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FILED
AND ENTERED
ON 1-2 2020
WESTCHESTER

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

SHANELLE STRAKER and
HENRY LANTIGUA,

Defendant.

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DECISION & ORDER
Ind No.: 19-0882-02

FILED
JAN - 2 2020
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

MINIHAN, J.

Defendant, HENRY LANTIGUA, charged by Westchester County Indictment No. 19-0882-02 with Criminally Negligent Homicide (Penal Law § 125.10), and Endangering the Welfare of a Child (Penal Law § 260.10[1]), 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 dated October 22, 2019, entered in this case, the court disposes of the motion as follows:

I.

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* material[1] 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 he has not been provided, he is directed to contact the assigned Assistant District Attorney upon receipt of t 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.*

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[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.

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 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]).

Further, the bill of particulars set forth in the voluntary disclosure form provided to defendant has adequately informed defendant of the substance of the alleged conduct and in all respects complies with CPL Article 245 and Section 200.95.

II.

MOTION to STRIKE NOTICED STATEMENTS
and to PRECLUDE STATEMENT TESTIMONY
CPL 710

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

The People served CPL 710.30(1)(a) notices of two statements which defendant allegedly made on May 31, 2018 at 5pm at 150 South Avenue to a Mt. Vernon Police Officer and at 6:41pm at Mt. Vernon Police Department and on June 1, 2018 at 4:35am at Mount Vernon Police Department and on June 17, 2018 at 2:30pm at Mount Vernon Police Department. Defendant's motion to suppress the noticed statements as unconstitutionally obtained is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether the statement was involuntarily made by 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]), obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

III.

MOTION to INSPECT and DISMISS
CPL ARTICLE 190

Defendant moves pursuant to CPL 210.20(1)(b) and (c) to dismiss 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 indictment contains a plain and concise factual statement 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 crime, and alleges that the defendant committed the acts which constitute the crime at a specified place during a specified time period and, therefore, is sufficient on its face (*People v Cohen*, 52 NY2d 584 [1981]; *People v Iannone*, 45 NY2d 589 [1978]).

Pursuant to CPL 190.65(1), an indictment must be supported by legally sufficient evidence which establishes that the defendant committed the offenses charged. The evidence presented, if accepted as true, is legally sufficient to establish every element of the offense charged (CPL 210.30[2]). "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]).

A review of the minutes reveals that the evidence presented, if accepted as true, would be legally sufficient to establish every element of the offense charged (CPL 210.30 [2]). Accordingly, defendant's motion to dismiss the indictment is denied.

Defendant's claim that the Grand Jury proceeding was defective within the meaning of CPL 210.35 is without merit. 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]).

In making the present determination, the court does not find it necessary to order release of those portions of the Grand Jury minutes as constitute colloquy or instructions.

IV.

MOTION TO DISMISS for SPEEDY TRIAL VIOLATION

Defendant moves to dismiss the indictment on the basis that the 16-month preindictment delay from the alleged crimes on May 31, 2018, to the filing of the indictment on October 3,

2019, violated his right to due process. The *Taranovich* factors, defendant argues, weigh in favor of dismissal because the delay was substantial, the People had no legitimate reason for the delay, the underlying charge of criminally negligent homicide is a non-violent class "E" felony, and the defense has been prejudiced by the delay in that if the case had been prosecuted in a timely manner defense counsel could have retained a doctor to independently establish the cause of death of the child. As an alternative to dismissal, defendant requests a hearing on this matter. The People argue that the motion to dismiss should be denied as defendant's due process rights were not violated. The People point out that they met the five-year deadline in CPL 30.10(2)(b) for commencing the prosecution and argue that the *Taranovich* factors weigh against dismissal -- the delay was not substantial and resulted from the extensive investigation, the charges are serious, defendant was not incarcerated on this indictment during the delay, and defendant has failed to establish any prejudice. The court agrees with the People and denies the motion to dismiss, finding no violation of defendant's right to due process.

