COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

----------x

THE PEOPLE OF THE STATE OF NEW YORK

-against-

RASHON JEFFERS,

Defendant.

----------x

DECISION & ORDER

Indictment No: 21-0448

ROBERT J. PRISCO, J.

Defendant **RASHON JEFFERS** is charged by Indictment Number 21-0448 with one count of Assault in the Second Degree pursuant to Penal Law [PL] § 120.05 (2) [Count One], two counts of Criminal Possession of a Weapon in the Third Degree pursuant to PL § 265.02 (1) [Counts Two and Three] and one count of Attempted Assault in the Second Degree pursuant to PL §§ 110 and 120.05 (2). The charges pertain to Defendant's alleged striking of another individual with a tire wrench and the serious physical injury allegedly sustained by that individual as a result thereof and Defendant's further alleged intent to cause physical injury to that same individual with a fire extinguisher. The above offenses are alleged to have occurred at 17 South 13th Avenue in the City of Mount Vernon, at approximately 7:24 p.m. on March 28, 2021.

On September 20, 2021, Defendant was arraigned by the Honorable David S. Zuckerman on the charges contained in Indictment Number 21-0448. Attached to the indictment is an Information accusing Defendant of having been previously convicted of Attempted Criminal Possession of a Controlled Substance in the Fourth Degree on or about October 23, 2008, in the Westchester County Court, five (5) CPL § 710.30 (1) (b) Notices signifying the People's intent to offer testimony of an observation of the defendant either at the time or place of the commission of the offenses or upon some other relevant occasion by a witness or witnesses who have previously identified him as such, and the People's Demand for a Notice of Alibi pursuant to CPL § 250.20.

On December 20, 2021, Defendant filed a Notice of Pre-Trial Motions pursuant to CPL Article 255 (hereinafter "Notice of Motion"), an Affirmation in Support and a Memorandum of Law, seeking various forms of judicial intervention and relief.

On December 30, 2021, the People filed an Affirmation in Opposition, a Memorandum of Law and an unredacted certified copy of the stenographic transcript of the August 25, 2021 Grand Jury proceeding, along with copies of the Grand Jury Exhibits.

After consideration of the above referenced submissions and the unredacted certified stenographic transcript of the August 25, 2021 Grand Jury proceeding, the Court decides Defendant's Motion as follows:

1. MOTION FOR DISCOVERY.

Pursuant to CPL Article 245, Defendant moves for discovery and provides a list of "specific items of discovery" that "the prosecution is required to provide" (*see* Point A, Pages 2-4, of Defendant's Notice of Motion and Point A, Pages 1-4, of Defendant's Memorandum of Law).[1] Specifically, Defendant contends that "[t]he information sought is reasonable and both material and necessary to adequately prepare and conduct a defense" (*see* Point A, Page 1, of Defendant's Memorandum of Law).

In response, the People assert that they "have [already] provided defendant [with] substantial discovery" [2] and oppose discovery "to the extent it exceeds CPL Article 245" (*see* Points I and II, Page 1, of the People's Memorandum of Law). The People further assert that "[a]ny motion by defendant for discovery within the parameters of CPL Article 245 is moot because, to the extent such material exists and is in [the] possession [or] control of the People, it has or will be provided to defendant" (*see* Points I and II, Pages 1-2, of the People's Memorandum of Law).

As of the present date, the Court has not received a Certificate of Compliance pursuant to CPL § 245.50 (1) stating that, after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery, the People have disclosed

---

[1] Defendant's repeated references in his Memorandum of Law to various sections of CPL Article 240 in support of his motion for discovery is interpreted as being brought pursuant to CPL Article 245, which replaced Article 240, effective January 1, 2020.

