

People v Tejada

2022 NY Slip Op 34942(U)

July 15, 2022

County Court, Westchester County

Docket Number: Indictment No. 70633-22

Judge: Robert J. Prisco

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
JUL 15 2022
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

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

-against-

DECISION & ORDER

LUIS TEJADA,

Indictment No: 70633-22

Defendant.

-----X
ROBERT J. PRISCO, J.

Defendant **LUIS TEJADA** is charged by Indictment Number 70633-22 with one count of Grand Larceny in the Third Degree pursuant to Penal Law [PL] § 155.35 (1) [First Count], five counts of Criminal Possession of Stolen Property in the Third Degree pursuant to PL § 165.50 [Counts Two through Six], eight counts of Criminal Possession of a Forged Instrument in the Second Degree pursuant to PL § 170.25 [Counts Seven through Fourteen], and eight counts of Illegal Possession of a Vehicle Identification Number [VIN] pursuant to PL § 170.70 (2) [Counts Fifteen through Twenty-Two].

Count One pertains to Defendant's alleged theft of approximately twenty-two thousand five hundred dollars (\$22,500) from an individual on September 15, 2021, when he allegedly sold an automobile that he knew to be stolen to that individual for said amount.

Counts Two through Six pertain to Defendant's alleged knowing possession of five (5) stolen automobiles on September 17, 2021, when the value of each automobile exceeded three thousand dollars (\$3000).¹

Counts Seven through Fourteen pertain to Defendant's alleged possession of eight (8) forged instruments, to wit, New Jersey Motor Vehicle Commission Titles pertaining to eight (8) separate automobiles,² on September 17, 2021, with knowledge that such titles were forged and with intent to defraud, deceive, or injure another.

Counts Fifteen through Twenty-Two pertain to Defendant's alleged possession of eight (8)

¹ The automobiles are described, respectively, as a 2020 Honda CRV, a 2021 Honda Accord, a 2019 Honda Pilot, a 2020 Honda CRV, and a 2018 Honda Accord.

² The automobiles are described, respectively, as a 2020 Honda CRV, a 2020 Honda Accord, a 2020 Honda CRV, a 2020 Honda Pilot, a 2020 Honda Accord, a 2020 Honda CRV, a 2020 Honda CRV, and a 2020 Honda CRV.

false VINs that were located on eight (8) separate automobiles,³ on September 17, 2021, with knowledge that such VINs were not the proper VINs for said automobiles.

On April 8, 2022, Defendant was arraigned by this Court on the charges contained in Indictment Number 70633-22. Attached to the indictment are the People's Demand for Notice of Alibi pursuant to Criminal Procedure Law [CPL] § 250.20 and two (2) CPL § 710.30 (1) (a) Notices regarding the People's intent to offer evidence of statements allegedly made by the defendant to detectives of the Yonkers Police Department.⁴ In the course of Defendant's arraignment proceeding, the People filed a Certificate of Compliance pursuant to CPL § 245.50 (1), with a "Discovery Disclosure Index" that identifies items and materials that have been disclosed or provided to defense counsel, including written or recorded statements of the defendant, all other written and recorded statements, exculpatory and impeachment information, and tangible objects possessed by Defendant. Within the People's Certificate of Compliance is a "Statement of Readiness," wherein the People state that they "confirm and announce their readiness for trial on all counts charged."

On May 25, 2022, the Court received Defendant's Notice of Omnibus Motion and Omnibus Motion, seeking various forms of judicial intervention and relief.

On May 31, 2022, the People filed an Affirmation in Opposition and a Memorandum of Law. The Court has also been provided with an unredacted certified copy of the stenographic transcript of the March 18, 2022 Grand Jury proceeding, along with Grand Jury Exhibits 1-14.

After consideration of the above referenced submissions and the unredacted certified stenographic transcript of the March 18, 2022 Grand Jury proceeding, the Court decides Defendant's Motion as follows:

³ The automobiles are described, respectively, as a 2020 Honda CRV, a 2018 Honda Accord, a 2020 Honda CRV, a 2021 Honda Accord, a Honda CRV, a 2020 Honda Pilot, a Honda CRV, and a Chevy Silverado.

