

People v Esquivel-Mancilla

2022 NY Slip Op 34813(U)

August 4, 2022

Supreme Court, Westchester County

Docket Number: Ind. No. 22-70257

Judge: Susan M. Capeci

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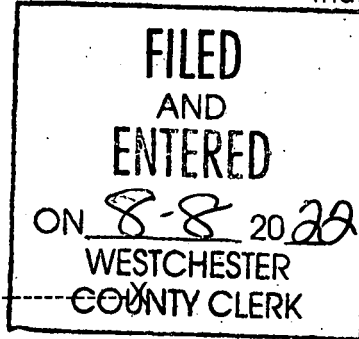
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER


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

DECISION AND ORDER
Ind. No. 22-70257

-against-

ANGEL M. ESQUIVEL-MANCILLA,
Defendant.




FILED
AUG - 8 2022
TIMOTHY L. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

The defendant, charged by indictment with three counts of criminal contempt in the first degree under P.L. 215.51 (b)(v), three counts of criminal contempt in the first degree under P.L. 215.51 (c), three counts of aggravated criminal contempt (P.L. 215.52 (1)), two counts of aggravated family offense (P.L. 240.75 (1)), two counts of assault in the third degree (P.L. 120.00 (1)), three counts of endangering the welfare of a child (P.L. 260.10 (1)), burglary in the second degree (P.L. 140.25 (2)), and resisting arrest (P.L. 205.30), makes this omnibus motion seeking: 1) further discovery, and disclosure of Brady material; 2) 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; 3) suppression of statements alleged to have been made by the defendant to law enforcement authorities, or a Huntley hearing; 4) suppression of physical evidence recovered, on the ground he was arrested without probable cause, or a Mapp/Dunaway hearing; 5) motion to suppress evidence of his identification, or a Wade hearing; 6) a Sandoval/Ventimiglia/Molineux hearing; and 7) motion to strike the People's demand for an alibi notice.

The People consent to an *in camera* review by the Court of the Grand Jury

minutes for legal sufficiency and the release of the grand jury testimony to the defendant, consent to a Sandoval/Ventimiglia/Molineux hearing, consent to a Huntley hearing limited to the defendant's Fifth amendment claims, and consent to discovery within the parameters of CPL article 245, but otherwise oppose the motion. The Court now finds as follows.

1. MOTION FOR FURTHER DISCOVERY, DISCLOSURE OF BRADY MATERIAL

Defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 245 and/or already provided by the People. If any items set forth in CPL Article 245 have not already been provided to Defendant pursuant to that Article, said items are to be provided forthwith. Any party is granted leave, if required, to apply for a Protective Order in compliance with CPL Article 245, upon notice to the opposing party and any party affected by said Protective Order. The People are directed to file a Certificate of Compliance with CPL Article 245 and the instant Order upon completion of their obligations thereunder, if they have not already done so. The People acknowledge their continuing obligation to disclose Brady material and are directed to disclose any such information to the defense in accordance with CPL article 245.

In this case, the People filed a Certificate of Compliance ("COC") on April 26, 2022, having filed a discovery package on that date, in addition to other materials previously provided to the defendant on April 21, 2022. In addition, they have subsequently submitted follow-up materials to the defendant. The defendant challenges the COC as "illusory," asserting that the People have failed to turn over significant materials that are required. Each claim will be addressed as follows.

Disclosure of Expert Witness

Specifically, the defendant asserts that the People have stated they will call an expert witness at trial, but have not disclosed the identity of this person. The People respond that they plan to call an expert witness in the area of domestic violence relationships, and will promptly disclose the identity of the expert when they have knowledge of the individual they will be calling.

CPL 245.21 (1)(f) provides; in pertinent part, that

"[t]he prosecution shall disclose to the defendant ... all items ... that relate to the subject matter of the case and are in the possession, custody or control of the prosecution or persons under the prosecution's direction or control, including but not limited to: ... [e]xpert opinion evidence, including the ... current curriculum vitae ... and a list of proficiency tests and results administered or taken within the past ten years of each expert witness whom the prosecutor intends to call as a witness at trial or a pre-trial hearing ... If in the exercise of reasonable diligence this information is unavailable for disclosure within [thirty-five calendar days after the defendant's arraignment], that period shall be stayed without need for a motion ... except that the prosecution shall notify the defendant in writing that such information has not been disclosed, and such disclosure shall be made as soon as practicable and not later than sixty calendar days before the first scheduled trial date...." (CPL 245.20 (1)(f); see also People v Moss, 2022 WL 2205392, at 2 (N.Y. Crim. Ct. June 21, 2022))

Accordingly, the since the People have notified the defendant of their intention to call an expert witness, the COC should not be stricken on this basis. The People are directed to disclose information as to their expert witness as soon as practicable and not later than sixty calendar days before the first scheduled trial date, as per the statute.

