

**People v Diaz**

2021 NY Slip Op 33914(U)

June 10, 2021

County Court, Broome County

Docket Number: Indictment No. 21-115

Judge: Kevin P. Dooley

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK  
COUNTY COURT :: COUNTY OF BROOME

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THE PEOPLE OF THE STATE OF NEW YORK

-v-

AMANDA C. DIAZ,  
Defendant.

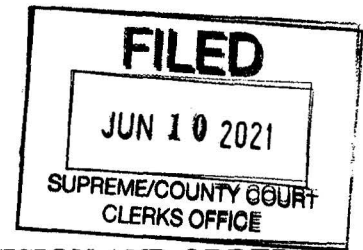
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**KEVIN P. DOOLEY, J.**

On March 4, 2021, a Broome County Grand Jury handed up Indictment No. 21-115, charging the above-named defendant with Aggravated Driving While Intoxicated, a class E felony, Driving While Intoxicated, a class E felony, and Endangering the Welfare of a Child, a class A misdemeanor. The indictment alleges that on October 31, 2020, the defendant, who was previously convicted of Driving While Ability Impaired by Drugs, operated a motor vehicle on Route 17 in the Town of Union, while in an intoxicated condition and while a child less than fifteen years of age was a passenger in the vehicle.

The defendant was arraigned in Broome County Court on March 9, 2021. On April 30, 2021, the defendant filed with the Court an Omnibus Motion seeking certain Orders and relief in connection with the indictment filed against him. The People's response was filed on May 28, 2021. The following constitutes the Decision and Order of the Court.

#### **GRAND JURY MOTIONS**

The defendant moves for an Order, pursuant to CPL 210.30, for inspection of the stenographic minutes of the grand jury proceeding for the Court to determine whether the evidence before the grand jury was legally sufficient to support the charges contained in the indictment, and whether the grand jury proceedings were defective within the meaning of CPL 210.35. The People have no objection to the Court examining the grand jury minutes and provided a copy of the same for the Court's review on May 28, 2021. Upon examination of the minutes, the Court finds that release of the minutes to the defense is not necessary to assist the Court in making its determination of the motion. Accordingly, the defendant's request for release of the grand jury minutes is denied.



#### **DECISION AND ORDER**

Indictment No. 21-115  
Docket No. 70142-21

In reviewing the legal sufficiency of the evidence presented, the Court must view the evidence in a light most favorable to the People and determine whether the evidence, if unexplained or uncontradicted, would be sufficient to support a guilty verdict after trial. The Court's inquiry is limited to assessing whether the facts, if proven, and the logical inferences flowing therefrom, provide proof of every element of the crimes charged and the defendant's commission of those crimes. Its inquiry does not include weighing the proof or examining its adequacy or determining whether there was reasonable cause to believe the accused committed the crimes charged, as the resolution of such questions is exclusively the province of the grand jury. *People v. Jensen*, 86 NY2d 248 (1995).

Upon examination, the evidence presented to the grand jury was legally sufficient to establish the commission by the defendant of the offenses charged in the indictment or lesser included offenses thereof. In addition, there were no defects in the grand jury proceedings within the meaning of CPL 210.20 (1) (c). Therefore, the defendant's motion to dismiss the indictment is denied.

### **MOTIONS FOR DISCOVERY AND OTHER PRE-TRIAL DISCLOSURES**

As part of his Omnibus Motion, the defendant has filed a motion to compel discovery pursuant to CPL 245.20. The prosecutor responds that he has turned over all discovery material in his possession.

The Court notes that on March 9, 2021, the prosecutor filed and served a certificate of compliance, stating that after exercising due diligence and making reasonable inquiries to ascertain the existence of materials and information subject to discovery, he has disclosed and made available all known material and information subject to discovery. Attached to the certificate of compliance is a nine-page document entitled "CPL 245 Disclosure, Pre-Trial Notices and Demands," a one-page D.E.M.S.<sup>1</sup> instruction sheet, a two-page "Breath Test Instrument and Related Documents" report, and Compliance Reports for Discovery dated

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<sup>1</sup> DEMS is a software program used by the Broome County District Attorney's Office to provide defense counsel access to electronically stored discovery materials. As discovery materials and information are submitted to the District Attorney's Office, they are uploaded into the DEMS program and made available to defense counsel, who are provided with a username and password to access and download "the discovery package" for a specific case. Each discovery package includes a compliance report in PDF format, listing the files included in the packet and the file's location.

December 14, 2020, March 8, 2021, and March 8, 2021. In his “CPL 245 Disclosure, Pre-Trial Notices and Demands,” the prosecutor advises that the transcripts of the grand jury witnesses’ testimony were not yet available and that he has not determined which witnesses he will call or what recordings or tangible evidence he will offer at trial. The prosecutor is directed to file a supplemental certificate of compliance documenting when the transcripts of the grand jury testimony of witnesses are or were disclosed, and which witnesses and evidence he intends to offer at trial, along with information concerning any prior criminal convictions or pending charges of those witnesses.

The defendant also moves for Orders requiring the prosecution to furnish a Bill of Particulars and to disclose all favorable or exculpatory material pursuant to *Brady v. Maryland*, 373 US 83 (1963). The prosecutor has provided a response to the defendant’s request for a Bill of Particulars. He also responds that he is aware of his disclosure obligations under *Brady* and will continue to comply with those requirements.

If the defendant believes he has not received discovery materials to which he is entitled, he can move for an Order to compel specific disclosure, preclude evidence, or other applicable relief pursuant to CPL 245.35 and 245.80.

### **REQUESTS AND MOTIONS FOR PRE-TRIAL HEARINGS\**

*Request for Sandoval/Ventimiglia Hearing:* The defendant requests that the Court conduct a pre-trial hearing to determine the admissibility at trial, either as part of the People’s direct case, or for the purpose of cross-examining the defendant, should he elect to testify, of the defendant’s prior criminal convictions and/or uncharged criminal conduct. The prosecutor responds that the defendant has no prior criminal convictions, and he is unaware of any prior bad acts or uncharged criminal conduct that he could offer in his direct case at trial. Therefore, no pre-trial hearing is required.

#### *Motion to Suppress Statements*

The defendant moves for an Order suppressing all statements and admissions attributed to her that were made to law enforcement officers on the ground the statements were involuntarily made or obtained in violation of her constitutional rights. The prosecutor objects to the Court

conducting a hearing pursuant to *People v. Huntley*, 15 NY2d 72 (1965), arguing that “any statement made was the result of an investigative question.” CPL 710.60 (2) provides that the Court may not summarily deny a motion to suppress statements of a defendant on the ground the statement was involuntarily made. Therefore, a pre-trial hearing will be conducted on June 17, 2021, at 10:30 a.m., to determine whether any statements of the defendant were involuntarily made or obtained in violation of her right to counsel.

#### **DEMAND FOR RECIPROCAL DISCOVERY**

As part of the Certificate of Compliance, the prosecutor served a Demand for Reciprocal Discovery pursuant to CPL 245.20 (4). The defendant is directed to file a response to the Demand by June 30, 2021.


#### **MOTION FOR FURTHER RELIEF**

Criminal Procedure Law Section 255.20 provides that absent a showing of good cause, all pre-trial motions must be filed at the same time and within 45 days of arraignment. Therefore, good cause must be established before the Court will consider granting the defense leave to renew or make further motions.

The above constitutes the Decision and Order of Court.

It is so Ordered.

Dated: June 10, 2021  
Binghamton, New York

  
HON. KEVIN P. DOOLEY  
Broome County Court Judge