

People v Sinclair

2022 NY Slip Op 34821(U)

September 20, 2022

County Court, Westchester County

Docket Number: Indictment No. 22-71321-02

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 9-20-2022
WESTCHESTER
COUNTY CLERK

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

-against-

FILED

DANIEL SINCLAIR

SEP 23 2022

DECISION & ORDER
Indictment No. 22-71321-02

TIMOTHY C. IDONI
COUNTY CLERK
County of WESTCHESTER

-----X
MINIHAN, J.

Defendant, Daniel Sinclair, is charged by Westchester County Indictment Number 22-71321-02 together with codefendant Christopher Mills with Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03[3]) (two counts). Defendant filed an omnibus motion consisting of a Notice of Motion and an Affirmation in Support. In response, the People filed an Affirmation in Opposition together with a Memorandum of Law. On August 30, 2022, defendant filed, and this Court accepted, a Notice of Supplemental Motion and an Affirmation in Support. In response, the People filed an Affirmation in Opposition to defendant's Supplemental Motion together with a Memorandum of Law. Defendant filed a Reply on September 16, 2022.

I.

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

Defendant argues that the People did not provide the Grand Jury minutes on this matter in a timely manner. The Court disagrees. Defendant is in custody and therefore, pursuant to CPL 245.10(1)(a)(i), the prosecutor must perform her initial discovery obligations within 20 days after defendant's arraignment on the indictment. However, CPL 245.20(1)(b) allows for an additional 30-day grace period for turning over Grand Jury minutes,¹ for a total of 50 allowable days to disclose after the date of arraignment. Here, defendant was arraigned on the indictment on June 13, 2022, making disclosure of the Grand Jury minutes due by August 2, 2022. The People provided the minutes to defendant on August 1, 2022 which was within the statutory allowable time frame.

Defendant moves pursuant to CPL 210.20 to dismiss the indictment, or reduce the counts charged against him, on the grounds that the evidence before the Grand Jury was legally insufficient, and the Grand Jury proceeding was defective within the meaning of CPL 210.35. On consent of the People, the Court has reviewed the minutes of the proceedings before the Grand Jury.

The Court denies defendant's motion to dismiss or reduce the counts in the indictment for legally insufficient evidence because a review of the minutes reveals that the evidence presented, if

¹ The Legislature provided an extended deadline specifically for Grand Jury minutes, recognizing that their preparation may require more time compared to other discoverable materials since transcription service might be limited. In fact, Grand Jury testimony can be provided as late as 30 days before the first scheduled trial date (see CPL 245.20[1][b]).

accepted as true, would be legally sufficient to establish every element of the offenses charged, including that defendant constructively possessed the two firearms contained in the white plastic bag recovered from the hotel lobby (see CPL 210.30[2]). Defendant argues that the People failed to meet their burden of proving that defendant had constructive possession of the two firearms and, specifically, failed to establish that defendant exercised dominion and control over the firearms. The relevant evidence before the Grand Jury, pertaining to this motion, was that defendant and codefendant were renting a hotel room, in defendant's name; complaints were made to the general manager that the smell of smoke was emanating from that room; the general manager went inside the hotel room and observed a firearm in plain view on the table which he photographed; subsequently, the general manager, along with members of the Greenburgh Police Department, returned to the hotel room where defendant and codefendant were inside, told them they were being evicted, and the general manager gave them a plastic bag to put their personal items in. Defendant and codefendant walked into the lobby together, codefendant carrying a large plastic bag with objects inside which he placed down on a couch in the lobby area. Defendant was always within approximately one foot from the bag as shown on video from the hotel lobby. According to officer testimony, both defendant and codefendant denied ownership of the bag. During the Grand Jury presentation, the hotel lobby surveillance video was played multiple times.

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, if accepted as true, is legally sufficient to establish that defendant exercised sufficient dominion and control over the plastic bag thereby establishing he constructively possessed the firearms inside (Penal Law § 10.00[8]; *People v Williams*, 170 AD3d 1046 [2d Dept 2019]). "Constructive possession may be established by direct evidence or by circumstantial evidence with inferences drawn from the facts presented in the case" (*People v Skyles*, 266 AD2d 321, 322 [2d Dept 1999]). First, the hotel room was rented in defendant's name and the general manager and officers observed defendant in the hotel room soon after the gun was observed and photographed therein, establishing that defendant exercised dominion and control over the hotel room in which the firearm was observed. In the lobby, defendant remained within close proximity of the garbage bag containing two firearms, giving him access to the weapons, and codefendant never said that the bag or firearms were his, as discussed in more detail *infra*. As such, the Court finds that the People set forth legally sufficient evidence to find that defendant constructively possessed the firearms, both in the hotel room and in the lobby.