Disclosure of Brady material

The defendant next asserts that the People failed to disclose Brady material, in that they have not produced CPS records pertaining to the victim and her altercation with a former boyfriend which involved the parties' child. The People respond that they

are unaware of any "founded" reports by CPS with respect to the victim. They have turned over the Domestic Incident Report related to the May 7, 2021 incident, stating the children were removed from the victim by CPS on that date. To the extent that any indicated finding is made with respect to the victim as to this or any other incident, the People state they will turn that over to the defendant.

Unfounded reports are not normally available to the People as they are legally sealed pursuant to Soc. Serv. Law § 422 (5). "No adverse consequence to the prosecution or the prosecutor shall result from the filing of a certificate of compliance in good faith" (CPL § 245.50). Since the People have indicated they do not have any indicated CPS reports pertaining to the victim in their possession, the COC should not be invalidated on this basis.

Disclosure of Radio runs, Police Reports, Body Camera footage, 1k Material

The People represent that they are not in possession of any body worn camera footage relating to any of the incidents. The People further respond that they have provided all discovery in their possession as to the October 2020 incident as part of the April 26, 2022 discovery package (provided earlier to defendant's prior counsel). As for the January 2022 and May 2021 incidents, they also provided the domestic incident reports for each date, which acted as the police report of each incident. With respect to any 1k material, the People maintain they have provided all such discovery material in their possession. The People state they will provide any continuing discovery if it is found as to further radio runs if any such information arises.

CPL 245.20 (2) requires the prosecution to "make a diligent, good faith effort to ascertain the existence of material or information discoverable under [CPL 245.20 (1)] and to cause such material or information to be made available for discovery where it exists but is not within the prosecutor's possession, custody or control" (CPL 245.20 [2]). The Court finds that based upon their representations, the People have met their obligation, and finds the COC should not be stricken on this basis.

2. 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]). With respect to any claim made by the defendant for disclosure of the instructions given to the Grand Jury, instructions to the Grand Jury are not discoverable under the statute (see CPL 245.20(1)(b)).

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.

3. MOTION TO SUPPRESS STATEMENTS

The People have served the defendant with a CPL 710.30 notice with respect to oral statements alleged to have been made by him to law enforcement authorities, on May 7, 2021, at 18 Bush Avenue, Port Chester, NY. The defendant argues that this noticed statement should be suppressed on the ground that it was obtained involuntarily, and as a result of his unlawful arrest.

The defendant's motion for suppression of the above statements 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 statements 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.

As more fully discussed in Point 4, infra, the defendant's motion for a hearing based upon his claim of unlawful arrest is denied.

4. MOTION TO SUPPRESS PHYSICAL EVIDENCE/ PROBABLE CAUSE HEARING

The defendant's motion for a Dunaway/Mapp hearing on the issue of probable cause for his arrest and the subsequent recovery of evidence is denied. The defendant has not set forth any allegations of fact in support of his conclusory statement of illegal arrest. In the absence thereof, no hearing is warranted on this ground (see People v Mendoza, 82 NY2d 415 (1993); CPL 710.60(3)(b)). Moreover, the defendant was

arrested pursuant to a validly issued arrest warrant.

Any evidence recovered from the defendant's person was thus seized incident to his lawful arrest (People v Belton, 55 NY2d 49 (1982)). Accordingly, the defendant's motion for suppression of physical evidence is denied.

5. MOTION TO SUPPRESS IDENTIFICATION EVIDENCE

The People served the defendant with a CPL 710.30 notice with respect to his identification, which pertains to an identification made subsequent to the commission of the crime on January 9, 2022, at 7:27 am, at 18 Bush Avenue, Port Chester, NY. Although they did not specify who made the identification in the notice, the People now indicate in their Affirmation in Opposition that the victim, who is the wife of the defendant and has two children with him, made the noticed identification to indicate his whereabouts in the apartment upon the arrival of the police. The People argue that this identification was confirmatory, rather than an identification procedure, and that no Wade hearing is warranted.

"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 defendant is his wife, 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).

6. 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]).

7. MOTION TO STRIKE THE PEOPLE'S ALIBI DEMAND

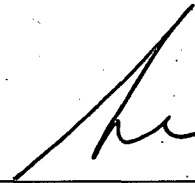
The defendant contends that the People's alibi demand should be stricken since the statute it is based on, CPL 250.20, is unconstitutional pursuant to Wardius v Oregon (412 US 470 (1973)). He claims the statute improperly requires the defense to supply names of alibi witnesses in advance of the People's requirement to provide names of rebuttal witnesses to the defense.

The defendant's motion is denied. New York State courts have specifically found this statute to be constitutional following the United States Supreme Court decision in Wardius v Oregon, supra (People v Dawson, 185 AD2d 854 (2d Dept 1992));

People v Gill, 164 AD2d 867 (2d Dept 1990)).

This constitutes the Decision and Order of this Court.

Dated: August 4, 2022
White Plains, New York



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

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