

**People v Blakely**

2022 NY Slip Op 34857(U)

September 19, 2022

County Court, Westchester County

Docket Number: Indictment No. 22-71200

Judge: Anne E. Minihan

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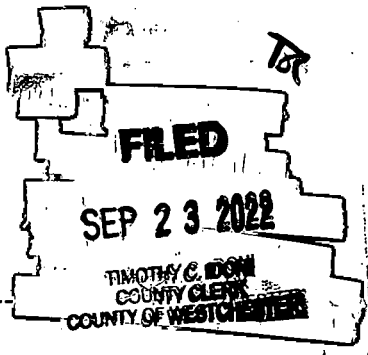
COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

**FILED**  
**AND ENTERED**  
ON 9-20- 2022  
**WESTCHESTER**  
**COUNTY CLERK**

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

-against-

PERCELL ROSS BLAKELY  
AKA PERCELL LAMONT ROSS



DECISION & ORDER  
Indictment No. 22-71200

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MINIHAN, J.

Defendant, Percell Ross Blakely AKA Percell Lamont Ross, charged by Westchester County Indictment Number 22-71200 with Murder in the First Degree (Penal Law § 125.27[1][a][vii], Murder in the Second Degree (Penal Law § 125.25[1]), Murder in the Second Degree (Penal Law § 125.25[3]), Robbery in the First Degree (Penal Law § 160.15[1]), Robbery in the First Degree (Penal Law § 160.15[2]), and Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03[1][b]), 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. Defendant filed a Reply on September 13, 2022.

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,<sup>1</sup> defendant's motion is granted and such discovery, including both *Brady* material<sup>2</sup> and *Rosario* material, shall be provided forthwith. Leave is granted for either party to seek a protective order (CPL Article 245).

<sup>1</sup> Specifically, in his motion, defendant claims that the People have not provided photographs of the gold chain allegedly stolen from victim by defendant (*see* Defendant's Notice of Motion, page 3, ¶ [1][d]), "the names and addresses of the People's witnesses Claudia-Charlotte Cabrera-Diaz" (*see* Defendant's Notice of Motion, page 4, ¶ [3][a]), Miranda forms/cards signed by defendant (*see* Defendant's Notice of Motion, page 4, ¶ 7), "information or documents related to [the] cell phone [recovered] or any testing, reviewing or analysis done to that phone" (*see* Defendant's Memorandum of Law, page 2), "photographs, videos, documentation, chain of custody information or information related to the several items that were seized as a result of the arrest of Mr. Ross-Blakely" such as "clothing, a firearm, identification materials, .22 caliber ammunition, various clothing items, a gold colored necklace with a gold pendant from the dashboard inside the vehicle, an automobile, and other personal items from Mr. Ross-Blakely's vehicle" (*see* Defendant's Memorandum of Law, page 2), the Grand Jury exhibits (*see* Defendant's Memorandum of Law, page 5), the Connecticut warrant and accompanying affidavit (*see* Defendant's Memorandum of Law, page 14), "additional lab reports and *Rosario* materials" (*see* Defendant's Memorandum of Law, page 19), or search warrant "affidavits, applications or testimony or other oral communications" (*see* Defendant's Memorandum of Law, page 21).

<sup>2</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

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 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.

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

III.

### 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 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 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*. 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. 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]).

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 Molineux*,

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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.

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.

IV.

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 him, 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 each offense 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 reveals that a quorum of the grand jurors was present during the presentation of evidence, and that the Assistant District Attorneys properly 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]).

Moreover, as to defendant's additional claims in his Memorandum of Law, the Court finds that the indictment was not voted by an extended term of the Grand Jury, the presentation of evidence was not withdrawn prior to a vote being taken and then re-submitted, the prosecutors properly answered questions raised by the Grand Jurors, the prosecutors did not inject their personal opinions or beliefs or vouch for the credibility of witnesses, the prosecutors' legal instructions were

understandable, oaths were properly administered, there was no hearsay evidence put before the Grand Jury, and there was no unsworn testimony given.

