

**People v Portillo**

2022 NY Slip Op 34792(U)

May 26, 2022

County Court, Westchester County

Docket Number: Indictment No. 22-70383

Judge: Anne E. Minihan

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**FILED**

MAY 31 2022

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER  
COUNTY OF WESTCHESTER

FILED  
AND ENTERED  
ON 5-27-2022  
WESTCHESTER  
COUNTY CLERK

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

-against-

JULISA GOMEZ PORTILLO

Defendant.

DECISION & ORDER  
Indictment No. 22-70383

-----X  
MINIHAN, J.

Defendant, Julisa Gomez Portillo, charged by Westchester County Indictment Number 22-70383 with Vehicular Assault in the First Degree (Penal Law § 120.04[1]), Aggravated Driving While Intoxicated: Per Se (Vehicle and Traffic Law § 1192[2-a][a]), Driving While Intoxicated (Vehicle and Traffic Law § 1192[3]), and Assault in the Third Degree (Penal Law § 120.00[3]), has filed an omnibus motion consisting of a Notice of Motion, an Affirmation in Support, and a Memorandum of Law. In response, the People filed an Affirmation in Opposition together with a Memorandum of Law. On May 20, 2022, defendant filed a Reply to the People's Affirmation in Opposition and a Memorandum of Law.

I.

MOTION for DISCOVERY, DISCLOSURE, and INSPECTION  
CPL ARTICLE 245

To whatever extent material that is discoverable under CPL Article 245 has not already been provided to the defense by the People, the defendant's motion is granted and such discovery, including both *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).

In her motion, defendant claims that she has not received the following outstanding discovery: 1) the curriculum vitae, proficiency tests, and qualifications of People's witness Sergeant Stasaitis; 2) the qualifications of forensic toxicologist Mary Jane Masih; 3) laboratory documents and raw data relating to the analysis of defendant's blood sample, including calibration, inspection, repair, and maintenance records of the instruments used to perform the analysis; 4) any documents relating to the Irvington Police Department, first responders to the scene; and 5) the transcript of the instructions and charges given by the prosecutor to the grand jury during the grand jury presentation. The prosecutor's instructions and/or colloquies are beyond the disclosure directed by CPL Article 245 and as such, the court denies that branch of the motion.

<sup>1</sup> The People have a 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 any such 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 an in-camera inspection by the court and determination as to whether it constitutes *Brady* material discoverable by defendant.

The People, in their answer, indicate that discovery pertaining to the Irvington Police Department and the qualifications of forensic toxicologist Mary Jane Masih has been provided to defendant. In defendant's Reply, she demands: 1) Sergeant Stasaitis's qualifications as an expert; 2) an updated 1K form for forensic toxicologist Mary Jane Masih; 3) outstanding discovery from the Irvington Police Department as well as the Greenburgh Police Department; and 4) laboratory discovery related to the testing of defendant's blood. Defense counsel is directed to contact the assigned Assistant District Attorney upon receipt of this order. *If the discovery issue remains unresolved within three business days of receipt of this order, counsel for defendant shall contact the court to request an immediate compliance conference.*

Finally, defendant argues that the People filed a Certificate of Compliance on or about March 8, 2022 but after receiving defendant's omnibus motion, filed "a substantial amount of additional discovery related to Sergeant Stasaitis's report, Ms. Masih's qualifications, and laboratory certification documents" (Defendant's Reply Memorandum of Law, page 1). The People 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.

Moreover, the People must 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]).

II.

MOTION to DISMISS for FACIAL INSUFFICIENCY

Defendant moves to dismiss the indictment pursuant to CPL 210.25(1) on the ground that it is facially insufficient. This motion is denied.

The indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offenses charged and defendant's commission thereof with sufficient precision as to clearly apprise her of the conduct which is the subject of the indictment (CPL 200.50). The indictment charges each and every element of the crimes, and alleges that defendant committed the acts which constitute the crimes at a specified place during a specified time period and, therefore, is sufficient on its face (*People v Cohen*, 52 NY2d 584 [1981]; *People v Iannone*, 45 NY2d 589 [1978]).

III.

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

Defendant moves pursuant to CPL 210.20 to dismiss the indictment, or reduce the counts charged against her, on the grounds that the evidence before the Grand Jury was legally insufficient, and 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 proceedings before the Grand Jury.

The court denies defendant's motion to dismiss or reduce the counts in the indictment for legally insufficient evidence because a review of the minutes reveals that the evidence presented, if accepted as true, would be legally sufficient to establish every element of the offenses charged (*see* CPL 210.30 [2]). 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]). Here, the evidence presented, if accepted as true, is legally sufficient to establish every element of the offenses charged (CPL 210.30[2]).

