

**People v Cox**

2020 NY Slip Op 34910(U)

February 5, 2020

Supreme Court, Westchester County

Docket Number: Docket No. 19-1143

Judge: Susan M. Capeci

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

-against-

TARIQ COX,

Defendant

-----X

FILED  
AND  
ENTERED  
ON 2-6 2020  
WESTCHESTER  
COUNTY CLERK

DECISION AND ORDER  
Docket #19-1143

FILED

FEB - 5 2020

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

The defendant, charged by indictment with two counts of criminal possession of a weapon in the second degree (P.L. 265.03 (3); 265.03(1)(b)), assault in the second degree (P.L. 120.05 (2)), criminal mischief in the third degree (P.L. 145.05 (2)), unlawful imprisonment in the first degree (P.L. 135.10), criminal mischief in the fourth degree (P.L. 145.00 (4)), menacing in the second degree (P.L. 120.14 (1)), assault in the third degree (P.L. 120.00 (1)), endangering the welfare of a child (P.L. 260.10 (1)), and criminal contempt in the second degree (P.L. 215.50 (3)), makes this omnibus motion seeking: 1) inspection of the grand jury minutes by the Court and the defendant, and thereafter, for the dismissal of the indictment and/or reduction of the charges contained therein; 2) a Sandoval/Ventimiglia/Molineux hearing; and 3) a reservation of rights to make further pre-trial motions as necessary.

The People consent to an in camera review of the grand jury minutes for legal sufficiency, and consent to a Sandoval/Ventimiglia/Molineux hearing, but otherwise oppose the motion. The Court now finds as follows.

1. 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 [c] 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. 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 (2<sup>nd</sup> 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 (2<sup>nd</sup> 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 [1<sup>st</sup> 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 such portions of the Grand Jury minutes as have not already been disclosed pursuant to CPL Article 245 to the parties was necessary to assist the Court.

## 2. MOTION FOR SANDOVAL/VENTIMIGLIA/MOLINEUX HEARING

Granted, solely to the extent that Sandoval/Ventimiglia/Molineux hearings, as the case may be, shall be held immediately prior to trial, as follows:

A. Pursuant to CPL §245.20, the People must notify the Defendant, not less than fifteen days prior to the first scheduled date for trial, of all specific instances of Defendant's uncharged misconduct and criminal acts of which the People have knowledge and which the People intend to use at trial for purposes of impeaching the credibility of the Defendant, or as substantive proof of any material issue in the case, designating, as the case may be for each act or acts, the intended use (impeachment or substantive proof) for which the act or acts will be offered; and

B. Defendant, at the ordered hearing, 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 AD2d 266 [2<sup>nd</sup> Dept. 1985]).


3. MOTION FOR A RESERVATION OF RIGHTS TO FILE FURTHER PRE-TRIAL MOTIONS

The defendant requests leave to make further motions as necessary. The defendant's motion is denied. CPL 255.20 is controlling with respect to the time frame for making pre-trial motions and there have been no allegations of good cause for making further motions outside of those time constraints. Any such request will be considered at the time it is made.

The defendant's further request for any hearings in this case to be held at least 20 days in advance of trial to allow transcription of the hearing minutes is denied. A request for any hearing minutes to be expedited if necessary will be considered at the time it is made.

This constitutes the Decision and Order of this Court.

Dated: February 5, 2020  
White Plains, New York

  
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HON. SUSAN M. CAPECI  
A.J.S.C.

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