

**People v Willis**

2021 NY Slip Op 33989(U)

May 28, 2021

County Court, Westchester County

Docket Number: Indictment No. 20-0153

Judge: Anne E. Minihan

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FILED  
AND ENTERED  
ON 5-28-2021  
WESTCHESTER

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

-against-

DECISION & ORDER  
Indictment No. 20-0153

OMAR WILLIS, LATIK FRAZER &  
THOMAS RICKETTS

Defendant.

-----X  
MINIHAN, J.

**FILED**

JUN - 1 2021

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Defendant, OMAR WILLIS, charged by Westchester County Indictment Number 20-0153 with aiding, abetting and acting in concert with co-defendants LATIK FRAZER and THOMAS RICKETTS with conspiracy in the fourth degree (Penal Law § 105.10); Burglary in the Second Degree (Penal Law § 140.25[2])(eight counts); Grand Larceny in the Second Degree (Penal Law § 155.40 [1])(three counts); Grand Larceny in the Third Degree (Penal Law § 155.35 [1])(four counts); Criminal Mischief in the Second Degree (Penal Law § 145.10); Grand Larceny in the Fourth Degree (Penal Law § 155.30 [1]); Criminal Possession of Stolen Property in the Third Degree (Penal Law § 165.50); Criminal Possession of Stolen Property in the Fourth Degree (Penal Law § 165.45 [1]) and aiding and abetting with codefendant Frazer, Burglary in the Second Degree (Penal Law § 140.25[2]) and Grand Larceny in the Third Degree (Penal Law § 155.35 [1]) and aiding and abetting with codefendant Ricketts with Burglary in the Second Degree (Penal Law § 140.25[2]) and Grand Larceny in the Fourth Degree (Penal Law § 155.30 [1]) and charged individually with Attempted Burglary in the Second Degree (Penal Law § 110/140.25 [2]) and with Criminal Possession of Stolen Property in the Fifth Degree (Penal Law § 165.40)(three counts) has filed an omnibus motion which consists 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:

I.

MOTION to INSPECT and DISMISS and/or REDUCE  
CPL ARTICLE 190

Defendant moves pursuant to CPL 210.20(1) to dismiss the indictment and/or reduce the counts thereof 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. On consent of the People, the court has reviewed the minutes of the grand jury proceeding.

Here, 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]).

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.

II.

### MOTION to SUPPRESS PHYSICAL EVIDENCE

This branch of defendant's motion 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 including evidence recovered from the vehicle and not obtained pursuant to a search warrant (*Mapp v Ohio*, 367 US 643 [1961]). 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]).

To the extent that the defendant has standing to contest any property seized pursuant to the search warrants dated September 25, 2019 and November 4, 2019 and to the extent that the defendant challenges the sufficiency of the search warrants, that argument fails. The results of a search conducted pursuant to a facially sufficient search warrant are not subject to a suppression hearing (*People v Arnau*, 58 NY2d 27 [1982]). The Fourth Amendment to the U.S. Constitution provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” Article I § 12 of the New York State Constitution contains identical language. Consistent with these constitutional provisions, CPL 690.45(4) requires that when a search warrant authorizes the seizure of property, the warrant must include “[a] description of the property which is the subject of the search.” “To meet the particularity requirement, the warrant must be specific enough to leave no discretion to the police” (*see People v Cahill*, 2 NY3d 14, 41 [2003]). Upon review of the four corners of the search warrant affidavits, the warrants were adequately supported by probable cause, and sufficiently particular as to the places to be searched and the things to be seized (*see People v Keyes*, 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]).

III.

MOTION to PRECLUDE NOTICED IDENTIFICATION TESTIMONY  
CPL 710

The People served defendant pursuant to CPL § 710.30(1)(b) with notice of alleged identifications of defendant from photos and video. Defendant's motion to suppress testimony of the noticed identifications is granted to the limited extent of ordering a pre-trial *Wade* hearing (*see United States v Wade*, 388 US 218 [1967]). At the hearing, the People bear the initial burden of establishing the reasonableness of the police conduct and the lack of any undue suggestiveness (*see People v Chipp*, 75 NY2d 327, 335 [1990] *cert. denied* 498 US 833 [1990]; *People v Berrios*, 28 NY2d 361 [1971]). Once that burden is met, defendant bears the ultimate burden of proving that the procedure was unduly suggestive. Where suggestiveness is shown, the People must show the existence of an independent source by clear and convincing evidence. The hearing will address the People's claim that an identifying witness had a sufficient prior familiarity with defendant as to render the witness impervious to police suggestion (*see People v Rodriguez*, 79 NY2d 445 [1992]).

IV.

MOTION to SUPPRESS NOTICED STATEMENTS  
CPL 710

Pursuant to CPL § 710.30(1)(a), the People served defendant with notices of statements defendant allegedly made on September 25, 2019, at approximately 12:45 AM, to a member of the Westchester County Department of Public Safety and made on June 10, 2020 to an officer at a traffic stop and a third statement made on June 10, 2020 during a car stop. Defendant's motion to suppress the noticed statements on the ground that it was unconstitutionally obtained is granted to the extent of ordering a pretrial *Huntley* hearing to determine whether the statements 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]), and/or obtained in violation of the defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]), or his Sixth Amendment right to counsel.

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 *Sandoval* hearing (*see People v Sandoval*, 34 NY2d 371[1974]). At said hearing, the People shall notify the defendant, *in compliance with CPL Article 245*, of all specific instances of his criminal, prior uncharged criminal, 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, *and in any event not less than 15 days prior to the first scheduled trial date*. 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]).

On the People's consent, 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.

VI.

MOTION for DISCOVERY, DISCLOSURE and INSPECTION  
CPL Article 245

To whatever extent material discoverable under CPL Article 245 has not already been provided to the defense by the People, defendant's motion is granted and such discovery, including *Brady* material<sup>1</sup> 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 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.

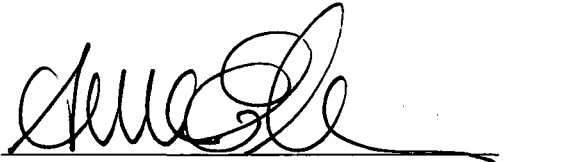
The People recognize their continuing duty to disclose the terms of any deal or agreement made between the People and any prosecution witness at the earliest possible date (*see People v Steadman*, 82 NY2d 1 [1993]; *Giglio v United States*, 405 US 150 [1972]; *Brady v Maryland*, 373 US 83 [1963]; *People v Wooley*, 200 AD2d 644 [2d Dept 1994]).

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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 material which is arguably subject to disclosure under *Brady* and its progeny and CPL 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.

**The People are hereby directed to provide defendant with a Bill of Particulars within four days of receipt of this order (see CPL 200.95(3)).**

Dated: White Plains, New York  
May **28**, 2021



Honorable Anne E. Minihan  
Acting Justice of the Supreme Court

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