

**People v Peguero**

2023 NY Slip Op 34810(U)

March 31, 2023

County Court, Westchester County

Docket Number: Indictment No. 70044-23

Judge: Robert J. Prisco

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

**FILED**

APR 19 2023

TIMOTHY J. ...  
COUNTY CLERK  
COUNTY OF WESTCHESTER  
DECISION & ORDER

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

-against-

CARLOS PEGUERO,

Indictment No: 70044-23

Defendant.

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

Defendant **CARLOS PEGUERO** is charged by Indictment Number 70044-23 with one count of Driving While Intoxicated pursuant to Vehicle and Traffic Law [VTL] § 1192 (3) [Count One], two (2) counts of Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree pursuant to VTL § 511 (3) (a) (i) and (iii) [Counts Two and Three, respectively], and one count of violating VTL § 1111 (d) (1) [Count Four].<sup>1</sup> The charges pertain to Defendant's alleged operation of a motor vehicle while intoxicated and while his privilege to operate a motor vehicle in the State of New York was revoked. The defendant is also accused of failing to stop said motor vehicle at a clearly marked stop line. The offenses are alleged to have occurred at the intersection of Broadway and Ashford Avenue, in the Village of Dobbs Ferry, at approximately 12:40 a.m., on August 7, 2022.

On January 13, 2023, Defendant was arraigned by this Court on the charges contained in Indictment Number 70044-23. Attached to the indictment is the People's Demand for a Notice of Alibi pursuant to Criminal Procedure Law [CPL] § 250.20, and six (6) Informations, the first, second and fourth of which accuse Defendant of having previously been convicted of Driving While Intoxicated in violation of VTL § 1192 (3), on or about April 29, 2021, in the Bronx County Criminal Court, Driving While Intoxicated in violation of VTL § 1192 (3), on or about May 30, 2018, in the Croton on Hudson Village Court, and of Driving While Ability Impaired in violation of VTL § 1192 (1), on or about November 7, 2019, in the Westchester County Court. The third Information references the aforementioned convictions and alleges that as a result of such

<sup>1</sup> Although Count Four of the indictment is listed as VTL § 1110 (d) (1), it is clear to the Court that this is a typographical error, as the evidence presented, instructions provided, and the count deliberated and voted upon by the Grand Jury was pursuant to VTL § 1111 (d) (1).

convictions, “defendant’s license or privilege of operating a motor vehicle in the State of New York, or said defendant’s privilege of obtaining a license . . . , was permanently revoked, and said defendant knew or had reason to know of said revocation, and that said revocation was in effect at that time.” The fifth Information states that on or about January 7, 2019, “defendant’s license or privilege of operating a motor vehicle in the State of New York, or said defendant’s privilege of obtaining a license . . . were revoked based upon said defendant’s refusal to submit to a chemical test...and the defendant on or about January 16, 2019 knew or had reason to know that said revocation was in effect at the time. Finally, the sixth Information pertains to the May 30, 2018 conviction, which states that “defendant’s license or privilege of operating a motor vehicle in the State of New York, and said defendant’s privilege of obtaining a license [as a result of that conviction] were revoked...and said defendant knew or had reason to know of said conviction and revocation and that said revocation was in effect at that time.” Also attached to the Indictment is a CPL § 710.30 (1) (a) Notice regarding the People’s intent to offer evidence of statements allegedly made by Defendant to members of the Dobbs Ferry Police Department.<sup>2</sup>

During the court appearance on January 13, 2023, the People served and filed a Certificate of Compliance pursuant to CPL § 245.50 (1), with an attached “Discovery Disclosure Index” that identifies the items and materials that have reportedly been disclosed or provided to defense counsel. Also attached to the Certificate of Compliance are Discovery Package Transmittal Notices from the Westchester County District Attorney’s Office which delineate the dates, times and methods of such disclosures. 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.” The People also confirmed their actual readiness for trial on the record when the Court made inquiry thereof pursuant to CPL § 30.30 (5).

On February 9, 2023, the Court received the People’s Supplemental Certificate of Compliance which includes a “Statement of Readiness,” wherein “[t]he People confirm and announce their readiness for trial on all counts charged.” Attached to the Supplemental Certificate of Compliance is an Amended Discovery Disclosure Index pursuant to CPL §§ 245.20 and 245.50, and Discovery Package Transmittal Notices from the Westchester County District Attorney’s

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<sup>2</sup> The CPL § 710.30 (1) (a) notice pertains to electronically recorded oral statements that were allegedly made by Defendant across from 505 Broadway, in the Village of Dobbs Ferry, at approximately 12:40 a.m., on August 7, 2022.

