

People v Sheridan

2019 NY Slip Op 34391(U)

May 13, 2019

County Court, Westchester County

Docket Number: Indictment No. 18-1332

Judge: David S. Zuckerman

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FILED

MAY 14 2019

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER

MIRABAI SHERIDAN and PHILIP BUDIN;

Ind. No.: 18-1332

Defendants.

-----X

ZUCKERMAN, J.

Defendants stand accused under Indictment No. 18-1332 of one count each of Robbery in the First Degree (Penal Law §160.15[4]), Burglary in the First Degree (Penal Law §140.30[4]), Attempted Robbery in the Second Degree (Penal Law §110/160.10[2b]), Conspiracy in the Fourth Degree (Penal Law §105.10), and Criminal Possession of a Firearm (Penal Law §265.01-b). Defendant Budin also stands accused under the same Indictment of one count of Tampering With Physical Evidence (Penal Law §215.40[2]), while Defendant Mirabai Sheridan stands charged with one count each of Attempted Tampering with Physical Evidence (Penal Law §110/215.40[2]) and Endangering the Welfare of a Child (Penal Law §260.10[1]). As set forth in the Indictment, it is alleged that, on or about October 24, 2018, Defendants, in Westchester County, New York, while aiding and abetting and acting in concert with each other, did forcibly steal property, and did enter or remain unlawfully in a dwelling with the intent to commit a crime therein, and in the course or commission thereof, or immediate flight therefrom, displayed what appeared to be a pistol.

It is further alleged that, on or about November 14, 2018, Defendants, in Westchester County, New York, while aiding and abetting and acting in concert with each other, did attempt to forcibly steal property, and in the course or commission thereof, or immediate flight therefrom, displayed what appeared to be a pistol. In addition, it is alleged that, on or about and between October 12, 2018 and November 14, 2018, Defendants, in Westchester County, New York, did, with intent that conduct constituting a class B or class C felony be performed, namely Robbery in the First or Second Degree, agreed with one or more persons to engage in or cause the performance of such conduct. It is further alleged that, on or about November 14, 2018, Defendants, in Westchester County, New York, while aiding and abetting and acting in concert with each other, did possess a firearm. In addition, it is alleged that, on or about and between October 23, 2018 and November 14, 2018, Defendant Philip Budin, in Westchester County, New York, believing that certain physical evidence was about to be produced or used in an official proceeding, and intending to prevent such production or use, did suppress it by an act of concealment, alteration or destruction, or by employing force, intimidation or deception against another. It is also alleged that, on or about November 15, 2018, Defendant Mirabai Sheridan, in Westchester County, New York, believing that certain physical evidence was about to be produced or used in an official proceeding, and intending to prevent such production or use, did attempt to suppress it by an act of

concealment, alteration or destruction, or by employing force, intimidation or deception against another. while aiding and abetting and acting in concert with each other, did possess a firearm. Finally, it is alleged that, on or about October 24, 2018, Defendant Mirabai Sheridan, in Westchester County, New York, knowingly acted in a manner likely to be injurious to the physical, mental, or moral welfare of a child less than seventeen years of age.

By Notices of Motion dated March 18, 2019, with accompanying Affirmations, Defendants move for omnibus relief. In response, the People have submitted Affirmations in Opposition dated April 1, 2019. On April 23, 2019, the court corresponded with the People and counsel for Defendant Budin, advising the People that the court had concerns regarding the sufficiency of the proof as to defendant Budin, including whether he aided, abetted, and acted in concert with defendant Sheridan. *See People v Coleman*, 131 AD3d 705 (2nd Dept 2015). The People responded on April 30, 2019; counsel for Defendant Budin did not reply.

The motions are disposed of as follows:

I. DEFENDANT SHERIDAN

A. MOTION FOR SANDOVAL/VENTIMIGLIA/MOLINEUX HEARING

1. *Sandoval* - Granted, solely to the extent that a *Sandoval* hearing shall be held immediately prior to trial at which time:

A. The People must notify the Defendant of all specific instances of the Defendant's prior uncharged criminal, vicious or

immoral conduct of which the People have knowledge and which the People intend to use at trial for purposes of impeaching the credibility of the Defendant (*see*, CPL §240.43); and

B. Defendant must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf (*see*, *People v. Malphurs*, 111 A.D.2d 266 [2nd Dept. 1985]).

2. *Ventimiglia/Molineux* - Upon the consent of the People, in the event that the People determine that they will seek to introduce evidence at trial of any prior bad acts of the Defendant, including acts sought in their case in chief such as the prior crime used to elevate Count 1 of the Indictment to a Felony, they shall so notify the Court and defense counsel and a *Ventimiglia/Molineux* hearing (*see* *People v Ventimiglia*, 52 NY2d 350 [1981]; *People v Molineux*, 168 NY 264 [1901]) shall be held immediately prior to trial to determine whether or not any evidence of uncharged crimes may be used by the People, including to prove their case in chief. The People are urged to make an appropriate decision in this regard sufficiently in advance of trial to allow any *Ventimiglia/Molineux* hearing to be consolidated and held with the other hearings herein.