Moreover, defendant claims that the Grand Jury proceeding was defective, and the indictment must be dismissed, because the People withheld allegedly exculpatory evidence during the Grand Jury presentation. Specifically, defendant argues that police-worn body cameras, not before the Grand Jury, contain video and audio of conversations between the officers and codefendant Mills that “would have provided exculpatory evidence that Sinclair had no nexus to the white garbage bag,” and specifically that “Mills admitted the white garbage bag belonged to him, that he had packed the contents of the garbage bag inside of room 208, carried it down to the lobby by himself and that he admitted using the lap top and printer for schoolwork to become a writer” (*see* Defendant’s Supplemental Affirmation, ¶ 13). Moreover, defendant argues that the video shows that he “never looked at the white garbage bag, touched the white garbage bag or exercised dominion and control over the white garbage bag” but that codefendant Mills carried the bag into the lobby (*see* Defendant’s Supplemental Affirmation, ¶ 12) and in fact stated that the bag belonged to him (*see* Defendant’s Supplemental Reply Affirmation, ¶ 13). The People indicate that at no point during any of the exchanges between codefendant Mills and the officers did he admit ownership of the garbage bag. In fact, according to the People’s 710.30 notices, when each defendant was asked separately if the bag belonged to them, they replied, “no” and specifically, codefendant stated, “That’s not my bag, sir.” When asked if the bag was abandoned property, codefendant stated, “yes.” While codefendant was seated on the couch, he stated, “I just packed it up and brought the bag out of the room because the manager said take everything out of the room. I just picked it up and dragged it down here. I didn’t put anything in it. Yes, the bag was already packed.”

Defendant has asked the Court to review police-worn body camera number 26, alleging that it contains a conversation between codefendant Mills and a police officer at approximately 18:50 in which “Mills just admitted the white garbage bag belonged to him” (*see* Defendant’s Supplemental Reply Affirmation, ¶ 8). The People have provided this video footage and the Court has reviewed it, beginning at timestamp 18:48:24. At approximately 18:50:24, an officer asks, “That’s all you guys got - a bag? That’s all you guys got?”² and codefendant Mills replies, “Yeah, a printer.” Codefendant Mills then says he was doing schoolwork and that’s why he had his printer. At approximately 18:55:28 codefendant Mills says to officers, “That’s not my bag. I picked the bag up when he told us to take everything out.” When an officer asks both defendant and codefendant if it was their bag, they both said no. At approximately 18:57:28, codefendant Mills is heard telling officers, “That bag is not mine. I, I brought, I just brought it out the room... yes, I brought the bag out the room. I just packed the bag up and brought it out the room. The manager said take everything out the room. No, I didn’t put anything, I just grabbed, dragged, he grabbed the bag, dragged it outside.” The Court watched the surveillance video until it finished, at time stamp 19:00:29. During the conversations heard in this video, codefendant Mills never said the bag belonged to him. Defendant’s claim that codefendant Mills admitted the bag was his is not true and meritless. Therefore, this Court need not reach a decision on whether that evidence would be considered exculpatory and whether the prosecutor needed to present it to the Grand Jury. Nonetheless, the People *did* present evidence of defendant’s denial of ownership of the bag as well as surveillance from the hotel lobby depicting codefendant carrying the bag into the lobby, placing it on the couch, and sitting next to it at times. These facts which defendant claims are exculpatory were offered to the Grand Jury through the testimony presented and the hotel lobby video

² One cannot be certain of the exact language captured by audio recording, but the quoted language is what the Court believes was said.

surveillance. Moreover, it should be noted, “the People maintain broad discretion in presenting their case to the Grand Jury and need not seek [out] evidence favorable to the defendant or present all of their evidence tending to exculpate the accused” (*People v Ramjit*, 203 AD2d 488 [2d Dept. 1994] citing *People v Mitchell*, 82 NY2d 509 [1993]). For these reasons, defendant’s motion to dismiss the indictment as defective is denied.

The Court also finds that the Grand Jury proceeding was not 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 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]). As to defendant’s specific contentions, the Court finds no exculpatory evidence was withheld and the Grand Jurors’ questions were appropriately handled or answered.

To the extent that defendant’s motion seeks disclosure of portions of the Grand Jury minutes beyond the disclosure directed by CPL Article 245, such as the prosecutor’s instructions and/or colloquies, the court denies that branch of the motion.

II.

BRADY MATERIAL

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]). The People also acknowledge that they have or will comply with their obligations under CPL 245.20(1) (k), (l), and (p). 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 defendant.

The Court has served a *Brady* Order on the People, dated August 2, 2022, which details the time period their disclosure must be made in accordance with the standards set forth in the United States and New York State Constitutions and CPL Article 245.