Office.

On February 14, 2023, the Court received Defendant's Demand for a Bill of Particulars.

On February 27, 2023, via email, the Court received Defendant's Notice of Motion, an Affirmation in Support of Motion, and a Memorandum of Law, seeking various forms of judicial intervention and relief.

On March 10, 2023, via email, this Court received the People's Affirmation in Opposition and Memorandum of Law in response to Defendant's motion for omnibus relief.

The Court is also in receipt of an unredacted certified copy of the stenographic transcript of the Grand Jury proceeding dated December 21, 2022, along with copies of the Grand Jury exhibits that were received in evidence.

After consideration of the above referenced submissions and the unredacted certified stenographic transcript dated December 21, 2022, the Court decides Defendant's Motion as follows:

**1. MOTION FOR INSPECTION OF THE GRAND JURY MINUTES AND DISMISSAL OR REDUCTION OF THE CHARGES CONTAINED IN INDICTMENT NUMBER 70044-23 DUE TO THE LEGAL INSUFFICIENCY OF THE EVIDENCE PRESENTED AND THE INSTRUCTIONS PROVIDED.**

Citing CPL §§ 210.20 and 210.30, Defendant moves for inspection of the Grand Jury minutes by the Court and for the dismissal of Indictment Number 70044-23 or, in the alternative, for reduction of the counts thereof, on the grounds that the evidence before the Grand Jury was not legally sufficient and the Grand Jurors were not properly instructed on the applicable law (*see* Point 1, Page 1, of Defendant's Notice of Motion, and Pages 1-2 of Defendant's Memorandum of Law). Defendant also requests that the Court inspect the minutes of the Grand Jury proceeding to determine whether that proceeding was defective (*see* Page 2 of Defendant's Memorandum of Law).

In their response, the People consent to an in-camera inspection of the Grand Jury minutes by the Court (*see* Point A, Page 1, of the People's Memorandum of Law), contend that the indictment is supported by legally sufficient evidence (*Id.* at Page 2), and assert 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” (*Id.* at Page 3).

The Court has conducted an in-camera review of the entirety of the Grand Jury proceeding dated December 21, 2022, having examined the unredacted certified copy of the stenographic transcript thereof.

On December 21, 2022, prior to the commencement of the given sworn testimony, the People specifically inquired of and confirmed with the foreperson that twenty (20) grand jurors were present. Prior to instructing the grand jurors on the applicable law, the People confirmed with the foreperson that those twenty (20) grand jurors were present throughout the presentation of the case. These measures by the People satisfy this Court that the twenty (20) grand jurors who deliberated and voted on the charges contained in Indictment Number 70044-23 were present throughout the one-day presentation of the case.

“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 Edwards*, 36 NY3d 946, 947 [2020]; *People v Deleon*, 34 NY3d 965, 966 [2019]; *People v Bello*, 92 NY2d 523, 525 [1998]; *People v Booker*, 164 AD3d 819, 820 [2d Dept 2018]; *People v Pino*, 162 AD3d 910, 910-911 [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 Deleon*, 34 NY3d at 966; *People v Mills*, 1 NY3d at 274; *People v Booker*, 164 AD3d at 820; *People v Pino*, 162 AD3d at 911; *People v Arcila*, 152 AD3d 783, 784 [2d Dept 2017], *lv. denied* 30 NY3d 978 [2017]; *People v Hulsen*, 150 AD3d at 1262; *People v Franov*, 146 AD3d 978, 979 [2d Dept 2017]). “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 Gaworecki*, 37 NY3d 225, 230 [2021], quoting *People v Grant*, 17 NY3d 613, 616 [2011]; see *People v Mills*, 1 NY3d at 274; *People v Bello*, 92 NY2d at 526; see *People v Holloway*, 210 AD3d 1007, 1008 [2d Dept 2022]; *People v Castro*, 202 AD3d 815, 816 [2d Dept 2022]; *People v Booker*,

164 AD3d at 820). 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 Castro*, 202 AD3d at 816; *People v Booker*, 164 AD3d at 821; *People v Pino*, 162 AD3d at 911; *People v Arcila*, 152 AD3d at 784).