⁴ One of the notices refers to an oral statement allegedly made at approximately 11:30 a.m., on September 17, 2021, "[i]n the back of 525 Riverdale Avenue [in the City of] Yonkers." The other notice refers to a recorded oral statement allegedly made at approximately 12:17 p.m., on September 17, 2021, in the "Yonkers Police Department Detective Division" located at "104 South [Br]oadway [in the City of] Yonkers."

1. MOTION FOR RELEASE OF THE GRAND JURY MINUTES TO DEFENDANT, INSPECTION THEREOF, AND DISMISSAL OF THE CHARGES CONTAINED IN INDICTMENT NUMBER 70633-22 DUE TO THE LEGAL INSUFFICIENCY OF THE EVIDENCE PRESENTED AND THE INSTRUCTIONS PROVIDED.

Citing CPL Article 210 and §§ 210.30 (3) and 210.35, specifically, “Defendant moves that the indictment against him be dismissed...on the grounds that the evidence before the grand jury was not legally sufficient to establish the offense(s) charged, or any lesser-included offense.” Defendant further requests that the Court inspect the grand jury minutes, examine the legal instructions, and disclose such to defense counsel. Lastly, Defendant asks the Court to “scrutinize the grand jury proceedings to determine if they are defective” (*see* Point II, Page 6, of Defendant’s Omnibus Motion).

In their response, the People consent to an in-camera inspection of the Grand Jury minutes by the Court (*see* Point A, Page 6, of the People’s Memorandum of Law), contend that they have complied with their obligations pursuant to CPL § 245.20 (1) (b) (*see* Point A, Pages 6-7, of the People’s Memorandum of Law), and assert that the indictment is supported by legally sufficient evidence (*see* Point A, Page 7, of the People’s Memorandum of Law). The People also aver 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 A, Page 8, of the People’s Memorandum of Law).

Initially, regarding Defendant’s request for disclosure of the legal instructions to the defense, 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 and is specifically cited by the defendant in support of this request, 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 have complied with the discovery mandate of CPL § 245.20 (1) (b) by providing the defendant with the transcript of the testimony of the three (3) witnesses who

testified before the Grand Jury,⁵ 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 proceeding, having examined the unredacted certified copy of the stenographic transcript of the March 18, 2022 presentation. The record establishes that the twenty-three (23) grand jurors who deliberated and voted on the twenty-two (22) charges pertaining to Defendant in Indictment Number 70633-22, were present throughout the one-day presentation.

“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 Castro*, 2022 NY Slip Op 00874 [2d Dept 2022]; *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

⁵ While the People’s Discovery Disclosure Index indicates that the Grand Jury transcript was unavailable for disclosure within the time frame of CPL § 245.10 “due to the limited availability of transcription resources,” the People “provided the witness testimony portion to counsel by email [on May 6, 2022], which was confirmed by delivery receipt” (see Page 4 of the People’s Affirmation in Opposition).

[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 70633-22.

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 Mitchell*, 188 AD3d 1101, 1102 [2d Dept 2020]; *People v Sealy*, 181 AD3d 893, 894 [2d Dept 2020]; *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 Addimando*, 197 AD3d 106, 121 [2d Dept 2021]; *People v Sealy*, 181 AD3d at 894; *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, 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 March 18, 2022, 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 the charges contained within Indictment Number 70633-22 is denied.

2. MOTION FOR PRECLUSION OF EVIDENCE.

Defendant requests suppression of "any physical evidence seized from [him] and in his immediate surrounding area" on the ground that his arrest and the seizure of such evidence occurred without probable cause. In the alternative, Defendant requests a hearing pursuant to *Mapp v Ohio*, 367 US 643 [1961] (see Point III, Pages 6-7, of Defendant's Omnibus Motion).

Defendant further moves for suppression of the noticed statements on the grounds that such statements were "coerced and not voluntary, taken in violation of...*Miranda v Arizona*, 384 US 436 (1966)," and "procured in violation of the Fifth and Sixth Amendments of the United States Constitution and the Constitution of the State of New York." In the alternative, Defendant requests a hearing pursuant to *People v Huntley*, 15 NY2d 838 [1965] (see Point III, Page 7, of Defendant's Omnibus Motion).

