

<p>People v Hines</p>
<p>2019 NY Slip Op 34388(U)</p>
<p>November 29, 2019</p>
<p>County Court, Westchester County</p>
<p>Docket Number: Indictment No. 19-0181</p>
<p>Judge: Anne E. Minihan</p>
<p>Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u>(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.</p>
<p>This opinion is uncorrected and not selected for official publication.</p>

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

FILED
AND ENTERED
ON 11-29-2019
WESTCHESTER

-against-

WILLIAM HINES,

Defendant.

-----X
MINIHAN, J.

DECISION & ORDER
Indictment No. 19-0181
FILED ➤
DEC - 3 2019
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, charged by Westchester County Indictment Number 19-0181 with Robbery in the Second Degree (Penal Law § 160.10[2][a]) and Assault in the Second Degree (Penal Law § 120.05[6]), has filed an omnibus motion which consists of a Notice of Motion and an Affirmation in Support. In a response letter dated November 26, 2019, the People have consented to the pre-trial hearings sought in the omnibus motion. Defendant also submitted a separate motion to dismiss the indictment pursuant to CPL 190.50 and CPL 210.20, which consists of a Notice of Motion, an Affirmation in Support and an transcript of City Court proceedings on February 21, 2019. The People opposed the motion to dismiss by Affirmation in Opposition.

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 the motions as follows:

A.

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. To the extent that defendant's motion seeks certain discovery, i.e., the *Miranda* card, that 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.

B.

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 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]).

The evidence presented, if accepted as true, is legally sufficient to establish every element of the 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]).

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 (see *People v Jang*, 17 AD3d 693 [2d Dept 2005]; CPL 190.25[4][a]; CPL 210.30[3]).

Additionally, the defendant's separate motion to dismiss the indictment pursuant to CPL 190.50 and 210.20 on the basis that he was denied the right to testify before the grand jury is

denied. While the right to testify before a grand jury “must be scrupulously protected” (*People v Brumfield*, 24 NY3d 1126, 1128 [2015]), unlike the right to testify at trial it is a right of statutory construction not a constitutional right (*People v Smith*, 87 NY2d 715, 719 [1996]). CPL 190.50(5)(a) requires the People to provide notice to an accused of the pendency of a grand jury proceeding whenever “such person is a defendant who *has been arraigned in a local criminal court* upon a currently undisposed of felony complaint charging an offense which is a subject of the prospective or pending grand jury proceeding” (CPL 190.50[5][a] [emphasis added]). If the People fail to comply with the notice requirement in CPL 190.50(5)(a), the grand jury proceeding is defective and, upon timely motion by defendant, the resulting indictment must be dismissed (CPL 190.50[5][c]; 210.20[1][c]; *People v Small*, 26 NY3d 253, 259 [2015]). Here, defendant’s motion to dismiss is denied because, as the People correctly argue, the notice requirement in CPL 190.50(5)(a) does not apply since defendant had not been arraigned on a felony complaint at the time of the grand jury presentment (*see People v Small*, 26 NY3d 253, 259 [2015]). While defendant supports his motion with the transcript of a February 21, 2019 proceeding in the City Court of Yonkers wherein he expressed his desire to testify at any grand jury proceeding, such does not warrant dismissal of the indictment under CPL 190.50 and 210.20 since defendant had not yet been arraigned at the time of the subject grand jury presentment.

C.

MOTION to SUPPRESS NOTICED STATEMENTS

The People served CPL 710.30(1)(a) notice of statements allegedly made by defendant on February 12, 2019, at approximately 10:45 p.m. at the Yonkers Police Department Headquarters to a member of the Yonkers Police Department. Upon defendant’s motion, and on the People’s consent, a pre-trial *Huntley* hearing shall be held to determine whether any noticed statements 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]). The hearing will also address whether the alleged statements were obtained in violation of defendant’s Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

D.

MOTION TO SUPPRESS IDENTIFICATIONS

The People served CPL 710.30(1)(b) notice of identifications allegedly made of defendant during photographic arrays conducted at Yonkers Police Department Headquarters on February 13, 2019, at approximately 11:20 p.m. and on February 14, 2019, at approximately 4:40 p.m. Upon defendant’s motion, and on the People’s consent, a pre-trial hearing shall be held pursuant to *United States v Wade* (388 US 218 [1967]). At the hearing, the People bear the initial burden of establishing the reasonableness of the police conduct and the lack of any undue

suggestiveness (*see People v Chipp*, 75 NY2d 327, 335 [1990] *cert. denied* 498 US 833 [1990]; *People v Berrios*, 28 NY2d 361 [1971]). Once that burden is met, the defendant bears the ultimate burden of proving that the procedure was unduly suggestive. Where suggestiveness is shown, the People must show the existence of an independent source by clear and convincing evidence.

E.

MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

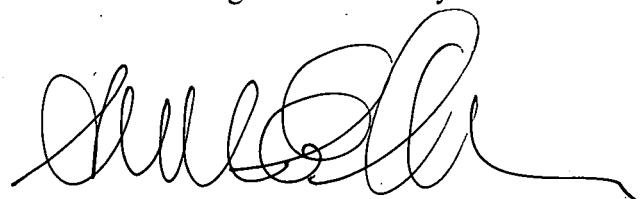
On defendant's motion, and the People's consent, the court orders a pre-trial *Sandoval* hearing to determine the extent, if at all, to which the People may inquire into defendant's prior criminal convictions, and prior uncharged criminal, vicious or immoral conduct (*see People v Sandoval* (34 NY2d 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 to impeach defendant's credibility if he elects to testify at trial (CPL 240.43). 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]).

F.

MOTION to RESERVE RIGHT to FILE FUTURE MOTIONS

This portion of the 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.

Dated: White Plains, New York
November 29, 2019



Honorable Anne E. Minihan
A.J.S.C.

To:

HON. ANTHONY A. SCARPINO, JR.
District Attorney, Westchester County
111 Dr. Martin Luther King, Jr., Boulevard
White Plains, NY 10601
Attn: A.D.A. John Z. Astarita

O'MEARA LAW OFFICE
Brendan O'Meara, Esq.
200 East Post Road
White Plains, NY 10601
Attorney for defendant, William Hines