

**People v Kerr**

2022 NY Slip Op 34949(U)

November 30, 2022

Supreme Court, Westchester County

Docket Number: Ind. No. 22-71833-01

Judge: Robert A. Neary

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This opinion is uncorrected and not selected for official publication.

**FILED**  
NOV 30 2022  
THE HON. JUDGE J. C. IDONE  
COUNTY CLERK  
COUNTY OF WESTCHESTER

**FILED  
AND  
ENTERED  
ON 11-30-2022  
WESTCHESTER  
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

- against -

DECISION AND ORDER

JAVIS KERR,

Ind. No. 22-71833-01

Defendant.

-----X

NEARY, J.

The defendant, Javis Kerr, has been charged with the crimes of Criminal Possession of a Weapon in the Third Degree, Menacing in the Second Degree, Criminal Possession of a Weapon in the Fourth Degree, Criminal Trespass in the Third Degree as a hate crime and Criminal Trespass in the Third Degree. The defendant has made an omnibus motion which consists of a Notice of Motion and an Affirmation and Memorandum of Law in support thereof. In response, the People have filed an Affirmation in Opposition together with a

Memorandum of Law. Having read all of the submitted papers and reviewed the court file, this Court makes the following determination.

A. MOTION TO STRIKE THE PEOPLE'S CERTIFICATE OF COMPLIANCE AND STATEMENT OF READINESS AS ILLUSORY

The defendant's motion is denied. The Court finds that the drastic remedy of striking the certificates of compliance is not warranted in this matter as the certificates of compliance were filed in good faith and reasonable under the circumstances. Moreover, no prejudice to the defendant has been demonstrated.

B. DEMAND FOR EXCULPATORY INFORMATION

The People recognize their continuing duty to disclose exculpatory material at the earliest possible date. [See *Brady v. Maryland*, 373 US 83, 83 S Ct. 1194, 10 LE2d 215 and *Giglio v. United States*, 405 US 150, 92 S Ct. 763, 31 LE2d 104]. If the People are or become aware of any material which is arguable exculpatory but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

C. MOTION TO SUPPRESS STATEMENTS PURSUANT TO CPL SECTION 710

This branch of the defendant's motion is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the

defendant, which have been noticed by the People pursuant to CPL §710.30 (1)(a), were involuntarily made by the defendant within the meaning of CPL §60.45 (see CPL §710.20(3), CPL §710.60[3][b]; *People v. Weaver*, 49 NY2d 1012, 429 NYS2d 399, 406 NE2d 1335), obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (see *Dunaway v. New York*, 442 US 200, 99 S. Ct. 2248, 60 LE2d 824).

D. MOTION TO SUPPRESS PHYSICAL PROPERTY PURSUANT TO CPL SECTION 710

This branch of the 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, 81 S Ct. 1684, 6 LE2d 1081) and whether any evidence was obtained in violation of the defendant's Sixth Amendment right to counsel and/or obtained in violation of the defendant's Fourth Amendment rights. [See *Dunaway v. New York*, 42 US 200, 99 S Ct. 2248, 60LE2d 824].

E. MOTION TO INSPECT AND DISMISS OR REDUCE PURSUANT TO ARTICLE 210 OF THE CPL

The defendant's motion to inspect the Grand Jury minutes is granted. Upon an *in camera* inspection of the Grand Jury minutes by Court, the motion to dismiss the indictment or reduce a charged offense in the indictment is denied.

The Court has reviewed the minutes of the proceeding before the Grand Jury. The Grand Jury was properly instructed (See *People v. Calbud*, 49 NY2d 389, 426 NYS2d 389, 402 NE2d 1140 and *People v. Valles*, 62 NY2d 36, 476 NYS2d 50, 464 NE2d 418) and the evidence presented, if accepted as true would be legally sufficient to establish every element of the offenses charged. [See CPL §210.30(2)]. In addition, the minutes reveal that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, and that it was instructed that only those grand jurors who had heard all the evidence could participate in voting on the matter.

The Court does not find that the release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court in making this determination.

F. MOTION TO STRIKE DEMAND FOR ALIBI NOTICE

This motion is denied. Contrary to the defendant's contentions, it is well-settled that CPL §250.00 is indeed in compliance with the constitutional requirements (see *People v. Dawson*, 185 AD2d 854, 587 NYS2d 358, *appeal denied* 80 NY2d 974, 591 NYS2d 143, 605 NE2d 879; *People v. Cruz*, 176 AD2d 751, 574 NYS2d 1006, *appeal denied* 79 NY2d 855, 580 NYS2d 727, 588 NE2d 762; *People v. Gill*, 164 AD2d 867, 599 NYS2d 376, *appeal denied* 76 NY2d 893, 561 NYS2d 555, 562 NE2d 880; *People v. Peterson*, 96 AD2d 871, 578 NYS2d 358) and provides equality in the required disclosure (see *People v. Peterson*, 90 AD2d 871, 578 NYS2d 358; see generally *Wardius v. Oregon*, 412 US 470, 93 S Ct. 2208, 37 LE2d 82).

G. MOTION FOR VENTIMIGLIA AND SANDOVAL HEARING PURSUANT TO CPL SECTION 240.43

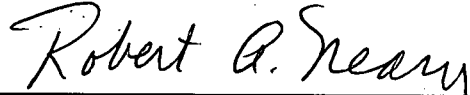
Immediately prior to commencement of jury selection, the prosecutor shall, upon request of the defendant, notify the defendant of any prior criminal act which the People seek to use in the cross-examination of the defendant as well as all specific instances of the defendant's prior uncharged criminal, vicious or immoral conduct of which the prosecutor has knowledge and which the prosecutor intends to use at trial for the purposes of impeaching the credibility of the defendant. Thereafter, upon the defendant's request, the trial court shall conduct a *Sandoval* and/or *Ventimiglia* hearing prior to the commencement of trial. [See *People v. Sandoval*, 34 NY2d 371 (1974); *People v. Ventimiglia*, 52 NY2d 350 (1981); *People v. Molineux*, 168 NY 264 (1901)].

H. MOTION TO RESERVE RIGHT TO REQUEST OR AMEND REQUESTS FOR FURTHER HEARINGS

Upon a proper showing, the Court will entertain appropriate additional motions 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 in this motion. [See CPL §255.20(3)].

This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York  
November 30, 2022

  
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ROBERT A. NEARY  
SUPREME COURT JUSTICE

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