To the extent that defendant's motion seeks disclosure of portions of the Grand Jury minutes beyond the disclosure directed by CPL Article 245, such as the prosecutor's instructions and/or colloquies, the Court denies that branch of the motion.

V.

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 him 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]).

VI.

MOTION to STRIKE PREJUDICIAL LANGUAGE

Defendant moves to strike certain language from the indictment on the grounds that it is irrelevant and potentially prejudicial. The language contained in the indictment merely identifies defendant's acts as public, rather than private wrongs and such language need not be stricken on the ground that it is prejudicial. This motion is denied (*see People v Gill*, 164 AD2d 867 [2d Dept 1990]; *People v Winters*, 194 AD2d 703 [2d Dept 1993]; *People v Garcia*, 170 Misc. 2d 543 [Westchester Co. Ct. 1996]).

VII.

MOTION to SUPPRESS PHYSICAL EVIDENCE  
And MOTION to CONTROVERT SEARCH WARRANTS

Defendant moves to suppress physical evidence on the ground that such evidence was seized pursuant to an illegal arrest not supported by probable cause and no exigent circumstance existed. It is uncontested that there was an active felony arrest warrant for defendant issued by a Connecticut court and that the officers who seized defendant were aware of it and trying to locate defendant because of that warrant, as well as for his alleged commission of the instant murder in New Rochelle. The People argue that this alone justified the seizure of defendant but defendant argues that New Rochelle Police Officers could not validly arrest defendant on the out-of-state Connecticut warrant and lacked any legal authority to stop or seize him in connection with that warrant. Moreover, the People argue that the police had probable cause to arrest defendant independent of the Connecticut warrant. 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 (*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 this Court to controvert the search warrants issued in this matter and to suppress any physical evidence obtained as a result. Alternatively, defendant moves for a *Franks* hearing.

To the extent that defendant has standing to contest any property seized pursuant to the search warrants, and to the extent that 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 United States 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]). For the Court’s review, the People have provided a search warrant signed by New Rochelle City Court Judge Matthew J. Costa on October 19, 2021 authorizing the search and seizure of defendant’s 2008 Dodge Caliber automobile and a cellular telephone recovered on the ground near defendant at or around the time of his arrest in Brooklyn, New York. The People have indicated in their papers that “no evidence that the People would seek to admit was recovered from the [cell] phone” (*see People’s Memorandum of Law*, page 15, fn 2) and they do not intend to introduce any evidence retrieved from defendant’s girlfriend’s apartment (where it is alleged defendant might have been living) that was searched. As such, the Court has reviewed the warrant affidavit for defendant’s automobile and upon review of the four corners of said warrant affidavit, the warrant was adequately supported by probable cause, and sufficiently particular as to the place 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]). The Court has also reviewed the Order and finds it to be proper in all respects.

Defendant has failed to make a substantial preliminary showing of cause for a *Franks-Alfinito* hearing (*Franks v Delaware*, 438 US 154 [1978]; *People v Alfinito*, 16 NY2d 181 [1965]; *People v Novick*, 293 AD2d 692 [2d Dept 2002]). Defendant fails to demonstrate that the warrant was based upon an affidavit containing false statements made knowingly or intentionally, or with reckless disregard for the truth (*People v McGeachy*, 74 AD3d 989 [2d Dept 2010]). Again, the Court has reviewed the affidavit in support of the search warrant and finds that it provided the requisite probable cause.

Defendant’s argument that “the warrant did not satisfy the two-pronged test for probable cause required by *Aguilar v Texas*, 84 S. Ct. 1509 (1964) and *Spinelli v United States*, 89 S. Ct. 584 (1969)” (*see Defendant’s Memorandum of Law*, pages 23-24) is improper here since the warrant was based upon a police officer’s knowledge and not that of a confidential informant or anonymous tip.

The People are directed to disclose the warrants and supporting affidavits if they have not already turned them over; or to move for a protective order.