III.

MOTION for DISCOVERY, DISCLOSURE, and INSPECTION CPL ARTICLE 245

To whatever extent material that is discoverable under CPL Article 245 has not already been provided to the defense by the People,³ the defendant’s motion is granted and such discovery,

³ Specifically, in his motion, defendant claims that “[t]he People have [y]et to provide the defense with the name of the individual and contact information [of the person] who was present with Mr. Fung when he first entered room # 208 at the hotel” (see Defendant’s Affirmation, page 5, ¶ [c]). Defendant also seeks search warrant returns (see Defendant’s Affirmation, page 7, ¶ [n]) and “the results of the search of the Sinclair cell phone [and] the Marriot[t] computer” (see Defendant’s Affirmation, page 8, ¶ [ii]).

including both *Brady* material⁴ and *Rosario* material, shall be provided forthwith. Leave is granted for either party to seek a protective order (CPL Article 245).

If the People have fulfilled their discovery obligations but have not yet filed a Certificate of Compliance, they are directed to do so forthwith and they are reminded of their continuing obligation to remain in compliance with the discovery mandates set forth in CPL Article 245 and to file supplemental Certificates of Compliance as the need arises.

The People must 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]).

IV.

MOTION to PRECLUDE NOTICED IDENTIFICATION TESTIMONY
CPL 710

Pursuant to CPL § 710.30(1)(b), the People served defendant with notice of five alleged identifications of defendant made by witnesses. Defendant's motion to suppress testimony of the noticed identifications is granted to the limited extent of ordering a pre-trial *Wade* hearing (*see United States v Wade*, 388 US 218 [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, defendant bears the ultimate burden of proving that the procedures were unduly suggestive. Where suggestiveness is shown, the People must show the existence of an independent source by clear and convincing evidence. The hearing will also address whether the alleged identifications were obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

V.

MOTION to SUPPRESS NOTICED STATEMENTS

The People, pursuant to CPL 710.30(1)(a), noticed two statements allegedly made by defendant to members of the Greenburgh Police Department. Defendant moves to suppress these noticed statements as involuntary, the product of an unlawful arrest, made without being adequately apprised of *Miranda* warnings, and obtained in violation of defendant's right to counsel. Defendant's motion to suppress is granted to the extent that a pre-trial *Huntley* hearing shall be held, on consent of the People, to determine whether the alleged statements were involuntarily made within the meaning of CPL 60.45 (*see* CPL 710.20(3); CPL 710.60[3][b]; *People v Weaver*, 49 NY2d 1012 [1980]). The hearing will also address whether the alleged statements were obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]),

⁴ Again, the People have a 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 CPL 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 an in-camera inspection by the Court and determination as to whether it constitutes *Brady* material discoverable by defendant.

or his Sixth Amendment right to counsel. If a statement is suppressed, the Court will then determine whether any evidence obtained as a result of or due to that statement should be suppressed.

VI.

MOTION to SUPPRESS PHYSICAL EVIDENCE and
MOTION to CONTROVERT SEARCH WARRANTS

The Court orders a *Mapp* hearing prior to trial to determine the propriety of any search resulting in the seizure of property from defendant⁵ (*see Mapp v Ohio*, 367 US 643 [1961]). The hearing will also address whether any evidence was obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

Defendant moves to controvert search warrants issued in this matter and to suppress any evidence obtained therefrom. On March 25, 2022, the Honorable Bonnie Orden, Justice of the Town Court of Greenburgh, signed a search warrant for the SpringHill Suites by Marriott hotel's (hereinafter "hotel") digital video recorder. On April 22, 2022, Judge Orden signed two additional warrants: (1) a warrant for defendant and codefendants' cellular telephones seized at the time of their arrest and an Acer laptop computer recovered from the plastic garbage bag in the lobby of the hotel; and (2) a warrant for the seizure of debit and credit cards contained within defendant and codefendants' wallets held at the Westchester County Jail.⁶

Insofar as defendant challenges the seizure of evidence not obtained from his person, the pre-trial hearing will address whether defendant had a reasonable expectation of privacy in any of the locations searched to constitute standing to challenge the seizure of any physical evidence (*see Rakas v Illinois*, 439 US 128 [1978]; *People v Ramirez-Portoreal*, 88 NY2d 99 [1996]; *People v Ponder*, 54 NY2d 160 [1981]; *People v White*, 153 AD3d 1369 [2d Dept 2017]; *People v Hawkins*, 262 AD2d 423 [2d Dept 1999]). If it is determined that defendant has standing, then the *Mapp* hearing will also determine the propriety of the subject search and seizure.

