

**People v Niles**

2020 NY Slip Op 35492(U)

October 29, 2020

County Court, Westchester County

Docket Number: Ind. No. 20-0228

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

FILED  
AND ENTERED  
ON 11-5 2020  
WESTCHESTER

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

-against-

JAHLIV NILES,

DECISION & ORDER  
Indictment No. 20-0228

Defendant.

-----X  
MINIHAN, J.

Defendant, JAHLIV NILES, charged by Westchester County Indictment Number 20-0228 with Murder in the Second Degree (Penal Law § 125.25[1]), and Criminal Possession of a Weapon in the Fourth Degree (Penal Law § 265.01[2]), has filed an omnibus motion consisting of a Notice of Motion and an Affirmation in Support. 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:

**FILED** 

I.

MOTION to INSPECT and DISMISS  
CPL ARTICLE 190

NOV - 5 2020  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Defendant moves to dismiss the indictment on the grounds that evidence before the grand jury was legally insufficient, the grand jury proceeding was defective within the meaning of CPL 210.35, and the indictment should be dismissed in the furtherance of justice under CPL 210.40. On consent of the People, the court has reviewed the minutes of the grand jury proceeding.

The evidence presented to the grand jury, if accepted as true, would be legally sufficient to establish defendant's guilt of the charges (CPL 210.30[2]). Accordingly, defendant's motion to dismiss the indictment is denied. 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]).

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, inter alia, 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 of 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]).

Defendant's request to dismiss the indictment in furtherance of justice is denied. The defendant has cited no persuasive or compelling factor, consideration or circumstances under CPL 210.40 warranting dismissal of this indictment. The court has examined the factors listed in CPL 210.40, which include, in relevant part, the seriousness and circumstances of the offense; the extent of harm caused by the offense; the evidence of guilt; the history, character and condition of the defendant; any exceptionally serious misconduct of law enforcement personnel; the purpose and effect of imposing upon the defendant a sentence authorized for the charged offenses; the potential impact of a dismissal on public confidence in the judicial system; the potential impact of dismissal upon the safety and welfare of the community; and other relevant facts suggesting that a conviction would not serve a useful purpose. Having done so, the court has discerned no compelling factor, consideration or circumstance which clearly demonstrates that further prosecution or conviction of the defendant would constitute or result in injustice.

The People acknowledge that they will comply with their obligations concerning grand jury testimony pursuant to CPL 245.20(1)(b). The court does not find it necessary to order release of those portions of the grand jury minutes as constitute colloquies or instructions.

Insofar as defendant's motion seeks "to dismiss the felony complaint pursuant to CPL 170.35(1)" based on insufficiency and since the People failed to produce a supporting deposition for the felony complaint, that branch of the motion is denied. Defendant's challenge to the felony complaint is academic since the felony complaint was superseded by an indictment (*see People v Petition*, \_\_AD3d\_\_, 2020 NY App Div LEXIS 5071 [Sept. 16, 2020; 2d Dept]; *People v Brown*, 170 AD3d 878, 880 [2d Dept 2019]).

II.

#### MOTION TO SUPPRESS PHYSICAL EVIDENCE

Defendant's motion to suppress physical evidence is granted solely to the extent of ordering a pretrial *Mapp* hearing to determine the propriety of any search resulting in the seizure of property (*see Mapp v Ohio*, 367 US 643 [1961]). The hearing will also address whether defendant had standing to contest any search including the search of the dumpster and its surrounding area where a knife handle was recovered; the search of the crime scene where the victim's sandals were recovered; and the search of the home where defendant's bloody clothes were located. 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]).

III.

MOTION to PRECLUDE STATEMENT TESTIMONY  
CPL 710

The motion to preclude use of the noticed statements is granted to the extent of ordering, on the People's consent, a pretrial *Huntley* hearing to determine whether the statements were 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]). The hearing shall also address whether the statements were 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]).

IV.

MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

Upon the consent of the People, if the People determine that they will seek to introduce evidence at trial of any prior uncharged misconduct and criminal acts of the 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 used by the People, including 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 the other hearings herein.

At the hearing, the 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. The 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]).

V.

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<sup>1</sup> and *Rosario* material, shall be provided forthwith. Leave is

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<sup>1</sup> 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

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 counsel has not been provided, counsel is directed to contact the assigned Assistant District Attorney upon receipt of this 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.

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.

To the extent the People cross-move for reciprocal discovery, it is likewise granted to the extent provided for in CPL Article 245. To the extent that defendant's motion requests a further Bill of Particulars that branch of the motion is denied. 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.

VI.

MOTION to PRECLUDE  
IDENTIFICATION TESTIMONY  
CPL 710

The motion is denied as the People have not served defendant with CPL 710.30 notices of any identification procedures.

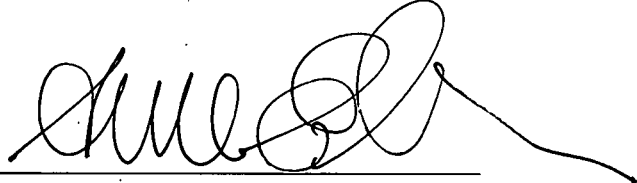
VII.

LEAVE TO MAKE ADDITIONAL MOTIONS

The branch of defendant's motion which seeks leave to make additional pre-trial motions for omnibus relief 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  
October 29, 2020

  
\_\_\_\_\_  
Honorable Anne E. Minihan  
Acting Justice of the Supreme Court

discoverable by the defendant.

To:

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