[2] The People contend that "[d]iscovery was provided on or about June 9, 2021, July 13, 2021, August 12, 2021, November 19, 2021, December 27, 2021 and December 28, 2021" (*see* Page 4, Footnote 6, of the People's Affirmation in Opposition).

and made available all known material and information subject to discovery. To the extent that such material and information has not yet been disclosed and made available to the defendant, the People are directed to do so immediately as their initial discovery obligations should have been performed as soon as practicable but not later than thirty-five (35) calendar days after the defendant's arraignment on the indictment (*see* CPL § 245.10 (1) (a) (ii)). Moreover, absent a finding of special circumstances by this Court, the People will not be deemed ready for trial pursuant to CPL § 30.30 until a proper Certificate of Compliance has been served and filed (*see* CPL § 245.50 (3)).

2. MOTION FOR BRADY MATERIAL.

Citing *Brady v Maryland*, 373 US 83 (1963), Defendant moves for an order directing the People to provide "all favorable evidence which tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment, and any information affecting the credibility of [a] potential prosecution witness" (*see* Point B, Page 4, of Defendant's Notice of Motion and Point B, Pages 4-5 of Defendant's Memorandum of Law).

In response, the People acknowledge "their continuing obligation to disclose exculpatory evidence that is within their possession pursuant to *Brady v Maryland* (373 US 83 [1963]) and *People v Fein* (18 NY2d 162 [1966]),"[3] state that "[t]o the extent such material becomes known and is in possession of the People, it will be provided to the defendant...[and represent that they] have or will comply with their obligations under CPL 245.20 (1) (k), (l), and (p)" (*see* Points I and II, Page 2, of the People's Memorandum of Law).

The People are respectfully reminded to remain cognizant of their discovery obligations not only as required by *Brady*, *Giglio, People v Geaslen*, 54 NY2d 510 [1981], and their respective progeny, but also as mandated by CPL Article 245. Specifically, CPL § 245.20 (1) (k) requires that the prosecutor disclose "[a]ll evidence and information, including that which is known to police or other law enforcement agencies acting on the government's behalf in this case, that tends to: (i) negate the defendant's guilt as to a charged offense; (ii) reduce the degree of or mitigate the defendant's culpability as to a charged offense; (iii) support a potential defense to a charged

[3] The People also acknowledge their obligation "to disclose the terms of any deal or agreement between the government and any prosecution witness under the guidelines set forth in *Giglio v United States* (405 US 150 [1972])" (*see* Page 2, Footnote 7, of the People's Memorandum of Law).

offense; (iv) impeach the credibility of a testifying prosecution witness; (v) undermine evidence of the defendant's identity as a perpetrator of a charged offense; (vi) provide a basis for a motion to suppress evidence; or (vii) mitigate punishment" and such disclosure must occur expeditiously upon its receipt, "whether or not such information is recorded in tangible form and irrespective of whether the prosecutor credits the information."

Pursuant to CPL § 245.20 (1) (l), the People must also disclose "a summary of all promises, rewards and inducements made to, or in favor of, persons who may be called as witnesses, as well as requests for consideration by persons who may be called as witnesses and copies of all documents relevant to a promise, reward or inducement."

Because the People have not yet served and filed a Discovery Disclosure Index, the Court is presently unaware of the material and information that has been disclosed to Defendant pursuant to the above obligations. However, to the extent that such has not been disclosed, should the People ascertain the existence of *Brady, Geaslen*, or *Giglio* material, or of any of the materials and information itemized in CPL § 245.20 (1) (k) and (l), through their mandated diligent, good faith effort to do so or otherwise, they are directed to expeditiously disclose the same upon its receipt.

