

People v Noone

2020 NY Slip Op 35454(U)

September 18, 2020

County Court, Westchester County

Docket Number: Indictment No. 19-1173

Judge: George E. Fufidio

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

SHAUN NOONE,

Defendant.

-----X
FUFIDIO, J.

DECISION & ORDER
Indictment No.: 19-1173

FILED

SEP 21 2020

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, SHAUN NOONE, having been indicted on or about March 4, 2020, on one count of burglary in the second degree (Penal Law § 140.25 [2]); one count of petit larceny (Penal Law § 155.25); and one counts of criminal possession of a stolen property in the fifth degree (Penal Law § 165.40); one count of unauthorized use of a motor vehicle in the second degree (Penal Law § 165.06) and harassment in the second degree (Penal Law § 240.26) has filed an omnibus motion which consists of a Notice of Motion, an Affirmation in Support and a Memorandum of Law. In response, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Upon consideration of these papers, the stenographic transcript of the grand jury minutes this Court disposes of this motion as follows:

A. MOTION TO INSPECT AND 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]).

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]). 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.

B. MOTION TO SUPPRESS STATEMENTS

The Court grants the Defendant’s motion to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the Defendant, which have been noticed by the People pursuant to CPL 710.30 (1)(a) 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]), obtained in violation of Defendant’s Sixth Amendment right to counsel, and/or obtained in violation of the Defendant’s Fourth Amendment rights (see *Dunaway v New York*, 442 US 200 [1979]).

C. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY CPL ARTICLE 710

The defendant was given two CPL 710.30 identifications. It is clear from the grand jury testimony that they are both in reference to two witnesses, who are familiar with the defendant, reviewing a video of an incident and opining that the person they viewed in the video is the Defendant. The People argue that the identifications were simply the witnesses giving their opinion that the person depicted in the video is the Defendant. However, it seems to the Court that any “identification” is based on someone’s opinion that the person before them, either in person, or from a photograph is the defendant. The basis of the opinion in this instance is the supposed prior familiarity of the witnesses with the Defendant.

The Defendant has not had the opportunity to cross-examine these witnesses as to the quality and nature of their prior familiarity and so, in an abundance of caution, this motion is granted to the extent that a hearing shall be held, first, to consider whether or not the witnesses prior familiarity with the Defendant was sufficient enough to render them impervious to suggestion and misidentification (*People v. Rodriguez*, 79 NY2d 445 [1992]) and; second, depending on the outcome of the first part of the hearing, whether the noticed identification was unduly suggestive (*United States v Wade*, 388 US 218 [1967]). In the further event the identifications are found to be unduly suggestive, the court shall then go on to consider whether the People have proven by clear and convincing evidence that an independent source exists for such witness’ proposed in-court identification (*People v Riley*, 70 NY2d 523 [1987]).

D. 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:

I. 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

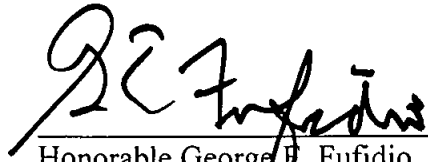
II. Defendant, at the ordered hearing, must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf (*see, People v. Malphurs*, 111 AD2d 266 [2nd Dept. 1985]).

E. MOTION RESERVING THE RIGHT TO FILE ADDITIONAL MOTIONS

Defendant's motion reserving the right to file additional motions is denied. Should the Defendant file any other motions that were not raised in his *Omnibus* motion, then they will need to be in compliance with CPL 255.20.

The foregoing constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
September 18, 2020


Honorable George E. Fufidio
Westchester County Court Justice

To:

HON. ANTHONY A. SCARPINO, JR.
District Attorney, Westchester County
111 Dr. Martin Luther King, Jr. Boulevard
White Plains, New York 10601

BY:

KIERAN MCGRATH, ESQ
Assistant District Attorney

MARIA I. WAGER, ESQ.
Assistant District Attorney

BRENDAN O'MEARA, ESQ.
Attorney for the Defendant
200 East Post Road
White Plains, New York 10601