In their response, the People contend that "Defendant's motion to suppress on Fourth Amendment grounds should be denied without a hearing for failure to provide facts in support of his claim" and that his motion to suppress his statements "based on a Sixth Amendment right to counsel violation...should [likewise] be denied because defendant has failed to provide any facts in support thereof" (see Point B, Pages 10-11 and 14, of the People's Memorandum of Law). With respect to Defendant's motion to suppress his noticed statements on the basis of an alleged Sixth Amendment violation, the People consent to a *Huntley* hearing, after which they aver that Defendant's motion should be denied (see Point B, Pages 12-13, of the People's Memorandum of Law). Finally, as it pertains to the vehicles in question, the People submit that "Defendant has failed to raise and establish standing to suppress the seized vehicles" (see Point C, Pages 15-16, of the People's Memorandum of Law).

CPL § 710.60 (1) requires that a motion for suppression of physical evidence must state

“the ground or grounds of the motion and must contain sworn allegations of fact” (*see also People v Ibarguen*, 37 NY3d 1107, 1108 [2021]; *People v Duval*, 36 NY3d 384, 391 [2021]; *People v Garay*, 25 NY3d 62, 71 [2015]; *People v Bryant*, 8 NY3d 530, 533 [2007]; *People v Guzman*, 153 AD3d 1273, 1276 [2d Dept 2017]; *People v White*, 137 AD3d 1311, 1312 [2d Dept 2016]). “Because hearings on suppression motions ‘are not automatic or generally available for the asking by boilerplate allegations” (*People v Burton*, 6 NY3d 584, 587 [2006], quoting *People v Mendoza*, 82 NY2d 415, 422 [1993]; *see People v Esperanza*, 203 AD3d 124, 128 [1st Dept 2022]; *People v Blanford*, 179 AD3d 1388, 1390 [3d Dept 2020], *lv. denied* 35 NY3d 968 [2020]; *People v Guzman*, 153 AD3d at 1276; *People v Dash*, 50 AD3d 914 [2d Dept 2008], *lv. denied* 10 NY3d 933 [2008]), CPL § 710.60 (3) permits summary denial of such a motion where the motion papers fail to allege a ground constituting a legal basis for the motion or where the sworn allegations of fact fail, as a matter of law, to support the ground alleged (*see People v Mendoza*, 82 NY2d at 421; *People v Rose*, 178 AD3d 1091, 1092-1093 [2d Dept 2019]; *People v Guzman*, 153 AD3d at 1276).

While “[a] trial court is required to grant a hearing if the defendant ‘raise[s] a factual dispute on a material point which must be resolved before the court can decide the legal issue’ of whether evidence was obtained in a constitutionally permissible manner” (*People v Burton*, 6 NY3d at 587, quoting *People v Gruden*, 42 NY2d 214, 215 [1977]; *see People v Esperanza*, 203 AD3d at 128; *People v Lambey*, 176 AD3d 1232, 1234 [2d Dept 2019]; *People v Worrell*, 138 AD3d 1154, 1155 [2d Dept 2016]; *People v Jennings*, 110 AD3d 738, 739 [2d Dept 2013]), allegations that consist entirely of counsel's legal conclusions and which fail to set forth any facts in support of the motion are insufficient to mandate an evidentiary hearing (*see People v Cunningham*, 194 AD3d 954, 955 [2d Dept 2021]; *People v Massey*, 186 AD3d 1716, 1717 [2d Dept 2020]; *People v Robinson*, 118 AD3d 1028, 1028 [2d Dept 2014], *lv. denied* 24 NY3d 1046 [2014]; *People v Smith*, 69 AD3d 657, 657 [2d Dept 2010], *lv. denied* 14 NY3d 844 [2010]).

Because Defendant’s motion seeking suppression of physical evidence is not accompanied by any factual allegations in support thereof and, instead, rests entirely on legal conclusions that he was seized and arrested without probable cause while not involved in any criminal activity, said motion is denied without the need for an evidentiary hearing.

