

**People v Brown**

2021 NY Slip Op 34095(U)

October 15, 2021

County Court, Westchester County

Docket Number: Indictment No. 20-0518

Judge: George E. Fufidio

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FILED <sup>JK</sup>

OCT 15 2021

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

-against-

DECISION & ORDER

BEDDIE BROWN;

Indictment No.: 20-0518

Defendants.

-----X  
FUFIDIO, J.

Defendant, BEDDIE BROWN, having been indicted on or about June 21, 2021 for one count of identity theft in the first degree (Penal Law § 190.80[1]); one count of identity theft in the first degree (Penal Law § 190.80[3]); one count of criminal possession of a forged instrument in the second degree (Penal Law § 170.25); one count of grand larceny in the third degree (Penal Law § 155.35); and one count of unlawful possession of personal identification information in the third degree (Penal Law § 170.25) 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 this Court disposes of this motion as follows:

A. MOTION TO INSPECT, DISMISS AND/OR REDUCE THE INDICTMENT

Defendant moves pursuant to CPL §§210.20(1)(b) and (c) to dismiss the indictment, or 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. The Court has reviewed the minutes of the proceedings before the Grand Jury.

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]). This prong of the Defendant’s motion is denied.

Additionally, the Court finds that the Defendant has not met his high burden of demonstrating that the integrity of the grand jury proceedings was impaired by any error, let alone one that would render the proceedings defective and prejudicial to the Defendant (*People v Darby*, 75 NY2d 449 [1990], *People v Thompson*, 22 NY3d 687 [2014]), nor does the Court find that there was any such error. Among other things the minutes reveal a quorum of the grand jurors was present during the presentation of evidence, that the Assistant District Attorney presented the evidence fairly and properly instructed the grand jury on the law and only permitted those grand jurors who heard all the evidence to vote the matter. To the extent that the Defendant complains that the grand jury was not instructed on the potential defenses of justification and extreme emotional disturbance, the evidence presented to the grand jury does not support those defenses nor is the prosecuting agency required to present such mitigating defenses (*People v Lancaster*, 69 NY2d 20 [1986]). Accordingly, this prong of the defendant’s motion is also denied.

In making this determination, the Court does not find that release of such portions of the Grand Jury minutes as have not already been disclosed pursuant to CPL Article 245 to the parties was necessary to assist the Court.

#### B. MOTION TO STRIKE SUPPRESS IDENTIFICATION TESTIMONY

The Defendant has been provided with nine CPL 710.30 identification notices. The People have stated that the two noticed identifications of the defendant, both of which were made by the investigating officer while he was testifying before the grand jury, were made after the investigation had been completed and after the investigating officer had already spent time with the defendant. Accordingly, the court orders a *Rodriguez* hearing to assess the investigating officer’s prior familiarity with this defendant in order to determine whether it is sufficient to have rendered them impervious to suggestion (*People v Rodriguez*, 79 NY2d 445 [1992]). In the event that the People are unable to demonstrate prior familiarity the Court will then conduct a *Wade* hearing to determine whether the noticed identifications were unduly suggestive (*United States v Wade*, 388 US 218 [1967]). Specifically, the court shall determine whether the identifications were so improperly suggestive as to taint any in-court identification. In the event the identifications are found to be unduly suggestive, the court shall then go on to consider whether the People have proven by clear and convincing evidence that an independent source exists for such witness’ proposed in-court identification (*People v Riley*, 70 NY2d 523 [1987]).

#### C. MOTION TO SUPPRESS PHYSICAL EVIDENCE

The Defendant has moved to suppress physical evidence. The People have put forth that they are unaware of any physical evidence recovered from the defendant following his arrest. Because the Defendant has not identified any evidence that he thinks should be suppressed, nor

has he demonstrated standing to challenge the physical evidence, such as bank records, that the People will likely be using to try to establish the Defendant's guilt, the motion is denied. The Defendant is given permission to revive this issue should this situation change prior to trial.

#### D. MOTION TO SUPPRESS NOTICED STATEMENTS

This 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]).

#### E. MOTION FOR SANDOVAL/VENTIMIGLIA/MOLINEUX HEARING

Granted, solely to the extent that *Sandoval/Ventimiglia/Molineux* hearings, as the case may be, shall be held immediately prior to trial, as follows:

I. Pursuant to CPL §245.20, the People must notify the Defendant, not less than fifteen days prior to the first scheduled date for trial, of all specific instances of Defendant's uncharged misconduct and criminal acts of which the People have knowledge and which the People intend to use at trial for purposes of impeaching the credibility of the Defendant, or as substantive proof of any material issue in the case, designating, as the case may be for each act or acts, the intended use (impeachment or substantive proof) for which the act or acts will be offered; and

II. Defendant, at the ordered hearing, must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf (see, *People v. Malphurs*, 111 AD2d 266 [2<sup>nd</sup> Dept. 1985]).

#### F. MOTION RESERVING THE RIGHT TO FILE ADDITIONAL MOTIONS

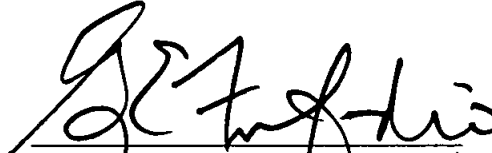
Defendant's motion reserving the right to file additional motions is denied. Should the Defendant file any other motions that were not raised in his *Omnibus* motion, then they will need to be in compliance with CPL 255.20(3).

#### G. MOTION FOR EXCULPATORY INFORMATION

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.

The foregoing constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York  
October 15, 2021



Honorable George E. Fufidio  
Westchester County Court Justice

To:

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