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 70044-23.

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 Jimenez*, 39 NY3d 74 [2022]; *People v Palma*, 208 AD3d 801, 802 [2d Dept 2022]; *People v Sealy*, 181 AD3d 893, 894 [2d Dept 2020], *lv. denied* 35 NY3d 1070 [2020]; *People v Arevalo*, 172 AD3d 891, 892 [2d Dept 2019]; *People v Williams*, 171 AD3d 804, 805 [2d Dept 2019]). "The exceptional remedy of dismissal of an indictment is warranted only where prosecutorial misconduct, fraudulent conduct or errors created a possibility of prejudice" (*People v Palma*, 208 AD3d at 802, quoting *People v Addimando*, 197 AD3d 106, 121 [2d Dept 2021]; see *People v Huston*, 88 NY2d 400, 409 [1996]; *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]). Here, the Court finds that no such misconduct, conduct or errors occurred.

Further, 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 at 394; 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 [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 December 21, 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 or reduce the charges contained within Indictment Number 70044-23 is denied.

## **2. MOTION TO DISMISS INDICTMENT NUMBER 70044-23 FOR FACIAL INSUFFICIENCY.**

Citing CPL § 210.25 (1), Defendant moves to dismiss the indictment on the ground that “it does not substantially conform to the requirements stated in [CPL] Section 200.50 (7) (a)...[as] [t]here is no plain and concise factual statement which asserts facts supporting every element of the offense(s) charged and/or the defendant’s commission thereof with sufficient precision to clearly apprise the defendant of the conduct which is the subject of the accusation” (see Point 2, Page 1, of Defendant’s Notice of Motion, and Pages 2-3 of Defendant’s Memorandum of Law).

“The essential purpose of a criminal indictment is to provide a defendant ‘with fair notice of the accusations made against him, so that he will be able to prepare a defense’” (*People v Winston*, 205 AD3d 32, 38 [1st Dept 2022], quoting *People v Iannone*, 45 NY2d 589, 594 [1978]; see *People v Morris*, 61 NY2d 290, 293 [1984]; *People v Williams*, 132 AD3d 785, 785-786 [2d Dept 2015], *lv. denied* 26 NY3d 1151 [2016], *recon. denied* 27 NY3d 1009 [2016]; *People v Atta*, 126 AD3d 713, 715 [2d Dept 2015], *lv. denied* 25 NY3d 1159 [2015]). “An indictment must contain ‘a plain and concise factual statement in each count which, without allegations of an evidentiary nature,...asserts facts supporting every element of the offense charged and the defendant’s...commission thereof with sufficient precision to clearly apprise [him] of the conduct which is the subject of the accusation’” (*People v Nunez-Garcia*, 178 AD3d 1087, 1088 [2d Dept

2019], *lv. denied* 35 NY3d 943 [2020]), citing CPL § 200.50 (7) (a); *see People v Grega*, 72 NY2d 489, 498 [1988]; *People v Morris*, 61 NY2d at 293; *People v Iannone*, 45 NY2d at 598; *People v Rice*, 172 AD3d 1616, 1617 [3d Dept 2019]; *People v Singleton*, 130 AD2d 598, 599 [2d Dept 1987], *aff'd* 72 NY2d 845 [1988]).

Here, each of the four (4) counts contained in Indictment Number 70044-23 contains a statement that satisfies the requirements of CPL § 200.50 (7) (a), the cases cited above, and further provides the date on which the conduct is alleged to have occurred (*see* CPL § 200.50 (6); *People v Henry*, 183 AD3d 607, 608 [2d Dept 2020]; *People v Atta*, 126 AD3d at 715]). Accordingly, Defendant's motion to dismiss Indictment Number 70044-23 for facial insufficiency is denied.

### **3. MOTION FOR PRECLUSION OF DEFENDANT'S PRIOR CRIMES OR BAD ACTS; ASSOCIATED SANDOVAL AND VENTIMIGLIA HEARINGS.**

Relying on *People v Sandoval*, 34 NY2d 371 [1974], and *People v Ventimiglia*, 52 NY2d 350 [1981], Defendant moves for a pre-trial hearing "to determine which, if any prior bad acts, convictions, vicious or immoral acts will be admitted into evidence to impeach Mr. Peguero's credibility should he elect to testify" (*see* Point 3, Pages 1-2, of Defendant's Notice of Motion, and Page 3 of Defendant's Memorandum of Law).

