COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER
Indictment No.: 19-0605

EDDIE JACKSON,

Defendant.

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FUFIDIO, J.

Defendant, EDDIE JACKSON, having been indicted on or about May 28, 2019 for attempted murder in the second degree (Penal Law § 110/125.25[2]), attempted assault in the first degree (Penal Law § 110/120.10[1]), assault in the second degree (Penal Law § 120.05[2]) and criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]) 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 FURTHER BILL OF PARTICULARS

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).

B & C. MOTION FOR DISCOVERY, DISCLOSURE AND INSPECTION
CPL ARTICLE 240

The parties have entered into a stipulation by way of a Consent Discovery Order consenting to the enumerated discovery in this case. Defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 240. If there any further items discoverable pursuant to Criminal Procedure Law Article 240 which have not been provided to defendant pursuant to the Consent Discovery Order, they are to be provided forthwith.

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.

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]).

D. 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 minutes reveal a quorum of the grand jurors was present during the presentation of evidence, 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.

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 [2d 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 [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]).

Additionally, the Defendant has asserted that the People failed to present exculpatory evidence to the grand jury and the failure to do so warrants dismissal. The People are not required to present exculpatory evidence to the grand jury unless that evidence would "materially influence" the grand jury's decision to indict or if the evidence would potentially eliminate a "needless or unfounded prosecution" (*People v Lancaster*, 69 NY2d 20 [1986]). Critically, the Defendant does not even put forth that any such evidence exists, nor has he told the People about any such evidence nor did he attempt to put this evidence before the grand jury using the procedures afforded to him in CPL Article 190. Accordingly, this branch of the Defendant's motion is 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]).

E. 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 [4th 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]).

The People have not expressed any indication that they plan on using any statements or identifications that were not noticed, but should have been. Should they intend to, they will have to show good cause as to why they were not noticed within fifteen days of arraignment (CPL 710.30) and if that showing is made, then the Court will conduct the relevant hearings.

F. MOTION TO SUPPRESS PHYSICAL EVIDENCE

Upon the Court's review of the four corners of the search warrant affidavits and orders, the court finds that all of the warrants executed in this case were adequately supported by probable cause to believe that evidence at the locations searched could tend to show that the offense was committed and that the defendant was the one who committed it (*see People v Keves*, 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]). The People have contended that the Defendant has not demonstrated standing to challenge the search of his father's apartment at 55 School Street in Yonkers. They have also stated that there was no evidence seized as a result of that search, so for now, the challenge to that search is moot. The Defendant may revive that challenge, provided he can assert standing, should that situation change.

The People consented to the Defendant's inspection of "any search warrant and supporting affidavit together with any return to the Court" in consent discovery, so if they have not done so, they are ordered to turn over all of those items upon receipt of this Order. If they have already been turned over in a redacted form (*People v Woolnough*, 180 AD2d 837 [2nd Dept 1992]), the Court is not persuaded that the warrants must be un-redacted and given over to the Defendant, because upon a review of the search warrant affidavits and orders the Court finds that probable cause was not predicated on any information from a confidential informant and that the information given to the police by a witness was virtually insignificant when compared to the information that was founded upon internal police knowledge generated by community policing and surveillance video of the Defendant in relation to the shooting. Because there were no informants used to generate probable cause, a *Darden* hearing is not appropriate.

The Court grants the Defendant's motion solely to the extent that *Mapp* and *Dunaway* hearings are directed to be held prior to trial to determine the propriety of any search resulting in the seizure of property from areas in which the Defendant can demonstrate a reasonable expectation of privacy, such as from his person or beyond the scope of what was authorized in the warrants (*see*, *Mapp v Ohio*, 367 US 643 [1961])

and whether any evidence was obtained in violation of the defendant's Fourth Amendment rights (*see*, *Dunaway v New York*, 442 US 200 [1979]).

G. MOTION TO SUPPRESS NOTICED STATEMENTS

The branch of the Defendant's motion seeking to suppress statements on the grounds that they were unconstitutionally obtained is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the Defendant, which have been noticed by the People pursuant to CPL 710.30 (1)(a) were involuntarily made by the 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]).

H. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY
CPL ARTICLE 710

This motion is granted to the extent that a hearing shall be held to consider whether or not the noticed identifications were unduly suggestive (*United States v Wade*, 388 US 218 [1967]). The People have given the Defendant six CPL 710.30 notifications regarding different identifications that were made of the Defendant. Two of which occurred "on or about" May 21, 2019, five hours apart from one another one at 2:00 pm and one at 5:00 pm, at the Yonkers police station. The remaining four occurred "on or about" May 28, 2019 at the Westchester County Courthouse; one at the District Attorney's Office and three at the grand jury. Evidently, based on the People's Opposition, the same witness has made all of the identifications and he has a prior familiarity with the Defendant, such that although he was not a witness to the crime he was, nonetheless, able to identify the Defendant as the shooter from a video and still photographs of the shooting that were recovered during the ensuing police investigation.

Based simply on the CPL 710.30 notices, this witness and his prior familiarity is impossible for the Defendant to discern. The Defendant has not had the opportunity to cross-examine these witnesses as to the quality and nature of this prior familiarity. Accordingly, in an abundance of caution, this motion is granted to the extent that a hearing shall be held, first, to consider whether or not the witness's prior familiarity with the Defendant was sufficient enough to render them impervious to suggestion and misidentification (*People v. Rodriguez*, 79 NY2d 445 [1992]) and, second, depending on the outcome of the first part of the hearing, whether the noticed identification was unduly suggestive (*United States v Wade*, 388 US 218 [1967]). Specifically, the court shall determine whether the identification was so improperly suggestive as to taint any in-court identification.

I. 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.

J. 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
October 16, 2019

Honorable George E. Fufidio
Westchester County Court Justice

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