With respect to defendant's claim that the Grand Jury proceeding was defective within the meaning of CPL 210.35, a review of the minutes reveal that a quorum of the grand jurors was present during the presentation of evidence, and that the Assistant District Attorney properly and clearly instructed the Grand Jury on the law and only permitted those grand jurors who heard all 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]).

#### IV.

#### MOTION to SUPPRESS PHYSICAL EVIDENCE

This branch of defendant's motion is granted solely to the extent of conducting a *Mapp* hearing prior to trial to determine the propriety of any search resulting in the seizure of property, such as the open can of Modelo beer that police took from defendant's vehicle and the three closed cans of wine they seized from defendant's purse (*see 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]).

Defendant also moves to suppress the results of the chemical test performed on a sample of her blood, which sample was taken pursuant to a telephonic order obtained from a County Court Judge pursuant to VTL § 1194(3). Defendant's motion is granted to the extent that a pre-trial hearing will be held to determine whether the order was obtained and the test administered

in violation of the provisions of VTL § 1194(3) or any other applicable law (*see* VTL § 1195[3]; CPL § 710.20[5]; *see also* *People v Whelan*, 165 AD2d 313 [2d Dept 1991]). This hearing will also address whether the defendant's refusal to submit to a chemical test was valid<sup>2</sup> and whether there was a Sixth Amendment right to counsel violation.

V.

MOTION to SUPPRESS NOTICED STATEMENTS

The People, pursuant to CPL 710.30(1)(a), noticed statements allegedly made by defendant to members of the Tarrytown Police Department on November 7, 2021. Defendant moves to suppress the statements as involuntary, made without *Miranda* warnings,<sup>3</sup> and in violation of defendant's right to counsel.<sup>4</sup> Defendant's motion to suppress is granted to the extent that a pre-trial *Huntley* hearing shall be held, on consent of the People, to determine whether the alleged statements were involuntarily made within the meaning of CPL 60.45 (*see* CPL 710.20[3]; CPL 710.60[3][b]; *People v Weaver*, 49 NY2d 1012 [1980]). The hearing will also address whether the alleged statements were obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]), or her Sixth Amendment right to counsel.

VI.

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 defendant's prior criminal convictions or 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 defendant, *in compliance with CPL Article 245*, of all specific instances of her criminal, prior uncharged criminal, vicious, or immoral conduct of which they have knowledge and which they intend to use in an attempt to impeach defendant's credibility if she elects to testify at trial, *and, in any event, not less than 15 days prior to the first scheduled trial date*. Defendant shall bear the burden of identifying any instances of her prior misconduct that she submits the People should not be permitted to use to impeach her credibility. Defendant shall be required to identify the basis of her belief that each event or incident may be unduly prejudicial to her ability to testify as a witness on her own behalf (*see* *People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

If the People determine that they will seek to introduce evidence at trial of any prior uncharged misconduct and criminal acts of 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*

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<sup>2</sup> In their answer, the People indicate that they do not intend to use defendant's refusal to submit to a chemical test as evidence. This is something that should be addressed with the hearing court prior to hearings being held in this matter.

<sup>3</sup> As to the first noticed statement of defendant.

<sup>4</sup> As to the second noticed statement of defendant.

*Molineux*, 168 NY 264 [1901]) shall be held immediately prior to trial to determine whether or not any evidence of uncharged crimes may be so used by the People. 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.

VII.

BRADY MATERIAL

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]). Again, if the People are or become aware of any such material which is arguably subject to disclosure under *Brady* and its progeny and Criminal Procedure Law 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 Court has served a *Brady* Order on the People, dated March 15, 2022, which details the time period their disclosure must be made in accordance with the standards set for in the United States and New York State Constitutions and CPL Article 245.

The People also acknowledge that they have or will comply with their obligations under CPL 245.20(1) (k), (l), and (p).

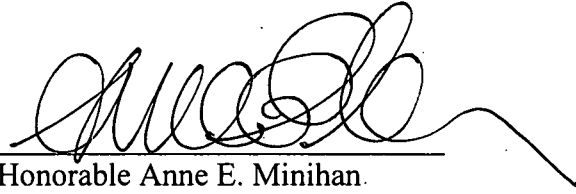
VIII.

LEAVE TO MAKE ADDITIONAL MOTIONS

Defendant's motion for leave to make additional motions is denied. Defendant must demonstrate good cause for any further pre-trial motion for omnibus relief, in accordance with CPL 255.20(3).

The foregoing constitutes the decision and order of this court.

Dated: White Plains, New York  
May 26, 2022

  
Honorable Anne E. Minihan.  
Acting Justice of the Supreme Court

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