Regarding Defendant’s motion to suppress the noticed statements, upon the issues raised by the parties, the motion to suppress statements is granted to the extent that hearings pursuant to *People v Huntley*, 15 NY2d 72 [1965], and *Dunaway v New York*, 442 US 200 [1979], will be

conducted to determine the voluntariness and admissibility of the noticed statements allegedly made by Defendant at approximately 11:30 a.m., on September 17, 2021, in the back of 525 Riverdale Avenue in the City of Yonkers, and at approximately 12:17 p.m., on September 17, 2021, in the Yonkers Police Department Detective Division located at 104 South Broadway in the City of Yonkers.⁶

3. MOTION FOR DISCOVERY.

Pursuant to CPL Article 240⁷ and cases including, but not limited to, *People v Ventimiglia*, 52 NY2d 350 [1981], *People v Rosario*, 9 NY2d 286 [1961], and *Brady v Maryland*, 373 US 83 [1962], Defendant moves for discovery and disclosure of a list of items and information (*see* Point IV, Pages 8-12, of Defendant's Omnibus Motion).

The People contend that Defendant's motion should be summarily denied as they are "in compliance with their CPL Article 245 obligations" (*see* Point D, Pages 17-18, of the People's Memorandum of Law).

Pursuant to CPL § 245.20 (1), the People must automatically disclose to defendant "all items and information that relate to the subject matter of the case and are in the possession, custody or control of the prosecution or persons under the prosecution's direction or control" (*see People v Moss*, 2022 NY Slip Op. 22189 [New York Cnty. Crim. Ct., 2022]; *People v Martinez*, 75 Misc3d 1212(A), 2022 NY Slip Op. 50476(U), [New York Cnty. Crim. Ct., 2022]; *People v Darren*, 75 Misc3d 1208(A), 2022 NY Slip Op. 50415(U), [New York Cnty. Crim. Ct., 2022]; *People v Aquino*, 74 Misc3d 1147, 1152 [New York Cnty. Sup. Ct., 2022]; *People v Rodriguez*, 73 Misc3d 411, 413 [Queens Cnty. Sup. Ct., 2021]) and the statute sets forth a non-exhaustive list of items and information that must be disclosed to the defendant as part of the People's initial discovery obligation (*see People v Deas*, 75 Misc3d 190, 193 [Westchester Cnty. Sup. Ct., 2022]; *People v*

⁶ If, at the conclusion of the *Dunaway* hearing, this Court determines that probable cause was not present to support his arrest, Defendant may renew his application to suppress physical evidence.

⁷ Defendant's references in his Omnibus Motion 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 CPL Article 240, effective January 1, 2020.

Rodriguez, 73 Misc3d at 413; *People v Perez*, 73 Misc3d 171, 173 [Queens Cnty. Sup. Ct., 2021]; *People v Soto*, 72 Misc3d 1153, 1155 [New York Cnty. Crim. Ct., 2021]). CPL § 245.20 (2) further requires the People to “make a diligent, good faith effort to ascertain the existence of [such] material or information,” and where it exists, to make it available for discovery, even if the material is not within their possession, custody, or control (see *People v Martinez*, 75 Misc3d 1212(A), 2022 NY Slip Op. 50476(U); *People v Darren*, 75 Misc3d 1208(A), 2022 NY Slip Op. 50415(U); *People v Cajilima*, 75 Misc3d 438, 440 [Nassau Cnty. Sup. Ct., 2022]; *People v Williams*, 73 Misc3d 1091, 1103-1104 [Kings Cnty. Sup. Ct., 2021]; *People v Perez*, 73 Misc3d at 174).

In the case at bar, pursuant to CPL § 245.50 (1), the People served and filed a Certificate of Compliance on April 8, 2022, and provided a Discovery Disclosure Index identifying the material and information that was provided and made available to Defendant. The Certificate of Compliance sets forth that, after exercising due diligence and making reasonable inquiry to ascertain the existence of material and information subject to discovery, the People have disclosed and made available to Defendant all known material and information subject to discovery.⁸

Accordingly, as the People have presumably satisfied the requirements of CPL § 245.50 (1) by providing the discovery required by CPL § 245.20 (1), serving upon the defendant and filing with the Court a Certificate of Compliance, and by specifically identifying the material and information provided, Defendant’s request for discovery and production is denied as moot. If Defendant has specific challenges or questions related to the People’s disclosure representations within the Certificate of Compliance, such challenges or questions must be addressed by motion (CPL § 245.50 (4)). If there are no specific challenges or questions thereto, Defendant should have performed his reciprocal discovery obligations, subject to constitutional limitations, no later than thirty (30) calendar days after being served with the Certificate of Compliance (CPL § 245.20 (4)).

