

**People v Bonilla**

2018 NY Slip Op 34092(U)

December 7, 2018

County Court, Westchester County

Docket Number: Indictment No. 18-0960-01

Judge: Anne E. Minihan

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FILED  
AND ENTERED  
ON 12/6 -2018  
WESTCHESTER

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

-against-

DECISION & ORDER  
Indictment No. 18-0960-01

IVAN BONILLA and STEVEN SANTIAGO,

Defendants.

-----X  
MINIHAN, J.

**FILED**

DEC 10 2018

TIMOTHY C. IDONI  
COUNTY CLERK

Defendant, IVAN BONILLA, having been indicted ~~COUNTY OF WESTCHESTER~~ 2018 for Burglary in the Second Degree (Penal Law § 140.25[2]) (two counts), and Attempted Grand Larceny in the Fourth Degree (Penal Law § 110/155.30) and Grand Larceny in the Third Degree (Penal Law § 155.35[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.

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, 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 Aeonian*, 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]).

B.

#### MOTION to SUPPRESS PHYSICAL EVIDENCE

On July 12, 2018, defendant was arrested in his home at 2865 University Avenue, Bronx, NY and claims that his arrest was unlawful and that all of the items seized must be suppressed as fruit of the poisonous tree.

Defendant has not set forth any facts to suggest that he had a legitimate expectation of privacy in the most of the places or items searched (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]). Most of the items recovered were pursuant to search warrants post-arrest (sealed order dated July 12, 2018 for the search of defendant's apartment including the basement; sealed order dated July 12, 2018 for co-defendant's cell phone; sealed order dated July 16, 2018 for co-defendant's property at the Westchester County Jail; sealed order for GPS tracking related to the vehicle; sealed order dated August 7, 2018 for several cell phones that were received on July 12, 2018 from both defendants apartment). 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]). To the extent that the defendant challenges the sufficiency of the search warrants, that argument fails. 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 demonstrate 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]).

Notwithstanding, a hearing should be held to determine whether defendant has standing to challenge the suppression of any physical evidence recovered not pursuant to the search warrants (*see 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 police entered the defendant's home with consent or because of exigent circumstances (*Payton v New York*, 445 US 573, 583 [1980]) and whether his warrantless arrest was supported by probable cause so that a search was incident to a lawful arrest (*People v Bunce*, 141 AD3d 536 [2d Dept 2016]). 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]).

C.

MOTION FOR a SEVERANCE and  
FOR a SEPARATE TRIAL

The defendant moves for a severance from his co-defendant and for a separate trial. Defendant presents no sworn allegations of fact or evidence to support the assertion that undue prejudice will result by joinder nor does he particularize the reasons as to why he would be prejudiced by a joint-trial with co-defendant. Any speculation that his co-defendant would pursue an antagonistic defense is an insufficient basis to proceed with separate trials (*People v Chaplin*, 181 AD2d 828 [2d Dept 1992]).

The defendant was properly joined in the same indictment (CPL 200.40[1]). All charges in the incident arise out of the same criminal transaction and are related in time and location relying on the same evidence. The court may, however, for good cause shown order that defendant be tried separately. Good cause includes a showing that defendant would be "unduly prejudiced by a joint trial" (CPL 200.40[1]). Further, where the proof against all defendants is supplied by the same evidence, "only the most cogent reasons warrant a severance" (*People v Bornholdt*, 33 NY2d 75, 87 [1973]; *People v Kevin Watts*, 159 AD2d 740 [2d Dept 1990]) and, ". . . a strong public policy favors joinder, because it expedites the judicial process, reduces court congestion, and avoids the necessity of recalling witnesses..." (*People v Mahboubian*, 74 NY2d 174, 183 [1989]).

Defendant's claim that the jury will not be able to separate the evidence against each defendant is not good cause for severance (CPL 200.40 [1]). Notably, a limiting instruction at trial would properly direct the jury to separately consider the proof as to each crime charged, thereby eliminating any prejudice to the defendant (*see People v Veeny*, 215 AD2d 605 [2d Dept 1995]).

D.

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 [1991]). If the People move to introduce such evidence, the defendant may renew this aspect of his motion.

Dated: White Plains, New York  
December 7, 2018



Honorable Anne E. Minihan  
Acting Justice of the Supreme Court

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