Both parties agree, however, that defendant does have standing to challenge the search of his cellular telephone and his motion to controvert the search warrant is granted. The Fourth Amendment to the United States Constitution provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Article I § 12 of the New York State Constitution contains identical language. Consistent with these constitutional provisions, CPL 690.45(4) requires that when a search warrant authorizes the seizure of property, the warrant must include "[a] description of the property which is the subject of the search." "To meet the particularity requirement, the warrant must be specific enough to leave no discretion to the police" (*People v Cahill*, 2 NY3d 14, 41 [2003]). Upon review of the four corners of the search warrant affidavit, the warrant was adequately supported by probable cause, and sufficiently particular as to the areas to be searched and the items to be seized (*see People v Keyes*, 291 AD2d 571 [2d Dept 2002]; *see generally People v Badilla*, 130 AD3d 744 [2d Dept 2015]; *People v Elysee*, 49 AD3d 33 [2d Dept 2007]). However, the search warrant authorized examination of defendant's phone without a

⁵ Defendant, however, lacks standing to contest the seizure of anything from the person of his codefendant, Christopher Mills.

⁶ While defendant mentions this search warrant in his omnibus motion, he does not move to controvert it.

timeframe limitation or date restriction and virtually allowed for a temporally unlimited search (*see People v Perez*, 72 Misc 3d 310 [Sup Ct, Kings County, 2021][finding the search warrant for a cell phone overbroad where there was no connection between the phone and the alleged crime and when it allowed for a temporally unlimited search of seemingly every component of the phone]). Although the affidavit sufficiently provided probable cause to search specific areas of defendant's phone in which incriminatory evidence might be found, the affidavit, and subsequent warrant, were fatally overbroad and lacked particularity since they did not limit the search of the cell phone to any relevant timeframe (*see People v Thompson*, 178 AD3d 457 [1st Dept 2019]). While it was of course possible that defendant's cell phone contained evidence of the specified offenses that predated March 17, 2022, there were no specific allegations to that effect. While an identity theft crime, such as check fraud, may involve preparation and planning, there were, again, no allegations of conduct relevant to those offenses during a certain timeframe (*see Thompson*, 178 AD3d 457 at 458). Federal courts have held that when the property to be searched is computer files, such as a cell phone, "the particularity requirement assumes even greater importance" since "[t]he potential for privacy violations occasioned by an unbridled, exploratory search" of such files "is enormous" (*US v Galpin*, 720 F3d 436, 446-447 [2d Cir 2013]; *see US v Zemlyansky*, 945 FSupp2d 438 [SDNY 2013] [lack of temporal limitation in the warrant supported the finding that the warrant functioned as a general warrant]). Because the warrant authorized the examination of defendant's cell phone without any date restriction, the Court finds the warrant overbroad and insufficiently particularized and therefore grants defendant's motion to controvert the warrant. As such, all evidence seized therefrom is suppressed.

VII.

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 defendant's prior criminal convictions or prior uncharged criminal, vicious, or immoral conduct. On the People's consent, the Court orders a pre-trial *Sandoval* hearing (*see People v Sandoval*, 34 NY2d 371[1974]). At said hearing, the People shall notify defendant, *in compliance with CPL Article 245*, of all specific instances of his criminal, prior uncharged criminal, vicious, or immoral conduct of which they have knowledge and which they intend to use in an attempt to impeach defendant's credibility if he elects to testify at trial, *and, in any event, not less than 15 days prior to the first scheduled trial date*. 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. Defendant shall be required to identify the basis of his belief that each event or incident may be unduly prejudicial to his 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]).

If the People determine that they will seek to introduce evidence at trial of any prior uncharged misconduct and criminal acts of defendant, including acts sought to be used in their case in chief, they shall so 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 or not any evidence of uncharged crimes may be so used by the People. 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 the other hearings herein.

VIII.

HEARINGS CONDUCTED PRIOR to TRIAL

Defendant requests that pre-trial hearings be scheduled sufficiently in advance of trial so that the hearing minutes may be transcribed in time for their use at trial. The hearings will be scheduled at a time that is convenient to the Court, upon due consideration of all its other cases and obligations.

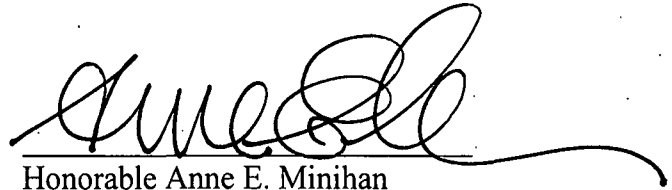
IX.

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
September 20, 2022



Honorable Anne E. Minihan
Acting Justice of the Supreme Court

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