For the above reasons, the Court denies defendant's motion to controvert the search warrant for defendant's automobile, the only warrant at issue here, and to suppress the evidence seized during the search of it.

Lastly, defendant moves to suppress evidence as the fruit of a *Payton* violation (*Payton v NY*, 445 US 573 [1980]). It is uncontested that defendant was not arrested in his home or a place he was staying, but rather while he was on the sidewalk outside of an apartment building. As such, defendant's claim is factually deficient to support suppression on this basis.

VIII.

MOTION to SUPPRESS NOTICED STATEMENTS

The People, pursuant to CPL 710.30(1)(a), noticed two statements allegedly made by defendant to members of law enforcement. Defendant moves to suppress these noticed statements as involuntary, the product of an unlawful arrest, made without being adequately apprised of *Miranda* warnings, and obtained in violation of defendant's right to counsel. 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 his Sixth Amendment right to counsel. If a statement is suppressed, the court will then determine whether any evidence obtained as a result of or due to that statement should be suppressed.

IX.

MOTION to STRIKE ALIBI NOTICE

Defendant's motion to strike the People's alibi notice is denied. Contrary to defendant's contentions, it is well-settled that CPL 250.20 is indeed in compliance with the constitutional requirements (*see People v Dawson*, 185 AD2d 854 [2d Dept 1992]; *People v Cruz*, 176 AD2d 751 [2d Dept 1991]; *People v Gill*, 164 AD2d 867 [2d Dept 1990]) and provides equality in the required disclosure (*People v Peterson*, 96 AD2d 871 [2d Dept 1983]; *see generally Wardius v Oregon*, 412 US 470 [1973]).

X.

MOTION to EXCLUDE DNA and MOTION FOR a FRYE HEARING

As the People indicate, defendant's motion for a *Frye* hearing is premature. According to both parties, only preliminary laboratory reports exist and testing has not been completed on the evidentiary items sent to the lab. It is therefore premature for defendant to argue that the techniques and procedures that he assumes *will be used* by the laboratory may not be widely accepted as reliable in the scientific community. Once testing is complete, and if the People intend to offer DNA evidence at trial, defendant can renew his motion at that time.

Defendant argues that his CODIS profile on file may have been generated using outdated techniques. However, the People indicate: “While a CODIS sample may be used to identify a potential donor, should a usable profile for comparison be generated from any evidence, the People would seek a buccal sample from defendant for comparison” (see People’s Memorandum of Law, page 23). As such, defendant’s argument is irrelevant.

Additionally, defendant moves to exclude DNA evidence as violative of his Sixth Amendment right to confront the witnesses against him, arguing that he has the “right to confront the technicians involved at all levels of analysis and comparison” and “[i]n order to introduce the DNA evidence in question the People must produce all analysts who have tested any DNA [e]vidence as well as any other sample yet to be tested, produced or analyzed by the People” (see Defendant’s Memorandum of Law, page 20). This argument is anticipatory. It is unknown at this time if there is any DNA evidence, and, if there is, whether the People would seek to admit such evidence. Even if they were to offer such evidence at trial, the trial court would decide whether the People could meet the foundational requirements for admitting such evidence. Defendant can challenge the admission of DNA evidence at the appropriate time.

XI.

HEARINGS CONDUCTED PRIOR to TRIAL

Defendant requests that pre-trial hearings be scheduled no less than twenty days before trial. The hearings will be scheduled at a time that is convenient to the court, upon due consideration of all of its other cases and obligations.

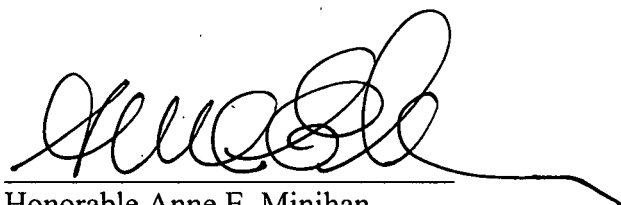
XII.

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  
September 19, 2022



Honorable Anne E. Minihan  
Acting Justice of the Supreme Court

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