

**People v Castro**

2019 NY Slip Op 35004(U)

September 23, 2019

County Court, Westchester County

Docket Number: Ind. No. 19-0526

Judge: George E. Fufidio

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COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

-against-

DECISION & ORDER

MAYKY CASTRO,

Indictment No.: 19-0526

**FILED** TP

Defendants.

SEP 24 2019

-----X  
FUFIDIO, J.

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Defendant, MAYKY CASTRO, having been indicted on or about June 13, 2019 with attempted grand larceny in the third degree (Penal Law § 110/155.35), attempted criminal possession of stolen property in the third degree (Penal Law § 110/165.50), attempted criminal possession of stolen property in the fourth degree (Penal Law § 110/165.45), criminal possession of stolen property in the fifth degree (Penal Law § 165.40), unauthorized use of a motor vehicle in the second degree (Penal Law § 165.06) and petit larceny (Penal Law § 155.25) has filed an omnibus motion which consists of a Notice of Motion, an Affirmation in Support and a Memorandum of Law. In response, 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, this Court disposes of this motion as follows:

**A. MOTION FOR DISCOVERY, DISCLOSURE AND INSPECTION**  
**CPL ARTICLE 240**

Except where the People have already disclosed or consented to the inspection and discovery of certain evidence, the Defendant's motion for discovery is granted to the extent provided for in CPL 240. If there any further items discoverable pursuant to Criminal Procedure Law Article 240 which have not been provided to defendant pursuant to this Order, they are to be provided forthwith or the People shall seek a protective order explaining to the Court why certain items have not been provided to the Defendant pursuant to CPL 240.

As to the defendant's demand for exculpatory material, the People have acknowledged their continuing duty to disclose exculpatory material at the earliest possible date upon its discovery (*see, Brady v Maryland, 373 US 83 [1963]; Giglio v United States, 405 US 150 [1972]*). In the event that the People are, or become, aware of any material which is arguably exculpatory and they are not willing to consent to its disclosure to the defendant, they are directed to immediately disclose such material to the court to permit an *in camera* inspection and determination as to whether the material must be disclosed to the defendant.

The Defendant's motion for a further bill of particulars is denied. The Defendant was given a bill of particulars as part of the Consent Discovery that was filed with the Court. The Court finds that

this bill of particulars conforms to the requirement of CPL 200.95 and that the information set forth in the bill of particulars in conjunction with the information set forth in the indictment and other court filings is sufficient to give the Defendant adequate notice of the charges against him so as to be able to formulate a defense to the allegations (*People v Iannone*, 45 NY2d 589 [1978], CPL 200.95).

Except to the extent that the defendant's application has been specifically granted herein, it is otherwise denied as seeking material or information beyond the scope of discovery (*see, People v Colavito*, 87 NY2d 423 [1996]; *Matter of Brown v Grosso*, 285 AD2d 642 [2d Dept 2001]; *Matter of Brown v Appelman*, 241 AD2d 279 [2d Dept 1998]; *Matter of Catterson v Jones*, 229 AD2d 435 [2d Dept 1996]; *Matter of Catterson v Rohl*, 202 AD2d 420 [2d Dept 1994]).

#### B. MOTION TO STRIKE CPL 710.30 NOTICES

The motion to strike is denied. Said notices are in conformity with the statutory requirements of CPL 710.30 in that they set forth the date, manner, location of the identification procedures employed or the date, location and substance of the statements they intend to offer against the Defendant (*People v Sumter*, 68 AD3d 1701 [4<sup>th</sup> Dept. 2009][pertaining to identifications]; *People v Lopez*, 84 NY2d 425[1994][pertaining to statements]) and were served in the proper time frame (CPL 710.30). Finally, because the Defendant has filed a suppression motion based upon the notices that were served, he has waived his right to be heard on the sufficiency of the notices (*People v Kirkland*, 89 NY2d 903 [1996]).

#### C. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY CPL ARTICLE 710

The record before the Court is unclear as to the particulars of how the identification of the Defendant was made. Thus, the motion is granted to the extent that a hearing shall be held to consider whether the noticed identifications was unduly suggestive (*United States v Wade*, 388 US 218 [1967]). In the event an identification is found to be unduly suggestive, the court shall then go on to consider whether the People have proven by clear and convincing evidence that an independent source exists for such witness' proposed in-court identification (*People v Adelman*, 36 AD3d 926 [2<sup>nd</sup> Dept. 2007]).

