

**People v Frazier**

2023 NY Slip Op 34777(U)

December 12, 2023

Supreme Court, Westchester County

Docket Number: Indictment No. 23-72474

Judge: Anne E. Minihan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

FILED

DEC 20 2023

COUNTY CLERK  
COUNTY OF WESTCHESTER

SUPREME COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

FILED  
AND ENTERED  
ON 12-12 2023  
WESTCHESTER  
COUNTY CLERK

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

-against-

VINCENT FRAZIER

DECISION & ORDER  
Indictment No. 23-72474

Defendant.

-----X  
MINIHAN, J.

Defendant, Vincent Frazier, charged by Westchester County Indictment Number 23-72474 with Attempted Murder in the Second Degree (Penal Law § 110/125.25[1]), Attempted Assault in the First Degree (Penal Law § 110/120.10[1]), and Criminal Possession of a Weapon in the Third Degree<sup>1</sup> (Penal Law § 265.02[1]), has filed an omnibus motion consisting of a Notice of Motion and an Affirmation in Support. In response, the People filed an Affirmation in Opposition together with a Memorandum of Law.

I.

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]). Defendant argues that the evidence presented to the Grand Jury was insufficient to establish defendant's intent to cause death or serious physical injury to the victim. Additionally, defendant argues that "there was no testimony before the Grand Jury that the defendant possessed a weapon" (*see* Defendant's Affirmation, p 2). The intent of defendant can be inferred from the evidence presented to the Grand Jury including the video footage of the incident depicting the conduct and surrounding circumstances (*see People v Bracey*, 41 NY2d 296 [1977]). In the video, defendant made repeated stabbing motions to the victim's torso area

<sup>1</sup> By special information attached to the indictment, defendant is alleged to have been previously convicted of the crime of Criminal Possession of a Weapon in the Third Degree (Penal Law § 265.02[1]) on or about June 23, 2004 in the Westchester County Court.

and indeed, the victim was treated for multiple stab wounds, including to his torso and the center of his chest, according to the paramedic's testimony.<sup>2</sup>

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]).

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.

## II.

### MOTION to PRECLUDE NOTICED IDENTIFICATION TESTIMONY CPL 710

Pursuant to CPL 710.30(1)(b), the People served defendant with notice of multiple identifications made of him by civilians and police officers.

Defendant's motion to suppress testimony of these noticed identifications is granted to the limited extent of ordering a pre-trial *Wade* hearing (see *United States v Wade*, 388 US 218 [1967]). At the hearing, the People bear the initial burden of establishing the reasonableness of the police conduct and the lack of any undue suggestiveness (see *People v Chipp*, 75 NY2d 327,

---

<sup>2</sup> It is necessary for the Court to discuss specific testimony from the Grand Jury proceedings in deciding the instant motion (see CPL 190.25[4]).

335 [1990] *cert. denied* 498 US 833 [1990]; *People v Berrios*, 28 NY2d 361 [1971]). Once that burden is met, defendant bears the ultimate burden of proving that the procedure was unduly suggestive. Where suggestiveness is shown, the People must show the existence of an independent source by clear and convincing evidence. The hearing will address the People's claim that the victim and the police officers had a sufficient prior familiarity with defendant as to render them impervious to police suggestion (*see People v Rodriguez*, 79 NY2d 445 [1992]).

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. In fact, in their papers, the People indicate that during cross-examination of defendant, they seek to introduce evidence of ten prior convictions. 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*, 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.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York  
December 2, 2023

  
Honorable Anne E. Minihan  
Justice of the Supreme Court

To:  
Hon. Miriam E. Rocah  
District Attorney, Westchester County  
111 Dr. Martin Luther King, Jr., Blvd.  
White Plains, NY 10601  
Attn: ADA Elizabeth H. Shumejda  
EShumejda@westchesterda.net

Robert G. Schneider, Esq.  
498A Heritage Hills  
Somers, New York 10589  
RobertSchneiderEsq@yahoo.com  
*Attorney for defendant, Vincent Frazier*