B. MOTION FOR A WADE/DUNAWAY HEARING

Defendant moves to suppress a noticed identification procedure pursuant to CPL §710.20(3), including that it was the product of an arrest which was not based on probable cause. The People, in their

Affirmation in Opposition, state that there was no impropriety in the identification procedure attributable to Defendant in the instant matter, and that it was the product of an arrest that was based on probable cause. Consequently, the motion to suppress a noticed identification procedure is granted to the extent that a *Wade/Dunaway* hearing is ordered to determine the propriety of the noticed identification procedure.

**C. MOTION TO INSPECT THE GRAND JURY MINUTES
AND TO DISMISS AND/OR REDUCE THE INDICTMENT**

Defendant moves pursuant to CPL §§210.20(1)(b) and © to dismiss the indictment, or counts thereof, on the grounds that the evidence before the Grand Jury was legally insufficient and that the Grand Jury proceeding was defective within the meaning of CPL §210.35. On consent of the People, the Court has reviewed the minutes of the proceedings before the Grand Jury.

Pursuant to CPL §190.65(1), an indictment must be supported by legally sufficient evidence which establishes that the defendant committed the offenses charged. Legally sufficient evidence is competent evidence which, if accepted as true, would establish each and every element of the offense charged and the defendant's commission thereof (CPL §70.10[1]); *People v Jennings*, 69 NY2d 103 [1986]). "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 Bello*, 92 NY2d 523 (1998); *People v Ackies*, 79 AD3d 1050 (2nd Dept 2010). In rendering

a determination, "[t]he reviewing court's inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of each element of the charged crimes and whether the grand jury could rationally have drawn the inference of guilt." *Bello, supra*, quoting *People v Boampong*, 57 AD3d 794 (2nd Dept 2008-- internal quotations omitted).

A review of the minutes reveals that the evidence presented, if accepted as true, would be legally sufficient to establish every element of the offenses charged (see CPL §210.30[2]). Accordingly, Defendant's motion to dismiss or reduce for lack of sufficient evidence is denied.

With respect to Defendant's claim that the Grand Jury proceeding was defective within the meaning of CPL §210.35, a review of the minutes supports a finding that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, that the grand jurors who voted to indict heard all the "essential and critical evidence" (see *People v Collier*, 72 NY2d 298 [1988]; *People v Julius*, 300 AD2d 167 [1st Dept 2002], *lv den* 99 NY2d 655 [2003]), and that the Grand Jury was properly instructed (see *People v Calbud*, 49 NY2d 389 [1980] and *People v. Valles*, 62 NY2d 36 [1984]).

In making this determination, the Court does not find that release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court.

II. DEFENDANT BUDIN

A. MOTION TO INSPECT THE GRAND JURY MINUTES AND TO DISMISS AND/OR REDUCE THE INDICTMENT

Defendant moves pursuant to CPL §§210.20(1)(b) and © to dismiss the indictment, or counts thereof, on the grounds that the evidence before the Grand Jury was legally insufficient and that the Grand Jury proceeding was defective within the meaning of CPL §210.35. On consent of the People, the Court has reviewed the minutes of the proceedings before the Grand Jury.

Pursuant to CPL §190.65(1), an indictment must be supported by legally sufficient evidence which establishes that the defendant committed the offenses charged. Legally sufficient evidence is competent evidence which, if accepted as true, would establish each and every element of the offense charged and the defendant's commission thereof (CPL §70.10[1]); *People v Jennings*, 69 NY2d 103 [1986]). "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 Bello*, 92 NY2d 523 (1998); *People v Ackies*, 79 AD3d 1050 (2nd Dept 2010). In rendering a determination, "[t]he reviewing court's inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of each element of the charged crimes and whether the grand jury could rationally have drawn the inference of guilt." *Bello*, *supra*, quoting *People v Boampong*, 57 AD3d 794 (2nd Dept 2008-- internal quotations omitted).

A review of the minutes reveals that the evidence presented, if accepted as true, would be legally sufficient to establish every element of the offenses charged (see CPL §210.30[2]), including with regard to Defendant aiding and abetting and acting in concert with Defendant Sheridan. With respect to Defendant's claim that the Grand Jury proceeding was defective within the meaning of CPL §210.35, a review of the minutes supports a finding that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, that the grand jurors who voted to indict heard all the "essential and critical evidence" (see *People v Collier*, 72 NY2d 298 [1988]; *People v Julius*, 300 AD2d 167 [1st Dept 2002], *lv den* 99 NY2d 655 [2003]), and that the Grand Jury was properly instructed (see *People v Calbud*, 49 NY2d 389 [1980] and *People v. Valles*, 62 NY2d 36 [1984]).

In making this determination, the Court does not find that release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court.

B. MOTION FOR A HUNTLEY/DUNAWAY HEARING

Defendant moves to suppress noticed statements pursuant to CPL §710.20(3) alleging that they were made after a seizure that was not based on probable cause. The People, in their Affirmation in Opposition, state that there was no impropriety in obtaining the statements attributable to Defendant and, in particular, add that his seizure was based on probable cause. They do, however, consent

to a hearing in the issue. Consequently, the motion to suppress noticed statements is granted to the extent that a *Huntley/Dunaway* hearing is ordered to determine the voluntariness of the noticed statements.