#### D. MOTION TO SUPPRESS PHYSICAL EVIDENCE

A *Mapp/Dunaway* hearing will be conducted prior to trial to determine the propriety of the stop that resulted in the seizure of property (*Mapp v. Ohio*, 367 US 643 [1961]; *Dunaway v New York*, 442 US 200 [1979]).

#### E. MOTION TO INSPECT, DISMISS AND/OR REDUCE

The court grants the defendant's motion to the limited extent that the court has conducted, with the consent of the People, an *in camera* inspection of the stenographic transcription of the grand jury proceedings. Upon such review, the court finds no basis upon which to grant defendant's application to dismiss or reduce the indictment.

The grand jury was properly instructed (*see People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2<sup>nd</sup> Dept 2013]). The evidence presented,

if accepted as true, is legally sufficient to establish every element of each 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 [2<sup>nd</sup> 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 [2<sup>nd</sup> 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]).

Additionally, the Court finds that the Defendant has not met his high burden of demonstrating that the integrity of the grand jury proceedings was impaired by any error, let alone one that would render the proceedings defective and prejudicial to the Defendant (*People v Darby*, 75 NY2d 449 [1990], *People v Thompson*, 22 NY3d 687 [2014]), nor does the Court find that there was any such error. Among other things the minutes reveal a quorum of the grand jurors was present during the presentation of evidence, that the Assistant District Attorney presented the evidence fairly and properly instructed the grand jury on the law and only permitted those grand jurors who heard all the evidence to vote the matter. Accordingly, this prong of the defendant’s motion is also denied.

Based upon the *in camera* review, since this court does not find release of the grand jury minutes or any portion thereof necessary to assist it in making any determinations and as the defendant has not set forth a compelling or particularized need for the production of the grand jury minutes, defendant’s application for a copy of the grand jury minutes is denied (*People v Jang*, 17 AD3d 693 [2d Dept 2005]; CPL 190.25[4][a]).

#### F. MOTION TO DISMISS FOR VIOLATING DEFENDANT’S CPL 30.30 RIGHTS

The Defendant has moved in his Notice of Motion for the Court to dismiss the indictment due to an alleged violation of CPL 30.30. The Defendant has not supported this claim with even the barest of proof, nor is the Court going to attempt to divine what the Defendant’s argument is for such a motion. Accordingly, this branch of the Defendant’s motion is denied.

#### G. MOTION FOR SANDOVAL AND VENTIMIGLIA HEARINGS

The 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 act, and vicious or immoral conduct (see, *People v Sandoval*, 34 NY2d 371[1974]). The People have consented to, and it is now ordered that immediately prior to trial the court will conduct a *Sandoval* hearing.

At the hearing, the People are required to notify the Defendant of all specific instances of his criminal, prior uncharged criminal acts and vicious or immoral conduct of which they have knowledge

and which they intend to use in an attempt to impeach the Defendant's credibility if he elects to testify at trial (CPL 240.43). The Defendant shall then 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 him should he decide testify as a witness on his own behalf and thereby prevent him from exercising this right (*see, People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

The Defendant's application for a *Ventimiglia* hearing is denied as premature, because the People have not indicated an intention to use any evidence of prior bad act or uncharged crimes of the Defendant in its case in chief (*see, People v Molineaux*, 168 NY2d 264 [1901]; *People v Ventimiglia*, 52 NY2d 350 [1981]). The People have stated that if they do intend to use any *Molineaux* evidence that they will inform the defense and the court of their intention and at that point the Defendant may renew this aspect of his motion.

#### H. MOTION TO STRIKE ALIBI NOTICE

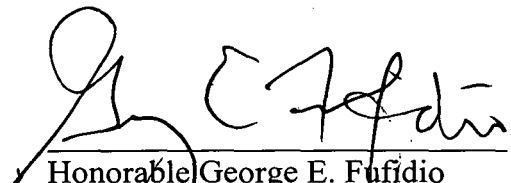
The Defendant's motion to strike the alibi notice is denied. Contrary to the Defendant's contentions, it is well-settled that CPL 250.00 is indeed in compliance with the constitutional requirements (*see People v Dawson*, 185 AD2d 854 [2d Dept 1992]; *People v Cruz*, 176 AD2d 751 [2d Dept 1991]; *People 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]).

#### I. MOTION RESERVING THE RIGHT TO FILE ADDITIONAL MOTIONS

Defendant's motion reserving the right to file additional motions is denied. Should the Defendant file any other motions that were not raised in his *Omnibus* motion, then they will need to be in compliance with CPL 255.20(2).

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

Dated: White Plains, New York  
September 23, 2019

  
Honorable George E. Fufidio  
Westchester County Court Justice

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