

People v Crumbsie

2021 NY Slip Op 34065(U)

February 17, 2021

County Court, Westchester County

Docket Number: Ind. No. 20-0069

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 2-17 2021
WESTCHESTER

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

-against-

SPENCER CRUMBSIE,

Defendant.

-----X
MINIHAN, J.

DECISION & ORDER
Ind No.: 20-0069

FILED ↗

FEB 17 2021

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant, charged by Westchester County Indictment No. 20-0069 with Burglary in the Third Degree (Penal Law § 140.20) and Petit Larceny (Penal Law § 155.25) has filed an omnibus motion consisting of a Notice of Motion, an Affirmation, and a Memorandum of Law. In response thereto, 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 and the Consent Discovery Order, entered in this case, the court disposes of the motion as follows:

A & B.

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

Defendant moves pursuant to CPL 210.25(1) to dismiss the indictment, or dismiss and/or reduce counts thereof, on the grounds that the indictment was facially insufficient, 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 indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's commission thereof with sufficient precision as to clearly apprise the defendant of the conduct which is the subject of the indictment (CPL 200.50). The indictment charges each and every element of the crimes, and alleges that the defendant committed the acts which constitute the crimes at a specified place during a specified time period and, therefore, is sufficient on its face (*see People v Cohen*, 52 NY2d 584 [1981]; *People v Iannone*, 45 NY2d 589 [1978]).

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 (CPL 210.30 [2]). Pursuant to CPL 190.65(1), an indictment must be supported by 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, the evidence presented to the grand jury was legally sufficient to establish the charges; thus, defendant’s motion to dismiss the indictment or reduce the charges 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 reveal that the Assistant District Attorney properly instructed the Grand Jury on the law (*see People v Valles*, 62 NY2d 36 [1984]). 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.

C.

MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

Defendant has moved for a pre-trial 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 shall bear 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.

D.

MOTION for DISCOVERY, DISCLOSURE and INSPECTION
CPL Article 245

Defendant argues that the People failed to comply with their discovery obligations and that their Certificate of Compliance was rendered invalid by virtue of the fact that the police witnesses declined to answer question number six in the CPL 245.20(1)(k) inquiry. The People respond that on November 4, 2020 they provided the defense with revised CPL 245.20(1)(k) questionnaires wherein all of the questions were answered and that, thus, defendant's claim is moot.

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* material¹ and *Rosario* material, shall be provided forthwith. Leave is 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.

E.

MOTION to STRIKE IDENTIFICATION NOTICE &
PRECLUDE IDENTIFICATION TESTIMONY
CPL 710

The motion to strike is denied. Said notice is in conformity with the statutory requirements of CPL 710.30.

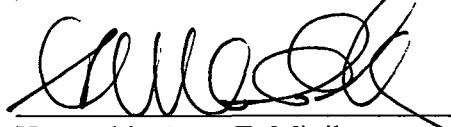
Defendant's motion to suppress testimony of the noticed identification(s) is granted to the limited extent of ordering a pre-trial *Wade* hearing (see *United States v Wade*, 388 US 218

¹ 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 or become aware of any such material which is arguably subject to disclosure under *Brady* and its progeny and Criminal Procedure Law Article 245 which they are unwilling to consent to disclose, they are directed to bring it to the immediate attention of the court and to submit it for the court's in camera inspection and determination as to whether it constitutes *Brady* material discoverable by the defendant.

[1967]). At the hearing, the People bear the initial burden of establishing the reasonableness of the police conduct and the lack of any undue suggestiveness (*see People v Chipp*, 75 NY2d 327, 335 [1990] *cert. denied* 498 US 833 [1990]; *People v Berrios*, 28 NY2d 361 [1971]). Once that burden is met, the defendant bears the ultimate burden of proving that the procedure was unduly suggestive. Where suggestiveness is shown, the People must show the existence of an independent source by clear and convincing evidence. The hearing shall also address whether the identifications were the result of an unlawful arrest (*Dunaway v New York*, 442 US 200 [1979]), or conducted in violation of defendant's Sixth Amendment right to counsel.

The foregoing constitutes the opinion, decision and order of the court.

Dated: White Plains, New York
~~November~~, 2020
FEB. 17, 2021


Honorable Anne E. Minihan
Acting Supreme Court Justice

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