3. MOTION FOR PRECLUSION OF DEFENDANT'S PRIOR CRIMES OR BAD ACTS; ASOCIATED SANDOVAL AND VENTIMIGLIA HEARINGS.

Relying on *People v Sandoval*, 34 NY2d 371 [1974], and *People v. Ventimiglia*, 52 NY2d 350 [1981], Defendant moves for a "pre-trial hearing to determine the admissibility at trial for any purpose of any and all alleged criminal convictions and/or criminal, vicious or immoral acts of defendant" and requests that the People notify him of "all specific instances of defendant's alleged prior uncharged criminal, vicious or immoral conduct of which the prosecution has knowledge, and which the District Attorney intends to use at trial" (*see* Point C, Pages 4-5, of Defendant's Notice of Motion and Point C, Pages 5-6, of Defendant's Memorandum of Law).

In response, the People acknowledge their *Sandoval* and *Ventimiglia* obligations and consent to hearings on same if such disclosure is made (*see* Point III, Page 3, of the People's Memorandum of Law). The People also indicate that should they "seek to introduce defendant's prior bad acts on their direct case, the People will inform defense counsel and the Court and request a hearing before introducing such *Molineux* evidence". (*see* Point III, Page 3, of the People's Memorandum of Law).

CPL § 245.20 (3) (a) provides, in substance and pertinent part, that "[t]he prosecution shall disclose to the defendant a list of all misconduct and criminal acts of the defendant not charged in the indictment, which the prosecution intends to use at trial for purposes of impeaching the credibility of the defendant." To the extent that the People seek to use any of Defendant's prior acts of misconduct or criminality on their direct case as substantive proof of any material issue in the case, CPL § 245.20 (3) (b) likewise obligates "[t]he prosecution [to] disclose to the defendant a list of all misconduct and criminal acts of the defendant not charged in the indictment, which the prosecution intends to use at trial [for such purpose]." Lastly, CPL § 245.20 (3) further requires that "the prosecution shall designate whether it intends to use each listed act for impeachment and/or as substantive proof."

As the People have concededly not yet disclosed to the defendant a list of his acts of misconduct and criminality which the prosecution intends to use at trial for purposes of impeaching his credibility or as substantive proof of any material issue in the case, or designated their intended use thereof, this Court will not order the requested *Sandoval* and *Ventimiglia* hearings at the present time. Should the People seek to use at trial any prior acts of misconduct or criminality of the defendant for CPL § 245.20 (3) (a) or (b) purposes, they are directed to disclose to Defendant a list of all such acts of misconduct and criminality and to designate the intended purpose of each listed act. Pursuant to CPL § 245.10 (1) (b), the People "shall perform [these] supplemental discovery obligations *as soon as practicable* but not later than fifteen (15) calendar days prior to the first scheduled trial date" (emphasis added). If the People do so, Defendant may renew his application to preclude the People's use of such acts of misconduct or criminality at trial or, in the alternative, request a hearing thereon to determine the admissibility thereof. If the People fail to do so, no use of such acts will be permitted at trial.

4. MOTION FOR INSPECTION OF GRAND JURY MINUTES AND DISMISSAL OR REDUCTION OF THE CHARGES CONTAINED IN INDICTMENT NUMBER 21-0448 DUE TO THE LEGAL INSUFFICIENCY OF THE EVIDENCE PRESENTED AND THE INSTRUCTIONS PROVIDED.

Citing CPL Article 210, Defendant moves "for inspection of the Grand Jury minutes by the Court and the defendant, and subsequent to that inspection, for the dismissal of the indictment or reduction of the counts thereof, on the grounds that the evidence before the Grand Jury was not legally sufficient, and that the Grand Jurors were not properly instructed on the applicable law,

and on lesser included offenses" (*see* Point D, Page 5, of Defendant's Notice of Motion and Point D, Pages 6-11, of Defendant's Memorandum of Law). Defendant further requests that "a transcript of the legal instructions to the Grand Jury should be delivered to counsel for examination so that [a] more precise argument can be made" and as the Court "could not possibly be as familiar with the contours of this case, at this point of the proceeding, as counsel for the accused" (*see* Point D, Page 11, of Defendant's Memorandum of Law).

