

**People v Castillo**

2017 NY Slip Op 33041(U)

September 20, 2017

County Court, Westchester County

Docket Number: 17-0528

Judge: Helen M. Blackwood

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COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

JOSHUA CASTILLO,

Defendant

-----X

DECISION and ORDER

Indictment No.: 17-0528

**FILED** 

SEP 29 2017

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Defendant, JOSHUA CASTILLO, is charged by indictment with one count each of criminal possession of a weapon in the second degree (PL §265.03[03]), criminal possession of a weapon in the third degree (PL §265.02[03]), and loitering in parks at night, a violation of Yonkers City Ordinance Section 100(17)(a). The defendant has filed a notice of motion, along with a supporting affirmation and memorandum of law seeking omnibus relief. The People have responded by filing an affirmation in opposition and a memorandum of law. Upon consideration of the aforementioned submissions, along with a review of the grand jury minutes and exhibits and the consent discovery order entered in this case, the motion is disposed of as follows:

I. Motion for Discovery and Inspection

The consent discovery order entered in this case indicates that the parties have agreed to enumerated discovery, disclosure, and inspection in accordance with Article 240 of the Criminal Procedure Law. The defendant's motion for discovery is granted to the extent that the People

are ordered to provide him with any material specified in CPL §240.20 that has not already been provided.

With respect to the defendant's demand for exculpatory information, including the disclosure of any deals and/or agreements between the prosecution and any of its witnesses, the People acknowledge their continuing obligations pursuant to Brady v. Maryland, (373 U.S. 83, 83 S.Ct. 1194 [1963]) and Giglio v. United States (405 U.S. 150, 92 S.Ct. 763 [1972]). If a question exists as to the potentially exculpatory nature of a particular item, or if the People are not willing to consent to an item's disclosure, the People are ordered to provide such item to the court forthwith for an *in camera* inspection and determination.

To the extent that the defendant requests material enumerated in CPL §§240.44 and 240.45, such motion is denied at this time. The People recognize their duty to comply with People v. Rosario (9 N.Y.2d 286, 213 N.Y.S.2d 448 [1961]) and are hereby ordered to do so in accordance with the time-frame set forth in the statute.

Any requests made by the defendant with respect to the discovery of items beyond the scope of Article 240 of the Criminal Procedure Law are denied (see, Pirro v. LaCava, 230 A.D.2d 909, 646 N.Y.S.2d 866 [1996]; Matter of Catterson v. Rohl, 202 A.D.2d, 608 N.Y.S.2d 696 [1994]).

## II. Motion to Suppress Physical Evidence

The defendant moves to suppress all physical evidence recovered from his person at the time of the arrest, or in the alternative, for a Mapp hearing to determine its admissibility, arguing that the police lacked probable cause to stop and search the defendant's person. The People argue that the defendant's motion should be denied because the police lawfully detained

and pursued the defendant when he fled. Furthermore, they argue that the “escalating circumstances” gave the police additional legal bases for searching the defendant (People’s Memorandum of Law, p. 7).

The defendant’s motion is granted to the extent that a hearing will be held to determine whether the police seized the defendant in violation of his Fourth Amendment rights (see, Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248 [1979]) and whether the search and seizure of the defendant’s property was lawful (see, Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 [1961]).

### III. Motion to Suppress Prior Bad Acts

The defendant requests a hearing to determine whether the prosecution should be permitted to use any criminal convictions, or bad acts of the defendant at trial. The defendant’s motion is granted to the extent that prior to jury selection, the People are ordered to disclose to the defendant all specific instances of his prior uncharged crimes and bad acts they expect to introduce at trial for impeachment purposes in accordance with CPL §240.43. In response, the defendant must sustain his burden of showing the prior convictions and bad acts which will unduly prejudice him as a witness on his own behalf (People v. Matthews, 68 N.Y.2d 118, 497 N.E.2d 287 [1986]). In the event that the People seek to use any such conduct in their direct case against the defendant, they are ordered to request a hearing to determine the admissibility of such evidence pursuant to People v. Ventimiglia, 52 N.Y.2d 350, 420 N.E.2d 59 (1981).

#### IV. Motion to Strike Prejudicial Language

The defendant moves to dismiss certain language from the indictment. Specifically, the defendant argues that the language, “. . . and against the peace and dignity of the People of the State of new York” should be stricken because it is irrelevant and potentially prejudicial.

The defendant’s motion is denied, as the language he is seeking to strike “merely identified the defendant’s acts as public, rather than private, wrongs,” (People v. Gill, 164 A.D.2d 867, 867, 559 N.Y.S.2d 376 [1990]).

