

People v Walker

2020 NY Slip Op 35330(U)

January 29, 2020

Supreme Court, Westchester County

Docket Number: Docket No. 19-0542

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-

LLOYD WALKER,

Defendant.

-----X

FILED
AND
ENTERED
ON 1-30 2020
WESTCHESTER
COUNTY CLERK
DECISION AND ORDER
Docket #19-0542

FILED

JAN 30 2020

TIMOTHY C. IDONI

COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant, charged by indictment with two counts of attempted assault in the first degree (P.L. 110/120.10 (1)), two counts of criminal possession of a weapon in the second degree (P.L. 265.03 (1)(b) and 265.03 (3)), criminal possession of a weapon in the third degree (P.L. 265.02 (1)), reckless endangerment in the first degree (P.L. 120.25), and stalking in the second degree (P.L. 120.55 (1)), 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) suppression of the statement alleged to have been made by him, as set forth in the CPL 710.30 notice, as involuntarily made, or in the alternative, for a Huntley hearing; 3) suppression of physical evidence on the ground that it was recovered as the result of his unlawful arrest based upon a lack of probable cause, or a Mapp/Dunaway hearing; 4) suppression of identification evidence as noticed to him, or a Wade hearing; 5) a Sandoval/Ventimiglia/Molineux hearing; 6) order to disclose Brady material; and 6) a reservation of rights to make further pre-trial motions as necessary.

The People consent to a Huntley hearing limited to the defendant's fifth amendment claims, consent to provide Brady material as required by CPL 245, 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 (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 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 TO SUPPRESS STATEMENT

The defendant has been served with a CPL 710.30 notice with respect to an oral statement alleged to have been made by him on March 25, 2019, at 11:30 pm at Mount Vernon Police Department headquarters to a member of the Mount Vernon Police Department. The defendant argues that this noticed statement should be suppressed as involuntarily made.

The defendant's motion for suppression of the above statement as set forth in the CPL 710.30 notice is granted to the extent that the Court will conduct a Huntley hearing prior to trial concerning the noticed statement allegedly made by the defendant for the

purpose of determining whether Miranda warnings were necessary and, if so, whether he was so advised and made a knowing, intelligent and voluntary waiver thereof, or whether the statements were otherwise involuntarily made within the meaning of CPL 60.45.

3. MOTION TO SUPPRESS PHYSICAL EVIDENCE/ PROBABLE CAUSE HEARING

The defendant's motion for a Dunaway hearing on the issue of probable cause for his arrest is denied, as he has not asserted any specific factual allegations, sworn or otherwise, in support of his claim of illegal arrest (People v Mendoza, 82 NY2d 415 (1993)). The defendant's arrest was based upon information provided to police officers by an identified citizen, which was presumed reliable (People v Boykin, 187 AD2d 661 (2d Dept 1992); People v Newton, 180 AD2d 764 (2d Dept 1992)). Any evidence recovered from his person was thus seized incident to his lawful arrest (People v Belton, 55 NY2d 49 (1982)). Further, the defendant's home and vehicle were searched pursuant to a validly issued search warrant, which he has not moved to controvert, and thus, the recovery of any items from these areas was authorized.

Lastly, with respect to any evidence recovered from the street, the nightclub where the incident is alleged to have commenced, or the victim's vehicle, the defendant did not have a legitimate expectation of privacy in these areas. It is the defendant who must establish standing by showing a legitimate expectation of privacy in the place searched (People v Ramirez-Portoreal, 88 NY2d 99, 108 (1996); People v Stanley, 50 AD3d 1066 (2d Dept 2008)).

4. MOTION TO SUPPRESS IDENTIFICATION EVIDENCE

The People served the defendant with a CPL 710.30 notice pertaining to his identification, made from a single photograph, on March 25, 2019 at approximately 10:30

am, at the Mount Vernon Police Department. Although the notice does not identify who made the identification, the People now state in their papers in opposition that the identification was made by the victim, who is the defendant's former girlfriend, with whom he has two children in common.

"In cases in which the defendant's identity is not in issue, or those in which the protagonists are known to one another, 'suggestiveness is not a concern and hence, [CPL 710.30] does not come into play'" (People v Rodriguez, 79 NY2d 445, 449 (1992) citing People v Gissendanner, 48 NY2d 543, 552 (1979)). In this case, since the identifying witness of the single photo is the former girlfriend of the defendant, and they are well known to each other, the identification was confirmatory. Therefore, no Wade or Rodriguez hearing is required with respect to this identification (People v Tas, 51 NY2d 915 (1978); People v Rodriguez, *supra*).

5. 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 [2nd Dept. 1985]).

6. MOTION FOR DISCLOSURE OF BRADY MATERIAL

Defendant's motion for discovery of Brady material is granted, upon consent.

7. 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.

This constitutes the Decision and Order of this Court.

Dated: January 29, 2020
White Plains, New York



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

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