In response, the People acknowledge their *Sandoval* and *Ventimiglia* obligations and consent to hearings on same if such disclosure is made (*see* Point G, Page 18, of the People's Memorandum of Law). The People also indicate that should they "seek to introduce defendant's prior bad acts on their direct case [pursuant to *People v Molineux*, 168 NY 264 [1901]], the People will inform defense counsel and the Court and request a hearing before introducing such *Molineux* evidence" (*Id.* at Page 19).

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.”

As the People have concededly not yet disclosed to the defendant a list of his acts of misconduct and criminality which the prosecution intends to use at trial for impeaching his credibility or as substantive proof of any material issue in the case, nor designated their intended use thereof, this Court will not order the requested *Sandoval* and *Ventimiglia* hearings 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 TO STRIKE THE PEOPLE’S CPL 710.30 STATEMENT NOTICE AND TO SUPPRESS STATEMENTS AND REFUSAL EVIDENCE.**

Citing CPL Article 710, the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and Article 1, Section 6, of the New York State Constitution, Defendant moves to strike “the notice of intent to offer a statement as insufficient and which violates the rights to due process of law and effective assistance of counsel, or, in the alternative...suppressing the alleged statement noticed to the defense and all fruits of such statement, since such statement was involuntary and made without proper advice or knowing waiver of *Miranda* rights and was the product of an unlawful arrest and made in violation of the right to counsel” (see Point 4, Page 2, of Defendant’s Notice of Motion, and Pages 3-6 of Defendant’s Memorandum of Law). Alternatively, Defendant requests “that a *Huntley* and *Dunaway* hearing be ordered to determine the voluntariness of [the] statements” (see Point 4, Page 2, of Defendant’s Notice of Motion, and Page 6 of Defendant’s Memorandum of Law).

Further, citing VTL § 1194 (2) (f) and *People v Boone*, 71 AD2d 859 [2d Dept 1979],

Defendant requests “a hearing to determine whether defendant’s refusal to take a breath test should be suppressed” (see Point 6, Page 2, of Defendant’s Notice of Motion, and Pages 7-9 of Defendant’s Memorandum of Law).

In response, the People claim that Defendant’s motion to strike the People’s notice should be denied since Defendant “waived any claim of deficiency in the People’s CPL 710.30 notice” when he moved to suppress such notice, and because the notice is sufficient since it “[specifies] the time, place and manner in which [such notice was] given, and to whom such statements were made” (see Point B, Pages 5-6, of the People’s Memorandum of Law). The People further claim that their “discovery disclosure index, provide[s] the substance of the statements in significant detail” (*Id.* at Page 5).

While the People aver that Defendant’s motion to suppress his statements to law enforcement officers and his refusal to submit to a chemical breath test on Fourth Amendment grounds, or for a *Dunaway* hearing should be denied (see Point C, Pages 6-7, of the People’s Memorandum of Law), they “consent to the Court’s ordering a *Huntley* hearing, after which defendant’s motion to suppress the noticed statements should be denied” (see Point D, Page 12, of the People’s Memorandum of Law). Specifically, as to Defendant’s motion to suppress his refusal to submit to a chemical test, the People contend that he was read his DWI warnings, informed of the consequences of a refusal to submit to a chemical test, and when asked to submit to such test, Defendant persisted in his refusal (see Point E, Pages 15-17, of the People’s Memorandum of Law).

As the People’s Notice is in conformity with the statutory requirements of CPL § 710.30 (1) (a), in that said notice provides the time, place and manner in which the statements were made and the substance of the statements (see *People v Lopez*, 84 NY2d 425, 428 [1994]; *People v Raszl*, 108 AD3d 1049, 1050 [4th Dept 2013]; *People v Coleman*, 256 AD2d 473, 474 [2d Dept 1998], *lv. denied* 93 NY2d 872 [1999]), thereby providing the defendant an “opportunity to challenge before trial the voluntariness of statements [allegedly] made by him” (*People v Lopez*, 84 NY2d at 428, citing *People v O’Doherty*, 70 NY2d 479, 484 [1987]; see *People v Sturdevant*, 74 AD3d 1491, 1492 [3d Dept 2010], *lv. denied* 15 NY3d 810 [2010]; *People v Lazzaro*, 62 AD3d 1035, 1035 [3d Dept 2009]; *People v Simpson*, 35 AD3d 1182, 1183 [4th Dept 2006], *lv. denied* 8 NY3d 990 [2007]), Defendant’s motion to strike the People’s statement notice is denied.

