 20, 2018
County Court, Westchester County
Docket Number: 18-0526
Judge: Anne E. Minihan
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

[* 1]

FILED
AND ENTERED
ON 9-21 2018
WESTCHESTER

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER
---X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

FILED
SEP 24 2018
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

PETER CORINES,

Defendants.
---X

DECISION & ORDER
Indictment No.: 18-0526

MINIHAN, J.

Defendant, PETER CORINES, is charged by Westchester County Indictment No. 18-0526 with Scheme to Defraud in the First Degree (Penal Law § 190.65[1][b]), Grand Larceny in the Second Degree (Penal Law § 155.40[01]), Attempted Grand Larceny in the Second Degree (Penal Law § § 110/155.40 [01]), Attempted Grand Larceny in the Third Degree (Penal Law § § 110/155.35[01]) (five counts), Identity Theft in the First Degree (Penal Law § 190.80[01]), Identity Theft in the First Degree (Penal Law § 190.80[02]), and Identity Theft in the First Degree (Penal Law § 190.80[03]).

Defendant has filed an omnibus motion consisting of a Notice of Motion and an Affirmation in Support, with exhibits. In response thereto, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Defendant has filed an Affirmation in 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:

A.

MOTION to INSPECT and to 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 transcript of the grand jury minutes. Upon such review, the court finds no basis upon which to grant defendant's application to dismiss or reduce the indictment.

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, and 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]).

Defendant's claim that the Assistant District Attorney was obligated to instruct the grand jury on General Obligations Law as it pertains to a power of attorney is without merit. While the People must charge the grand jury on exculpatory defenses, which may result in a finding of no criminal liability, a valid power of attorney would not be a complete defense to the larcenous conduct allegedly committed by defendant (*see People v Valles*, 62 NY2d 36, [1984]; *compare People v Ippolito*, 20 NY3d 615, 624 [2013]).

Defendant is correct that the People presented insufficient evidence to the grand jury as to charge one, Scheme to Defraud in the First Degree (Penal Law § 190.65[1][b]). Penal Law § 190.65(1)(b) provides, in pertinent part, that a person is guilty of scheme to defraud in the first degree when he "engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons." To prove intent to defraud in the first degree the People are required to show "a pattern of fraudulent conduct targeting more than one victim" (*People v Goodluck*, 117 AD3d 653 [1st Dept 2014]). Here, the People presented evidence to the grand jury of defendant's allegedly fraudulent conduct targeting only one victim. Accordingly, the court dismisses count one in the indictment.

As to the remaining charges in the indictment, the evidence presented to the grand jury, if accepted as true, is legally sufficient to establish every element of each offense charged (*see* 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]).

Based on 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 (*see People v Jang*, 17 AD3d 693 [2d Dept 2005]; CPL 190.25[4][a]). There is no legal support for defense counsel's request for a letter indicating when the grand jury minutes were received by this court.

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 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]). If the People are or become aware of any material which is arguably exculpatory and they are not willing to consent to its disclosure to 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 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).

Except to the extent that 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 SUPPRESS PHYSICAL EVIDENCE

Defendant's motion to suppress the physical evidence seized from his person at the time of his allegedly unlawful arrest is denied, as the People point out that no physical evidence was taken from defendant pursuant to his arrest.

[* 4]

D.

MOTION to SUPPRESS NOTICED STATEMENT and
for an AUDIBILITY HEARING

Defendant moves to suppress a statement which he allegedly made to the police and which the People noticed pursuant to CPL 710.30. The People argue that a hearing on this issue will show that suppression is not warranted because defendant was not in custody at the time of the statement, but was nonetheless advised of his *Miranda* rights before the statement, and his statement was voluntary. Defendant's motion is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether the statement was involuntarily made by defendant within the meaning of CPL 60.45 (*see People v Huntley*, 15 NY2d 72 [1965]; 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 defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

Defendant's request for a hearing as to the audibility of the videotape of his noticed statement is granted to the extent that if the statement is deemed admissible after a *Huntley* hearing, the court shall go on to determine whether the videotape recording of the statement is so inaudible and indistinct that a jury must speculate as to its contents (*see People v Harrell*, 187 AD2d 453 [2d Dept 1992]; *People v Morgan*, 175 AD2d 930, 932 [2d Dept 1991]). Whether a tape recording should be admitted into evidence is within the discretion of the trial court (*People v Morgan*, 175 AD2d 930, 932 [2d Dept 1991]). This determination is to be made after weighing the probative value of the evidence against the potential for prejudice (*People v Harrell*, 187 AD2d 453 [2d Dept 1992]).

E.

MOTION to SUPPRESS PHYSICAL EVIDENCE and
to CONTROVERT the SEARCH WARRANT

Defendant's motion to suppress any evidence seized from a search of his home conducted pursuant to a search warrant 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]). Here, the search warrant was supported by probable cause.

Defendant's motion to controvert the search warrant is denied. The court finds unconvincing defendant's claim that the search warrant affidavit contains a "blatantly false" statement which tainted the entire application. Defendant targets the following statement by the investigator in paragraph 4, one of the introductory paragraphs, "In summary, my investigation has revealed that [defendant] has taken or attempted to take monies from financial accounts owned by the victim []. As part of this scheme [defendant], fraudulently acting as a valid agent

on a power of attorney ("POA"), repeatedly tried to transfer money to himself without the permission, authority or consent of the victim." Defendant argues that this statement tainted the application because it gives the impression that defendant did not have a valid power of attorney. The court rejects defendant's claim. The investigator's search warrant affidavit alleges with detail several unauthorized and unlawful transfers by defendant to himself of funds held by the victim - - allegedly larcenous conduct which is beyond a power of attorney. Contrary to defendant's implication, a plain statement that defendant held a valid power of attorney would not have prevented the investigator's affidavit from showing probable cause. Upon review of the four corners of the search warrant affidavit, the court finds that the warrant was 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]).

F.

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 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 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 defendant's credibility if he elects to testify at trial (CPL 240.43). Also at the hearing, 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. 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 as premature since the People have not indicated an intention to use evidence of any prior bad act or uncharged crimes of defendant during its case in chief (*see People v Molineaux*, 168 NY 264 [1901]). If the People move to introduce such evidence, defendant may renew this aspect of his motion.

G.

MOTION to CONDUCT PRE-TRIAL HEARINGS
TWENTY DAYS in ADVANCE of TRIAL

Defendant's motion to schedule pre-trial hearings twenty days prior to trial is denied. The hearings will be scheduled at a time that is convenient to the Court, upon due consideration of all of its other cases and obligations.

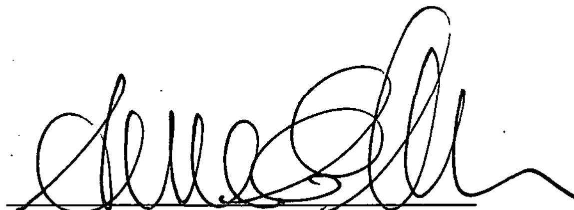
H.

MOTION for LEAVE to FILE FUTURE MOTIONS

This branch of defendant's 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
September 26, 2018



Honorable Anne E. Minihan
Acting Supreme Court Justice

To: HON. ANTHONY A. SCARPINO, JR.
District Attorney, Westchester County
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601
Attn.: A.D.A. Valerie A. Livingston

Tilem & Associates, P.C.
Attn.: Peter Tilem, Esq.
Attorney for Defendant Corines
188 E. Post Road
White Plains, New York 10601