In their response, the People consent to an in-camera inspection of the Grand Jury minutes by the Court only and contend that the indictment is supported by legally sufficient evidence (*see* Point IV, Pages 4-5, of the People's Memorandum of Law), and that "Defendant has failed to meet his high burden of showing the existence of any error in the grand jury proceeding which rendered it defective" (*see* Point IV, Page 6, of the People's Memorandum of Law).

Initially, regarding Defendant's request for the Grand Jury minutes in their entirety, this Court notes that CPL § 245.20 (1) (b) provides for automatic discovery of "[a]ll transcripts of the *testimony* of a person who has testified before a grand jury" (emphasis added). Similarly, CPL § 210.30 (3), which addresses motions to inspect grand jury minutes speaks only to the release of "grand jury *testimony* (emphasis added)." Accordingly, as there exists no statutory authority for the release to Defendant of those portions of the Grand Jury minutes that constitute colloquy or instructions and as the People contend that they have complied with the discovery mandate of CPL § 245.20 (1) (b) by providing the defendant with the transcript of the testimony of the two (2) witnesses who testified before the Grand Jury (*see* Point IV, Page 4, of the People's Memorandum of Law), the defendant's request for the Grand Jury minutes in their entirety is denied.

The Court has conducted an in-camera review of the entirety of the Grand Jury proceedings, having examined an unredacted certified copy of the stenographic transcript of the August 25, 2021 presentation.

On August 25, 2021, prior to the commencement of the given sworn testimony, the People specifically inquired of and confirmed with the foreperson that twenty-two (22) grand jurors were present. The record established that the twenty-one (21) grand jurors who deliberated and voted on the charges contained in Indictment Number 21-0448 were present throughout the one-day presentation of the case.

"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 [2003], quoting *People v Carroll,* 93 NY2d 564, 568 [1999]; *see People v Bello*, 92 NY2d 523, 525 [1998]; *People v Jensen*, 86 NY2d 248, 251 [1995]; *People v Jennings*, 69 NY2d 103, 114 [1986]; *People v Booker*, 164 AD3d 819, 820 [2d Dept 2018]; *People v Hulsen*, 150 AD3d 1261, 1262 [2d Dept 2017], *lv. denied* 30 NY3d 950 [2017]; *People v Flowers*, 138 AD3d 1138, 1139 [2d Dept 2016]). Legally sufficient evidence is "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 Mills,* 1 NY3d at 274; *People v Franov*, 146 AD3d 978, 979 [2d Dept 2017]; *People v Wisey*, 133 AD3d 799, 800 [2d Dept 2015]; *People v Ryan* 125 AD3d 695, 696 [2d Dept 2015], *lv. denied* 25 NY3d 1077 [2015]). "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], quoting *People v Bello*, 92 NY2d at 526; *see People v Ryan*, 125 AD3d at 696; *People v Woodson,* 105 AD3d 782, 783 [2d Dept 2013]). This 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'" (*People v Bello*, 92 NY2d at 526, quoting *People v Deegan,* 69 NY2d 976, 979 [1987]; *see People v Pino*, 162 AD3d 910, 911 [2d Dept 2018]).

Here, the evidence presented to the Grand Jury, when viewed in the light most favorable to the People, was legally sufficient to establish and support the charges contained in Indictment Number 21-0448.

A Grand Jury proceeding is "defective," warranting dismissal of the indictment, only where the "proceeding . . . fails to conform to the requirements of CPL Article 190 to such degree that the integrity thereof is impaired and prejudice to the defendant may result" (CPL § 210.35 (5); *see People v Arevalo*, 172 AD3d 891, 892 [2d Dept 2019]; *People v Williams*, 171 AD3d 804, 805 [2d Dept 2019]). Dismissal of an indictment under CPL § 210.35 (5) is an "exceptional remedy" that "should . . . be limited to those instances where prosecutorial wrongdoing, fraudulent conduct or errors potentially prejudice the ultimate decision reached by the Grand Jury" (*People v Huston*, 88 NY2d 400, 409 [1996]; *see People v Williams,* 171 AD3d at 805; *People v Burch,* 108 AD3d 679, 680 [2d Dept 2013], *lv. denied* 22 NY3d 1087 [2014]; *People v Thompson*, 81 AD3d 670, 671 [2d

Dept 2011], *aff'd* 22 NY3d 687 [2014]). In the case at bar, the Court finds that no such wrongdoing, conduct or errors occurred.