A defendant's right to a speedy trial is guaranteed both by the United States Constitution (US Const 6th, 14th Amends; *Klopfer v North Carolina,* 386 US 213), and by statute (CPL 30.20 [1]; Civil Rights Law § 12). While New York's Constitution does not list the right to a speedy trial, it does list the right to due process and there are statutory speedy trial requirements under the due process doctrine (CPL 30.20; Civil Rights Law § 12). An unjustified delay in prosecution will deprive a defendant of the New York constitutional right to due process (NY Const, art I, § 6; *People v Decker,* 13 NY3d 12, 14 [2009]). "Characterization of the delay as 'preindictment' or 'postindictment' is often determinative," inasmuch as a claim of unconstitutional preindictment delay "generally requires a showing of actual prejudice before dismissal would be warranted" (*People v Singer*, 44 NY2d 241, 252 [1978] [internal citations omitted]). However, "[a] determination made in good faith to delay prosecution for sufficient reasons will not deprive defendant of due process even though there may be some prejudice to defendant" (*People v Metellus*, 157 AD3d 821 [2d Dept 2018]; *see People v Decker*, 13 NY3d 12, 14 [2009]; *People v Vernace*, 96 NY2d 886, 888 [2000]; *People v Singer*, 44 NY2d at 254).

In determining whether a defendant's constitutional right to a speedy trial has been violated, the Court of Appeals has articulated five factors to consider: (1) the extent of the delay; (2) the reason for the delay; (3) the nature of the underlying charges; (4) any extended period of pretrial incarceration; and (5) any impairment of the defendant's defense (*see People v Romeo,* 12 NY3d 51, 55 [2009]; *People v Taranovich*, 37 NY2d 442, 444 [1975]). These factors apply as well to an analysis of a due process claim (*see People v Decker*, 13 NY3d at 15 [2009]). No one factor or combination of factors is necessarily decisive; rather, the particular case must be considered in light of all of the applicable factors (*People v Taranovich* at 445). Where there has been extended delay, the People have the burden to establish good cause (*see People v Decker,* 13 NY3d at 14 [2009]). Here, the People established good cause for the preindictment delay given the extensive investigation. The court finds no due process violation and, thus, denies the motion to dismiss the indictment.

V.

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 she elects to testify at trial.

At the hearing, the defendant shall bear the burden of identifying any instances of her prior misconduct that he submits the People should not be permitted to use to impeach her credibility. The defendant shall be required to identify the basis of her belief that each event or incident may be unduly prejudicial to ability to testify as a witness on her 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.

VI.

MOTION to STRIKE PREJUDICIAL LANGUAGE

The Defendant moves to strike certain language from the indictment on the grounds that it is surplusage, irrelevant or prejudicial. The language concluding the indictment merely identifies the Defendant's acts as public, rather than private wrongs and such language should not be stricken as prejudicial. This motion is denied (*see People v Gill*, 164 AD2d 867 [2d Dept 1990]; *People v Winters*, 194 AD2d 703 [2d Dept 1993]; *People v Garcia*, 170 Misc. 2d 543 [Westchester Co. Ct. 1996]).

VII.

MOTION TO STRIKE ALIBI NOTICE

Defendant's motion to strike the alibi notice is denied. Contrary to the defendant's contentions, it is well-settled that CPL 250.00 is indeed in compliance with the constitutional requirements (*see People v Dawson,* 185 AD2d 854 [2d Dept 1992]; *People v Cruz*, 176 AD2d

751 [2d Dept 1991]; *People v Gill*, 164 AD2d 867 [2d Dept 1990]) and provides equality in the required disclosure (*People v Peterson*, 96 AD2d 871 [2d Dept 1983]; *see generally Wardius v Oregon*, 412 US 470 [1973]).

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

Dated: White Plains, New York
December 23, 2019

Honorable Anne E. Minihan
Acting Supreme Court Justice

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