#### V. Motion to Dismiss Indictment as Facially Insufficient

The defendant moves to dismiss the indictment, arguing that it does not conform to the requirements of CPL §200.50(7)(a) because it does not sufficiently advise him of the conduct of which he is accused. The People respond by arguing that the indictment is, in fact, facially sufficient and together with the Bill of Particulars, contains all of the information necessary to give the defendant adequate notice of the charges against him.

The defendant’s motion is denied. The court finds that the instant indictment contains a plain and concise factual statement in each and every 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 of which he is accused (see, People v. Iannone, 45 N.Y.2d 589, 384 N.E.2d 656 [1978]).

#### VI. Motion to Inspect and Dismiss or Reduce

The People have provided the grand jury minutes to the court and the court has reviewed

those minutes *in camera*. After doing so, the court finds that there is no basis to dismiss or reduce any charges of the indictment. Accordingly, the defendant's motion to do so is denied in all respects.

The court finds that the evidence offered to the grand jury was legally sufficient in accordance with section 70.10 of the Criminal Procedure Law. "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]). Moreover, "[c]ourts 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 N.Y.3d 269, 274–275, 804 N.E.2d 392 [2003], quoting People v. Carroll, 93 N.Y.2d 564, 568, 715 N.E.2d 500 [1999]; see also, People v. Wisey, 133 A.D.3d 799, 21 N.Y.S.3d 111 [2015]). The court finds that the evidence presented to the grand jury, in its entirety, met this burden.

Additionally, the court finds that the grand jury was properly instructed as the law (see, People v. Calbud, 49 N.Y.2d 398, 402 N.E.2d 1140 [1980]) and that a quorum was present.

Finally, the court does not find that the release of the grand jury minutes or any portion thereof to the defendant is necessary, nor has the defendant set forth any compelling or particularized need for the production of the grand jury minutes. Therefore, the defendant application for the release of said minutes is denied (see, CPL §190.25[4][a]).

## VII. Motion to Strike Statement Notice

The defendant's motion to strike the statement notice served and filed by the People is denied. The court finds the notice conforms with section 710 of the Criminal Procedure Law.

## VIII. Motion to Suppress Statements

The defendant moves to suppress his noticed statements on the grounds that they were obtained in violation of his constitutional rights. Specifically, he argues that the statements were made involuntarily, without being given adequate Miranda warnings and the result of an illegal detention. The People consent to a Huntley hearing to determine the voluntariness of the defendant's statement and to determine whether or not he knowingly, intelligently, and voluntarily waived his Miranda rights, as well as to determine whether or not the defendant invoked his Sixth Amendment right to an attorney prior to questioning. However, the People maintain that the statement was made voluntarily after a valid waiver of the defendant's Miranda rights

The motion is granted to the extent that a Huntley hearing shall be held prior to trial to determine whether the statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL §710.30(1)(a), were made involuntarily within the meaning of CPL §60.45 (see, CPL §710.20[3]; CPL §710.60[3][b]; People v. Weaver, 49 N.Y.2d 1012 [1980]) and whether they were obtained in violation of the defendant's Fourth and Sixth Amendment rights (see, Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248 [1979]; Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 [1966]).

IX. Motion for Leave to File Additional Motions

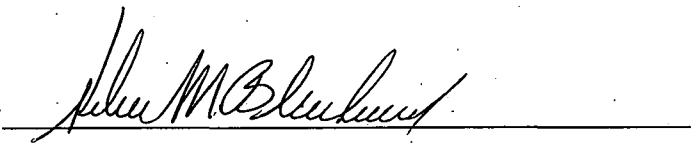
To the extent that the defendant has filed a motion seeking the right to file additional motions, the motion is denied. Should the defendant bring further motions for omnibus relief, he must do so by order to show cause setting forth the reasons why his motion was not and could not be brought in accordance with CPL §255.20.

X. Motion to Conduct Hearings Two Weeks Prior to Trial

To the extent that the defendant has moved to conduct pre-trial hearings at least two weeks prior to trial, the motion is denied. The hearings will be scheduled at a time that is convenient to the court based upon all of its other cases and obligations.

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

Dated: White Plains, New York  
September 20, 2017



HON. HELEN M. BLACKWOOD  
Westchester County Court

TO: ANTHONY A SCARPINO, JR.  
District Attorney  
Westchester County District Attorney's Office  
111 Dr. Martin Luther King, Jr. Blvd.  
White Plains, New York  
Attn: ADA Steven Ronco

The Legal Aid Society of Westchester County  
150 Grand Street, Suite 100  
White Plains, New York 10601  
Attn: Nicholas Speranza, Esq.