While a prosecutor is required to instruct the grand jury on the law with respect to matters before it (*People v Valles*, 62 NY2d 36, 38 [1984]; *People v Tunit*, 149 AD3d 1110, 1110 [2d Dept 2017]; *People v Samuels*, 12 AD3d 695, 698 [2d Dept 2004]; *see* CPL § 190.25 (6)), "a Grand Jury need not be instructed with the same degree of precision that is required when a petit jury is instructed on the law" (*People v Calbud, Inc.*, 49 NY2d 389, 394 [1980]; *see People v Caracciola*, 78 NY2d 1021, 1022 [1991]; *People v Batashure*, 75 NY2d 306, 311 [1990]; *People v Goetz*, 68 NY2d 96, 115 [1986]; *People v Valles* 62 NY2d 36, 38 [1984]; *People v Tunit*, 149 AD3d at 1110; *People v Castaldo*, 146 AD3d 797, 798 [2d Dept 2017]; *People v Burch,* 108 AD3d at 680; *People v Malan-Pomaeyna*, 72 AD3d 988 [2d Dept 2010]). It is well settled that such instructions are sufficient so long as they provide "enough information to enable [the grand jury] intelligently to decide whether a crime has been committed and to determine whether there exists legally sufficient evidence to establish the material elements of the crime" (*People v Calbud, Inc.*, 49 NY2d at 394-395; *see People v Valles* 62 NY2d at 38; *People v Tunit*, 149 AD3d at 1110-1111; *People v Patterson,* 73 AD3d 1215, 1215 [2d Dept 2010], *lv. denied* 15 NY3d 776 [2010]; *People v Malan-Pomaeyna*, 72 AD3d at 988).

Here, after an in-camera review of the unredacted certified copy of the stenographic transcript of the Grand Jury presentation on August 25, 2021, this Court determines that the Grand Jury proceeding was not defective and that the instructions given during the presentation were legally sufficient and proper.

Accordingly, for the reasons set forth above, Defendant's motion to dismiss or reduce the charges contained within Indictment Number 21-0448 is denied.

5. MOTION TO DISMISS INDICTMENT NUMBER 21-0448 FOR FACIAL INSUFFIENCY.

Citing CPL § 210.25 (1), Defendant moves to dismiss the indictment on the ground that "it does not substantially conform to the requirements stated in [CPL] Section 200.50 (7) (a) in that there is no plain and concise factual statement which asserts facts supporting every element of the offense(s) charged and/or the defendant's commission thereof with sufficient precision to clearly apprise the defendant of the conduct which is the subject of the accusation" (*see* Point E, Page 5,

of Defendant's Notice of Motion and Point E, Page 11, of Defendant's Memorandum of Law).

In response, the People assert that Defendant's motion should be denied as "each charge in the indictment is facially sufficient" (*see* Point V, Page 8, of the People's Memorandum of Law).

Regarding the four (4) offenses charged in Indictment Number 2021-0448, each count contains a plain and concise factual statement which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's commission thereof with sufficient precision to clearly apprise him of the conduct which is the subject of the accusation (*see* CPL § 200.50 (7) (a); *People v Grega*, 72 NY2d 489, 498 [1988]; *People v Iannone*, 45 NY2d 589, 598 [1978]; *People v Nunez-Garcia,* 178 AD3d 1087, 1088 [2d Dept 2019], *lv. denied* 35 NY3d 943 [2020]) and the date on which the conduct is alleged to have occurred *(see* CPL § 200.50 (6); *People v Henry,* 183 AD3d 607 [2d Dept 2020]); *People v Atta,* 126 AD3d 713, 715 [2d Dept 2015], *lv. denied* 25 NY3d 1159 [2015]). Accordingly, Defendant's motion to dismiss Indictment Number 21-0448 for facial insufficiency is denied.