However, as the People have consented to a hearing to address Defendant's claims regarding the voluntariness of his alleged statements, and based upon the issues raised by the parties, Defendant's 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, and regarding Defendant's alleged refusal to submit to a chemical test.

##### 5. MOTION TO SUPPRESS PHYSICAL EVIDENCE.

Citing CPL Article 710, the Fourth, Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and Article I, Section 12, of the New York State Constitution, Defendant moves to suppress and prohibit "all use at any trial or hearing on this matter of all physical evidence, including but not limited to, the vehicle and that [sic] any and all property located within the car Mr. Peguero was allegedly operating" on the grounds that "[s]uch materials were obtained without authority of a legal and proper judicial warrant supported by probable cause, and the search for and seizure of such property was unreasonable" (see Point 7, Pages 2-3, of Defendant's Notice of Motion, and Pages 9-12 of Defendant's Memorandum of Law). Defendant further requests that the Court suppress "the observations and field sobriety tests of Carlos Peguero as the fruits of an illegal seizure" (see Point 5, Page 2, of Defendant's Notice of Motion, and Page 6 of Defendant's Memorandum of Law). In the alternative, Defendant seeks "a Mapp/Dunaway hearing" (see Point 7, Page 3, of Defendant's Notice of Motion, and Page 12 of Defendant's Memorandum of Law).

While the People submit that Defendant's motion to suppress all observations of his performance on standard field sobriety tests and certain physical evidence recovered from his motor vehicle on Fourth Amendment grounds, or for a *Dunaway* hearing, should be denied (see Point C, Pages 6-7, of the People's Memorandum of Law), they "consent to a *Mapp* hearing, at which they will meet their burden of going forward with evidence to show that the police lawfully obtained [the] physical evidence" (see Point F, Page 17, of the People's Memorandum of Law).

As the People have consented to a hearing to address Defendant's claims, Defendant's motion for suppression of physical evidence is granted to the extent that hearings pursuant to *Mapp v Ohio*, 367 US 643 [1961], and *Dunaway v New York*, 442 US 200 [1979], will be conducted to determine the legality of the evidentiary recovery/seizure and its admissibility at trial.

## 6. DEMAND FOR A BILL OF PARTICULARS.

On February 14, 2023, the Court received Defendant's "Demand for a Bill of Particulars."

The People argue that Defendant's "motion"<sup>3</sup> for a Bill of Particulars should be denied "[c]onsidering the amount of discovery defendant has received, as well as the information contained in the accusatory instrument and supporting papers" (see Point H, Page 19, of the People's Memorandum of Law). The People further state that such request is unnecessary, "as defendant has more than adequate information to conduct a defense" (*Id.*).

Here, the "relevant facts," as set forth on Pages 2-4 of the People's Affirmation in Opposition, and the discovery provided to Defendant, including the Grand Jury minutes, provide sufficient factual information to amplify 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 Perillo*, 144 AD3d 1399, 1403-1404 [3d Dept 2016], *lv. denied* 29 NY3d 951 [2017]; *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]; CPL § 200.95 (1) (a)), 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]; see *People v Elliot*, 299 AD2d 731, 732 [3d Dept 2002]; *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 request for a Bill of Particulars is denied.

## 7. RESERVATION OF RIGHT TO MAKE ADDITIONAL PRE-TRIAL MOTIONS.

Defendant's request to make additional pre-trial motions (see Point 8, Page 3, of Defendant's Notice of 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.

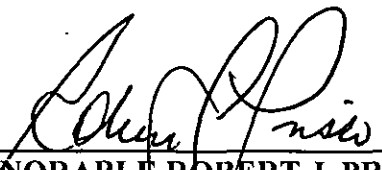
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<sup>3</sup> The Court notes that the defendant does not move in his Notice of Motion for the People to provide a response to his "Demand for a Bill of Particulars."

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  
March 31, 2023

  
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HONORABLE ROBERT J. PRISCO  
County Court Judge

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