People v Ford
2019 NY Slip Op 34396(U)
December 17, 2019
County Court, Westchester County
Docket Number: Ind. No. 19-0958
Judge: David S. Zuckerman

[* 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

ANTHONY FORD,

Ind. No.: 19-0958

Defendant.
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ZUCKERMAN, J.

Defendant stands accused under Indictment No. 19-0958 of one count each of Promoting Prison Contraband in the First Degree (Penal Law §205.25[1]) and Conspiracy in the Fifth Degree (Penal Law §105.05[1]). As set forth in the Indictment, it is alleged that, on or about February 9, 2019, Defendant, in Westchester County, New York, while aiding and abetting and acting in concert with others, unlawfully introduced dangerous contraband into a detention facility and, on or about and between January 14, 2019 and February 9, 2019, Defendant and others, with intent that conduct constituting a felony, namely Promoting Prison Contraband in the First Degree, be performed, agreed to engage in or perform such conduct. By Notice of Motion dated November 30, 2019, with accompanying Affirmation, Defendant moves for omnibus relief. In response, the People have submitted an Affirmation in Opposition dated December 12, 2019.

The motion is disposed of as follows:

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]). 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.

B. MOTION FOR A *HUNTLEY* HEARING

Defendant moves to suppress statements pursuant to CPL §710.20(3). The People, in their Affirmation in Opposition, state that there were no statements noticed which are attributable to Defendant. Consequently, the motion to suppress statements is denied

C. MOTION FOR A *MAPP/DUNAWAY* HEARING

Defendant moves to suppress all physical evidence which the

People seek to introduce against him at trial alleging that, *inter alia*, it was recovered after a search that was not based on probable cause, or the product of a defective search warrant. The People, in their Affirmation in Opposition, state that there was no impropriety in the searches conducted and seizures made and add, in particular, that they were based on probable cause. The People add that, besides the search of Defendant's person incident to his arrest, the searched locations are limited to public areas or a cellular telephone over which Defendant had no expectation of privacy and/or cannot assert standing. Defendant has not thereafter contested those assertions. 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 seizure of physical evidence recovered upon the search of Defendant's person incident to his arrest and is in all other respects denied.

D. 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 Counts 2 and 3 of the Indictment to Felonies, 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.

E. MOTION TO SEVER FROM CO-DEFENDANTS

Defendant moves to sever the trial of the instant Indictment from that of his co-defendants, 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-defendants testify at trial, a joint trial would violate his constitutional rights to a fair trial and his right to cross-examine witnesses.

(1) Prejudice from Joint Trial

The crimes alleged herein are, the People argue, properly joinable because they are part of the same criminal transaction--conspiracy to promote and promotion of prison contraband. Defendant has failed to demonstrate that the counts are not part of the same criminal transaction.

The People are thus correct that the counts are joinable. Consequently, Defendant having failed to demonstrate that the counts were not properly joinable under CPL §200.20, the court has no choice but to decline to sever the trial of this defendant from the trial of the co-defendants.

(2) Co-Defendant Statements

Defendant also asserts that the People have given notice of statements made by co-defendants which inculpate Defendant and in regard to which he would not have the right of cross-examination should those defendants decline to testify at trial. *See generally Bruton v US*, 391 US 123 (1968). In response, the People assert that it is premature to seek suppression where the People have not yet sought to introduce any such statements, nor, in fact, has the court even ruled on their admissibility. Consequently, the motion to sever is denied in all respects.

F. DISCOVERY AND INSPECTION

Discovery is granted to the extent provided for in Criminal Procedure Law Article 240 and/or provided by the People. If any items set forth in CPL Article 240 have not been provided to Defendant pursuant to the consent discovery order in the instant

matter, said items are to be provided forthwith. Further, the bill of particulars set forth in the voluntary disclosure form provided to Defendant has adequately informed her of the substance of her alleged conduct and in all respects complies with CPL §200.95.

The People acknowledge their continuing duty to disclose exculpatory material (see *Brady v Maryland*, 373 US 83 [1963] and *Giglio v United States*, 405 US 150 [1971]) at the earliest possible date. If the People are or become aware of any material which is arguably exculpatory but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

To any further extent, including regarding the production of *Rosario* material at this time, discovery is denied as such material or information is beyond the scope of discovery (*see People v Colavito*, 87 NY2d 423 [1996]; *Matter of Catterson v Jones*, 229 AD2d 435 [2nd Dept 1996]; *Matter of Catterson v Rohl*, 202 AD2d 420 [2nd Dept 1994]; *Matter of Brown v Appelman*, 241 AD2d 279 [2nd Dept 1998]).

All other motions are denied.

Dated: White Plains, New York
December 17, 2019

HON. DAVID S. ZUCKERMAN, A.J.S.C.

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