6. MOTION TO STRIKE LANGUAGE FROM INDICTMENT NUMBER 21-0448.

Defendant moves to strike the language "...and against the peace and dignity of the People of the State of New York" from Indictment Number 21-0448 on the ground that such language is "irrelevant and potentially prejudicial" (*see* Point F, Page 5, of Defendant's Notice of Motion and Point F, Page 12, of Defendant's Memorandum of Law).

As the phrase "against the peace and dignity of the People of the State of New York" merely identifies the defendant's alleged acts as a public rather than a private wrong, Defendant's motion to strike such language from Indictment Number 21-0448 is denied (*see People v Winters*, 194 AD2d 703, 704 [2d Dept 1993], *lv. denied* 82 NY2d 761 [1993]; *People v Gill*, 164 AD2d 867, 867 [2d Dept 1990], *lv. denied* 76 NY2d 893 [1990]).

7. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY.

Pursuant to CPL § 710.30 (1) (b), the People served five (5) notices upon Defendant regarding their intent to offer trial testimony from a witness or witnesses who allegedly identified him via two (2) video identifications that allegedly occurred on March 29, 2021 at 17 South 13th Avenue in the City of Mount Vernon and in the Mount Vernon Police Department, a video

identification that allegedly occurred on June 16, 2021 at the Mount Vernon City Court, and a video identification that allegedly occurred on August 25, 2021 at the Westchester County Grand Jury. Defendant was also allegedly identified on March 29, 2021 at the Mount Vernon Police Department through a single photograph.

Citing CPL Articles 710 and 60, the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and Article I, Section 12, of the New York State Constitution, Defendant moves to suppress "the pre-trial identifications of Rashon Jeffers" (*see* Point G, Pages 5-6, of Defendant's Notice of Motion) and "any in-court identification by any person who participated in a noticed suggestive identification procedure (*see* Point G, Page 12, of Defendant's Memorandum of Law).[4] In the alternative, Defendant moves for a "pre-trial Wade hearing...to determine the admissibility of such identifications and to determine if the noticed identifications have tainted any potential identification at a future judicial proceeding" (*see* Point G, Page 6, of Defendant's Notice of Motion). Finally, Defendant submits that "if it should be discovered that there was an unnoticed police arranged viewing of the defendant, the defense seeks preclusion of such viewing and preclusion of any in-court identification of the defendant by anyone associated with such unnoticed viewing" (*see* Point G, Page 12, of Defendant's Memorandum of Law).

In response, the People assert that the Defendant's motion on Fifth Amendment grounds should be denied because the four (4) identifications allegedly made from the surveillance video "did not constitute 'identification procedures' within the meaning of CPL 710.30, given the witness's prior familiarity with defendant [and], thus, the People need not have served notice upon the defendant" (*see* Point VII, Pages 11-12, of the People's Memorandum of Law). The People further assert that the identification of defendant from a single photograph was also confirmatory as "the victim who identified defendant, was fully aware of defendant's identity" and therefore "rendered the victim impervious to suggestion" (*see* Point VII, Pages 13-14, of the People's Memorandum of Law). Finally, the People aver that the identifications of Defendant did not violate his Sixth Amendment rights because "there is no right to the presence of counsel in investigatory, photographic identifications" and that when "defendant was identified at a

[4] The Court notes that while Defendant refers to a "motion to strike the identification notices" (*see* Point G, Page 12, of Defendant's Memorandum of Law) and the People address such in their opposition papers (*see* Point VI, Pages 9-10, of the People's Memorandum of Law), Defendant does not specifically state the grounds or under what theory the noticed identifications are insufficient.

preliminary hearing, he was represented by a member of the Legal Aid Society...[who] had the ability to object and cross-examine the victim regarding his in-court identification" (*see* Point VII, Pages 14-15, of the People's Memorandum of Law).