C. MOTION FOR A MAPP/DUNAWAY HEARING/TO CONTROVERT THE SEARCH WARRANT

Defendant moves to suppress all physical evidence which the People seek to introduce against him at trial, alleging that it was recovered after a search that was not based on probable cause. The People, in their Affirmation in Opposition, state that there was no impropriety in the search conducted and seizure made and add, in particular, that it was based on probable cause. Consequently, the motion to suppress physical evidence is granted to the extent that a pre-trial *Mapp/Dunaway* hearing is ordered to determine the propriety of the search and seizure.

While not also denominated in Defendant's moving papers as a motion to controvert the search warrant herein, with respect to physical evidence recovered pursuant to execution of search warrants in this matter, the court has also reviewed the affidavits in support of the search warrants and finds they provided the issuing magistrate with ample probable cause to support issuance of the warrant. Further, this court reviewed the search order and finds them to be proper in all respects. This court notes that according to the Voluntary Disclosure Form and People's Affirmations filed in this case, the People have provided defense counsel with access to the search warrant and supporting affidavit.

D. MOTION FOR A WADE HEARING

Defendant moves to suppress a noticed identification procedure pursuant to CPL §710.20(3). The People, in their Affirmation in Opposition, state that there was no impropriety in the identification procedure attributable to Defendant in the instant matter. Consequently, the motion to suppress a noticed identification procedure is granted to the extent that a *Wade* hearing is ordered to determine the propriety of the noticed identification procedure.

E. MOTION TO SEVER

Defendant moves to sever the trial of the instant Indictment from that of his co-defendant, asserting that his defense is in conflict with that of the co-defendant, that a joint trial would result in undue prejudice to him, and that, if the co-defendant's post arrest statement is admitted at trial, it would violate his constitutional rights to a fair trial and his right to cross-examine witnesses against him.

The defendant and the co-defendant are, the People argue, properly joinable because they are part of the same criminal transaction--a single burglary involving all three defendants. Defendant has pointedly failed to rebut this, by demonstrating that the counts against each are not part of the same criminal transaction. The People also assert that, as a single count against all three defendants, the proof as to each is essentially the same as that against the others. Consequently, Defendant

having failed to demonstrate that the counts were not properly joinable, the court has no choice but to decline to sever the trial of this defendant from the trial of the co-defendant.

Defendant also asserts that a joint trial would result in undue prejudice to him, including that their defenses are antagonistic, and that if the co-defendant's statement were to be admitted at trial, his right to a fair trial would be violated, and his right to cross-examine witnesses impaired. As the People properly note, Defendant has failed to specify how his right to a fair trial would be violated by joinder with another defendant whose trial strategy might differ from his, nor has concrete proof (as opposed to assertion and speculation) of such trial strategy differences been offered by this defendant. As to the *Bruton* issue (*Bruton v US*, 391 US 123 [1968]), the motion is premature since the court has not ruled on the admissibility at trial of any statements made by the co-defendant, and in any event the statements as recorded in the Voluntary Disclosure do not appear to be inculpatory as to this Defendant. Consequently, the motion to sever is denied in all respects.

F. MOTION FOR SANDOVAL/VENTIMIGLIA/MOLINEUX HEARING

1. *Sandoval* - Granted, solely to the extent that a *Sandoval* hearing shall be held immediately prior to trial at which time:

A. The People must notify the Defendant of all specific instances of the Defendant's prior uncharged criminal, vicious or immoral conduct of which the People have knowledge and which the

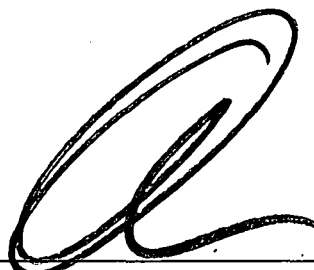
People intend to use at trial for purposes of impeaching the credibility of the Defendant (see, CPL §240.43); and

B. Defendant must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf (see, *People v. Malphurs*, 111 A.D.2d 266 [2nd Dept. 1985]).

2. *Ventimiglia/Molineux* - Upon the consent of the People, in the event that the People determine that they will seek to introduce evidence at trial of any prior bad acts of the Defendant, including acts sought in their case in chief such as the prior crime used to elevate Count 1 of the Indictment to a Felony, they shall so notify the Court and defense counsel and a *Ventimiglia/Molineux* hearing (see *People v Ventimiglia*, 52 NY2d 350 [1981]; *People v Molineux*, 168 NY 264 [1901]) shall be held immediately prior to trial to determine whether or not any evidence of uncharged crimes may be used by the People, including to prove their case in chief. The People are urged to make an appropriate decision in this regard sufficiently in advance of trial to allow any *Ventimiglia/Molineux* hearing to be consolidated and held with the other hearings herein.

All other motions are denied.

Dated: White Plains, New York
May 13, 2019



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