

**People v Kinlaw**

2021 NY Slip Op 34086(U)

October 29, 2021

Supreme Court, Westchester County

Docket Number: Ind. No. 20-00147-01

Judge: Robert A. Neary

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**FILED** *NY*

OCT 29 2021

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

**FILED  
AND  
ENTERED  
ON 10-29-2021  
WESTCHESTER  
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

- against -

DECISION AND ORDER

AARON KINLAW and LATONIA McINTYRE,

Ind. No. 20-00147-01

Defendants.

-----X

NEARY, J.

The defendant, Aaron Kinlaw, has been charged with the crimes of Burglary in the Second Degree and Criminal Mischief in the Fourth Degree. The defendant has made an omnibus motion which consists of a Notice of Motion and an Affirmation and Memorandum of Law in support thereof. In response, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Having read all of the submitted papers and reviewed the court file, this Court makes the following determination.

MOTION FOR DISCOVERY AND INSPECTION PURSUANT TO CPL ARTICLE 245 and  
MOTION FOR DISCLOSURE OF BRADY MATERIAL

The defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 245. If any items set forth in CPL Article 245 have not been provided to the defendant pursuant to the Consent Discovery Order in the instant matter, said items are to be provided forthwith.

The People recognize their continuing duty to disclose exculpatory material at the earliest possible date. [See *Brady v. Maryland*, 373 US 83, 83 S Ct. 1194, 10 LE2d 215 and *Giglio v. United States*, 405 US 150, 92 S Ct. 763, 31 LE2d 104]. If the People are or become aware of any material which is arguably exculpatory, but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

To any further extent, the application is denied as seeking material or information beyond the scope of discovery. [See *People v. Colavito*, 87 NY2d 423, 639 NYS2d 996, 663 NE2d 308; *Matter of Brown v. Grosso*, 285 AD2d 642, 729 NYS2d 492, *lv. denied* 97 NY2d 605, 737 NYS2d 52, 762 NE2d 930; *Matter of Brown v. Appelman*, 241 AD2d 279, 672 NYS2d 373; *Matter of Catterson v. Jones*, 229 AD2d 435, 644 NYS2d 573; *Matter of Catterson v. Rohl*, 202 AD2d 420, 608 NYS2d 696, *lv. denied* 83 NY2d 755, 613 NYS2d 127, 241 NE2d 279].

MOTION TO INSPECT (1) AND DISMISS INDICTMENT AND MOTION TO (2) INSPECT AND REDUCE INDICTMENT PURSUANT TO CPL ARTICLE 210 and MOTION TO DISMISS INDICTMENT; DEFECTIVE GRAND JURY PROCEEDING PURSUANT TO CPL ARTICLE 210

The defendant's motion to inspect the Grand Jury minutes is granted. Upon an *in camera* inspection of the Grand Jury minutes by Court, the motion to dismiss the indictment or reduce a charged offense in the indictment is denied.

The Court has reviewed the minutes of the proceeding before the Grand Jury. The Grand Jury was properly instructed (see *People v. Calbud*, 49 NY2d 389, 426 NYS2d 389, 402 NE2d 1140 and *People v. Valles*, 62 NY2d 36, 476 NYS2d 50, 464 NE2d 418) and the evidence presented, if accepted as true would be legally sufficient to establish every element of the offenses charged. [See CPL §210.30(2)]. In addition, the minutes reveal that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, and that it was instructed that only those grand jurors who had heard all the evidence could participate in voting on the matter.

The Court does not find that the release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court in making this determination.

MOTION FOR SANDOVAL/VENTIMIGLIA HEARING

Immediately prior to commencement of jury selection, the prosecutor shall, upon request of the defendant, notify the defendant of any prior criminal act which the People seek to use in the cross-examination of the defendant as well as all specific instances of the defendant's prior uncharged criminal, vicious or immoral conduct of which the prosecutor has knowledge and which the prosecutor intends to use at trial for the purposes of impeaching the credibility of

the defendant. Thereafter, upon the defendant's request, the trial court shall conduct a *Sandoval* and/or *Ventimiglia* hearing prior to the commencement of trial. [See *People v. Sandoval*, 34 NY2d 371 (1974); *People v. Ventimiglia*, 52 NY2d 350 (1981); *People v. Molineux*, 168 NY 264 (1901)].


MOTION TO STRIKE NOTICES OR IN THE ALTERNATIVE TO SUPPRESS STATEMENTS (HUNTLEY HEARING)

The motion to strike the defendant's noticed statement is denied. Said notice is in conformity with the statutory requirements of CPL §710.30.

That branch of the defendant's motion to suppress statements is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine the admissibility and voluntariness of any statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL §710.30 (1)(a), CPL §710.20(3), CPL §710.60[3][b]; *People v. Weaver*, 49 NY2d 1012, 429 NYS2d 399, 406 NE2d 1335.

This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York  
October 29, 2021

  
ROBERT A. NEARY  
SUPREME COURT JUSTICE

*People v. Aaron Kinlaw*  
Indictment No. 20-00147-01

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