As there is insufficient information presently before this Court to conclude that "the [identifying] witness knows defendant so well as to be impervious to...suggestion" (*People v Rodriguez*, 79 NY2d 445, 454 [1992]; *see People v Richardson*, 2021 NY Slip Op. 07287 [2d Dept 2021]; *People v Coleman*, 73 AD3d 1200, 1202 [2d Dept 2010]; *People v Morrison*, 59 AD3d 569 [2d Dept 2009], *lv. denied* 12 NY3d 918 [2009]; *People v Tomlin*, 41 AD3d 620 [2d Dept 2007], *lv. denied* 10 NY3d 817 [2008]) and because "prior familiarity should not be resolved at trial in the first instance" (*People v Rodriguez*, 79 NY2d at 452; *see People v Carmona*, 37 NY3d 1016, 1017-1018 [2021]), Defendant's motion to suppress evidence of the identification of defendant is granted to the extent that a *Rodriguez* hearing will be held to determine whether the witness' alleged identifications of Defendant from video surveillance and from a single photograph were truly confirmatory in nature. At the conclusion of the *Rodriguez* hearing, if this Court concludes that the identifications were confirmatory, no further hearing on the issue of identification testimony is needed. However, if this Court does not so conclude, a bifurcated hearing pursuant to *United States v Wade*, 388 US 218 [1967], will then be held.

To the extent that the People have failed to serve a notice within fifteen (15) days after Defendant's arraignment regarding an identification for which such notice is required pursuant to CPL § 710.30, absent a showing of "good cause" (*see* CPL § 710.30 (2)), "no evidence of a kind specified in [CPL § 710.30 (1)] may be received against [Defendant] upon trial" (CPL § 710.30 (3); *see People v Pacquette*, 25 NY3d 575, 579 [2015]).

8. RESERVATION OF RIGHTS TO MAKE ADDITIONAL PRE-TRIAL MOTIONS.

Defendant's request to make additional pre-trial motions (*see* Page 7 of Defendant's Notice of Motion and Page 3 of Defendant's Affirmation in Support) is granted to the extent that, if sought, he will be required to serve and file an Order to Show Cause detailing the reason(s) why said motions were not brought in conformity with the time provisions and motions practice set forth in CPL § 255.20 (1) and (2), respectively.

However, notwithstanding the provisions of CPL § 255.20 (1) and (2), this Court will "entertain and decide on its merits, at any time before the end of the trial, any appropriate pre-trial motion based upon grounds of which the defendant could not, with due diligence, have been previously aware, or which, for other good cause, could not reasonably have been raised within the period specified in [CPL § 255.20 (1)] or included within the single set of motion papers as required by [CPL § 255.20 (2)]" (CPL § 255.20 (3); *see People v Wisdom*, 23 NY3d 970, 972 [2014]; *People v Marte,* 197 AD3d 411, 413 [1st Dept 2021]; *People v Burke*, 174 AD3d 915, 915 [2d Dept 2019]; *People v Milman*, 164 AD3d 609, 610 [2d Dept 2018]).

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
January 20, 2022

HONORABLE ROBERT J. PRISCO
County Court Judge

To: HON. MIRIAM E. ROCAH
Westchester County District Attorney
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601
Attn: Assistant District Attorney Graham R. Chapman

THE LEGAL AID SOCIETY OF
WESTCHESTER COUNTY
Attorney for Defendant Rashon Jeffers
150 Grand Street-Suite 100
White Plains, New York 10601
Attn: Andrew L. Restivo, Esq.