Regarding Defendant’s request for *Brady* material, the People are reminded to remain cognizant of their discovery obligations not only as required by *Brady*, *Giglio v United States*, 405

⁸ The Discovery Disclosure Index indicates that “ALL STATEMENTS OF WITNESSES/ OR PERSONS WITH RELEVANT INFORMATION, WRITTEN OR RECORDED, INCLUDING POLICE REPORTS,” pursuant to “CPL § 245.20 (1) (e)” and “Radio Transmissions,” pursuant to “CPL § 245.20 (q),” have been provided to defense counsel. The disclosure thereof would also satisfy the People’s *Rosario* obligations.

US 150 [1972], *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 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.”

To the extent that such evidence and information is known but has not yet been disclosed, the People are directed to do so expeditiously. Further, 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.

Finally, as it relates to the information sought by Defendant pursuant to *Ventimiglia*, 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.”

If the People have 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, and designated their intended use thereof, hearings pursuant to *Ventimiglia, People v Sandoval*, 34 NY2d 371 [1974], and *People v Molineux*, 168 NY 264 [1901], will not be ordered 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 A BILL OF PARTICULARS.

Although not specifically addressed in his Omnibus Motion, citing CPL § 200.95, Defendant requests a Bill of Particulars (*see* Page 2 of Defendant’s Notice of Motion).

In their response, the People argue that Defendant’s request for a Bill of Particulars should be denied as untimely and unnecessary (*see* Point D, Page 18, of the People’s Memorandum of Law).

CPL § 200.95 (2) requires that “[u]pon a timely request for a bill of particulars...the prosecutor shall within fifteen days of the service of the request [for such] or as soon thereafter as is practicable, serve upon the defendant or his/her attorney, and file with the court, the bill of particulars.” Pursuant to CPL § 200.95 (3), “[a] request for a bill of particulars shall be timely if made within thirty days after arraignment and before the commencement of trial” and “the court may direct compliance with a request for a bill of particulars that, for good cause shown, could not have been made within the time specified.”

To the extent that Defendant’s demand for a bill of particulars is being made for the first time through his Omnibus Motion, because good cause has not been shown as to why such request could not have been made within thirty days after his arraignment, it is untimely.

Additionally, the “relevant facts,” as set forth on Pages 2-3 of the People’s Affirmation in Opposition, and the discovery provided to Defendant, including the Grand Jury minutes, contain factual information which amplifies the respective counts pending against Defendant.

Because a criminal bill of particulars is not a discovery device but merely serves to clarify the indictment, and it need not set forth the evidence that the People intend to introduce at trial (*see People v Davis*, 41 NY2d 678, 680 [1977]; *People v Ramlall*, 99 AD3d 815, 816 [2d Dept 2012]; *People v Zurita*, 64 AD3d 800, 801 [2d Dept 2009], *lv. denied* 13 NY3d 840 [2009]; *People v Earel*, 220 A.D.2d 899 [3d Dept 1995], *aff’d* 89 NY2d 960 [1997]; *see also* CPL § 200.95 (1) (a); *People v Perillo*, 144 AD3d 1399, 1403-1404 [3d Dept 2016], *lv. denied* 29 NY3d 951 [2017]), this Court finds that the information provided in the People’s Affirmation in Opposition and in the materials disclosed pursuant to CPL § 245.10 (1), satisfy “[t]he sole function of a bill of particulars, [which] is to define more specifically the crime or crimes charged in the indictment” (*People v Davis*, 41 NY2d at 679 [1977]; *Matter of Cosgrove v Doyle*, 73 AD2d 808, 809 [4th Dept 1979]; *People v Raymond G.*, 54 AD2d 596, 596 [3d Dept 1976]). Accordingly, Defendant’s motion is denied.


5. RESERVATION OF RIGHT TO MAKE ADDITIONAL PRE-TRIAL MOTIONS.

Defendant’s request to make additional pre-trial motions (*see* Point V, Page 13, of Defendant’s Omnibus Motion) 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
July 15, 2022



HONORABLE ROBERT J. PRISCO
County Court Judge

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