

People v Novoa

2021 NY Slip Op 33148(U)

January 11, 2021

County Court, Westchester County

Docket Number: Indictment No. 19-1114

Judge: Anne E. Minihan

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FILED
AND ENTERED
ON 1-12-2021
WESTCHESTER

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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

-against-

LUIS NOVOA aka LUIS ANTONIO
NOVOA OLIVEROS,

FILED

JAN 12 2021

TIMOTHY C IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER
Defendant.

DECISION & ORDER

Indictment No. 19-1114

-----X
MINIHAN, J.

Defendant, LUIS NOVOA, charged by Westchester County Indictment Number 19-1114 with Driving While Intoxicated, as a felony (VTL § 1192[3])¹, Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree (VTL § 511[3][a][i]), Leaving the Scene of an Incident Without Reporting (VTL § 600[1][a]), Failure to Drive Upon the Right Half of the Roadway (VTL § 1120[a]), Turning a Vehicle Without Giving an Appropriate Signal (VTL § 1163[a]), Failure to Stop at a Steady Red Light (VTL § 1111[d][1]), Failure to Comply with a Lawful Order or Direction of a Police Officer (VTL § 1102), and Criminal Mischief in the Fourth Degree (Penal Law § 145.00[3]), has filed an omnibus motion consisting 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.

I.
MOTION to INSPECT and DISMISS and/or REDUCE
CPL ARTICLE 190

Defendant moves pursuant to CPL 210.25(1) to dismiss and/or reduce the counts of the indictment 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.

The People concede that the Grand Jury was presented with legally insufficient evidence of identity as to counts three and eight of the indictment, charging Leaving the Scene of an Incident Without Reporting (VTL § 600[1][a]) and Criminal Mischief in the Fourth Degree (Penal Law § 145.00[3]), respectively. As the People concede, those counts should be dismissed and are, hereby, dismissed. The indictment is amended consistent with this decision.

As for the remaining charges in the indictment, a review of the Grand Jury minutes reveals that the evidence presented, if accepted as true, would be legally sufficient to establish every element of the offenses charged (CPL 210.30 [2]). Pursuant to CPL 190.65(1), an indictment must be supported by

¹By special information defendant is charged with having been convicted of DWI in the City of Mount Vernon Court, NY, on March 10, 2010, and having had his license revoked. Defendant is also charged with having been convicted of DWI in the Supreme Court, County of Westchester, NY, on April 19, 2010, and having had his license revoked.

legally sufficient evidence which establishes that the defendant committed the offenses charged. “Courts assessing the sufficiency of the evidence before a grand jury must evaluate whether the evidence, viewed most favorably to the People, if unexplained and uncontradicted--and deferring all questions as to the weight or quality of the evidence--would warrant conviction” (*People v Mills*, 1 NY3d 269, 274-275 [2002]). Legally sufficient evidence means competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant’s commission thereof (CPL 70.10[1]; *see People v Flowers*, 138 AD3d 1138, 1139 [2d Dept 2016]). “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 Jessup*, 90 AD3d 782, 783 [2d Dept 2011]). “The reviewing court’s inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of every element of the charged crimes, and whether the Grand Jury could rationally have drawn the guilty inference. That other, innocent inferences could possibly be drawn from those facts is irrelevant to the sufficiency inquiry as long as the Grand Jury could rationally have drawn the guilty inference” (*People v Bello*, 92 NY2d 523, 526 [1998]).

Here, except as to those charges hereby dismissed (Leaving the Scene of an Incident Without Reporting [VTL § 600(1)(a)] and Criminal Mischief in the Fourth Degree [Penal Law § 145.00(3)]), the evidence presented to the Grand Jury was legally sufficient to establish the charges and the motion to dismiss and/or reduce the remaining charges is denied.

To the extent that defendant’s motion alleges that the Grand Jury proceeding was defective within the meaning of CPL 210.35, a review of the minutes reveals that a quorum of the grand jurors was present during the presentation of evidence, and that the Assistant District Attorney properly instructed the Grand Jury on the law, and only permitted those grand jurors who heard all the evidence to vote the matter (*see People v Collier*, 72 NY2d 298 [1988]; *People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]).

Insofar as defendant’s motion seeks to dismiss the indictment in furtherance of justice, that branch of the motion is denied (*see* CPL 210.40). The defendant has cited no persuasive or compelling factor, consideration or circumstance under CPL 210.40 warranting dismissal of this indictment. The court has discerned no compelling factor, consideration or circumstance which clearly demonstrates that further prosecution or conviction of the defendant would constitute or result in injustice.

In making its determination, the Court does not find it necessary to release to the parties any portions of the Grand Jury minutes which are not required to be disclosed pursuant to CPL Article 245.

II.

MOTION to SUPPRESS NOTICED STATEMENTS CPL 710

Defendant’s motion to suppress the statements noticed pursuant to CPL 710.30(1)(a) on the grounds that they were unconstitutionally obtained is granted to the extent of ordering a pretrial *Huntley* hearing to determine whether the statements 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]), and/or obtained in violation of the defendant’s Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]), or his Sixth Amendment right to counsel.

III.

MOTION to SUPPRESS EVIDENCE

Defendant's motion to suppress any evidence obtained as the fruits of his illegal arrest without probable cause, including any evidence obtained from defendant's person and/or the vehicle, as well as the police officers' observations as to field sobriety tests and any refusal by defendant to submit to a chemical test, is granted solely to the extent of ordering a pretrial *Mapp* hearing to determine the propriety of any search (*see Mapp v Ohio*, 367 US 643 [1961]). The hearing will also address whether any evidence was obtained in violation of the defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

IV.

MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

Defendant has moved for a pretrial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into the defendant's prior criminal convictions, prior uncharged criminal, vicious or immoral conduct. On the People's consent, the court orders a pre-trial hearing pursuant to *People v Sandoval* (34 NY2d 371[1974]). At said hearing, the People shall notify the defendant, *in compliance with CPL Article 245, and in any event not less than 15 days prior to the first scheduled trial date*, of all specific instances of defendant's criminal, prior uncharged criminal, vicious or immoral conduct of which they have knowledge and which they intend to use to impeach defendant's credibility if he elects to testify at trial. At the hearing, the defendant has the burden of identifying any instances of his prior misconduct that he submits the People should not be permitted to use to impeach his credibility. The defendant shall be required to identify the basis of his belief that each event or incident may be unduly prejudicial to ability to testify as a witness on his own behalf (*see People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

Upon the consent of the People, if the People determine that they will seek to introduce at trial evidence in their case-in-chief of any prior uncharged misconduct and criminal acts of the defendant, the People shall notify the court and defense counsel, *in compliance with CPL Article 245, and in any event not less than 15 days prior to the first scheduled trial date*, 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 any such evidence may be used by the People 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 any other hearings ordered herein.

V.

MOTION for DISCOVERY, DISCLOSURE and INSPECTION
CPL Article 245

To whatever extent material that is discoverable under Criminal Procedure Law Article 245 has not already been provided to the defense by the People, the defendant's motion is granted and such discovery, including both *Brady* material² and *Rosario* material, shall be provided forthwith. Leave is

² The People acknowledge their continuing duty to disclose exculpatory material (*Brady v Maryland*, 373 US 83 [1963]; *see Giglio v United States*, 405 US 150 [1971]). If the People are

granted for either party to seek a protective order (CPL Article 245). If the defense has a particularized reason to believe that there remains outstanding discovery with which counsel has not been provided, counsel is directed to contact the assigned Assistant District Attorney upon receipt of this order. If the issue remains unresolved within two days of receipt of this order, counsel for the defendant shall contact the court to request an immediate compliance conference.

The People recognize their continuing duty to disclose the terms of any deal or agreement made between the People and any prosecution witness at the earliest possible date (*see People v Steadman*, 82 NY2d 1 [1993]; *Giglio v United States*, 405 US 150 [1972]; *Brady v Maryland*, 373 US 83 [1963]; *People v Wooley*, 200 AD2d 644 [2d Dept 1994]).

If the People have yet to provide defendant with a Bill of Particulars, they are hereby directed to provide same to defendant within three days of receipt of this order.

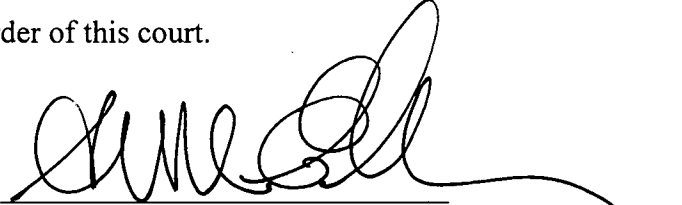
VI.

MOTION for LEAVE to MAKE ADDITIONAL MOTIONS

Defendant's motion for leave to make additional motions is denied. Defendant must demonstrate good cause for any further pre-trial motion for omnibus relief, in accordance with CPL 255.20(3).

The foregoing constitutes the decision and order of this court.

Dated: White Plains, New York
January 11, 2021



Honorable Anne E. Minihan
Acting Justice of the Supreme Court

To:
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or become aware of any such material which is arguably subject to disclosure under *Brady* and its progeny and CPL Article 245 which they are unwilling to disclose, they are directed to bring it to the immediate attention of the court for an in camera inspection and determination as to whether it constitutes *Brady* material discoverable by the defendant.