People v Adams
2023 NY Slip Op 34850(U)
January 10, 2023
Supreme Court, Westchester County
Docket Number: Indictment No. 22-71212
Judge: Anne E. Minihan

SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

ALEXIS ADAMS

Defendant.

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DECISION & ORDER
Indictment No. 22-71212

MINIHAN, J.

Defendant, Alexis Adams, charged by Westchester County Indictment Number 22-71212 with Assault in the Second Degree (Penal Law § 120.05[11]), Assault in the Second Degree (Penal Law § 120.05[2]), and Criminal Possession of a Weapon in the Fourth Degree (Penal Law § 265.01[2]), has filed an Omnibus Motion consisting of a Notice of Motion, an Affirmation in Support, a Memorandum of Law, and a Notice of Intent to Proffer Psychiatric Evidence. In response, the People filed an Affirmation in Opposition together with a Memorandum of Law. Defendant filed a Supplemental Omnibus Motion[1] on August 29, 2022. In response, the People filed an Affirmation in Opposition to defendant's Supplemental Motion together with a Memorandum of Law.

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

The People filed a Certificate of Compliance on or about July 19, 2022 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.[3]

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[1] While defendant refers to her motion as a Motion to Reargue, this Court has not yet ruled on the original motion; thus, there is no order subject to reargument (*see* CPLR 2221). Defendant's Supplemental Motion consists of a motion to strike the statement notice provided by the People at her arraignment and a motion to suppress said statement, discussed in Point III of this Decision and Order, *infra*.

[2] 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 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.

[3] In fact, the People filed a supplemental Certificate of Compliance and Statement of Readiness on or about August 25, 2022.

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.

MOTION to STRIKE IDENTIFICATION NOTICES and
PRECLUDE IDENTIFICATION TESTIMONY

The motion to strike is denied. Said notices are in conformity with the statutory requirements of CPL 710.30.

Defendant's motion to suppress identification testimony 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, 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 procedures were unduly suggestive. Where suggestiveness is shown, the People must show the existence of an independent source by clear and convincing evidence.

In her Notice of Motion, defendant makes a Fourth Amendment claim to suppress the identifications but did not include any argument in support in her Memorandum of Law. However, as the People correctly indicate, the photo array procedures were conducted prior to any seizure of defendant and therefore, the photo array evidence cannot be the fruit of defendant's arrest, whether lawful or not. As such, defendant's Fourth Amendment claim, as it relates to the identification procedures, is without merit.

Defendant also merely cites to the Sixth Amendment in her Notice of Motion but sets forth no facts whatsoever in support of her claim. Thus, defendant's motion to suppress on this basis is summarily denied. Moreover, the People point out that at the time the witnesses identified defendant, no accusatory instrument had been filed, no attorney actually entered the case, and defendant had not invoked her right to counsel.

III.

MOTION to STRIKE STATEMENT NOTICE and SUPPRESS
NOTICED STATEMENT

The motion to strike is denied. Said notice is in conformity with the statutory requirements of CPL 710.30.

The People, pursuant to CPL 710.30(1)(a), noticed one statement allegedly made by defendant to a member of the Metropolitan Transportation Authority Police Department on October 28, 2021 at approximately 7:57 A.M. Defendant moves to suppress this noticed statement as involuntary, the product of an unlawful arrest, and made without proper *Miranda* warnings. 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 statement was 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 statement was obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]). If the statement is suppressed, the court will then determine whether any evidence obtained as a result of or due to it should be suppressed.

IV.

MOTION to SUPPRESS PHYSICAL EVIDENCE

This branch of 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]). Insofar as defendant challenges the seizure of evidence not obtained from her person, the pre-trial hearing will address whether defendant had a reasonable expectation of privacy in any of the locations searched to constitute standing to challenge the seizure of any physical evidence (*see Rakas v Illinois*, 439 US 128 [1978]; *People v Ramirez-Portoreal*, 88 NY2d 99 [1996]; *People v Ponder*, 54 NY2d 160 [1981]; *People v White, 153* AD3d 1369 [2d Dept 2017]; *People v Hawkins*, 262 AD2d 423 [2d Dept 1999]). 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 to suppress evidence as the fruit of a *Payton* violation (*Payton v NY*, 445 US 573 [1980]) or, alternatively, for a *Payton* hearing (*see* Defendant's Memorandum of Law, page 11). Defendant does not allege that she was arrested in her home or a place she was staying without a warrant. As such, defendant's claim is factually deficient to support suppression on this basis.

V.

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 her 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 she 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 her prior misconduct that she submits the People should not be permitted to use to impeach her credibility. Defendant shall be required to identify the basis of her belief that each event or incident may be unduly prejudicial to her ability to testify as a witness on her 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.

VI.

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 the defendant.

The Court has served a *Brady* Order on the People, dated November 7, 2022, which details the time period their disclosure must be made in accordance with the standards set forth in the United States and New York State Constitutions and CPL Article 245.

VII.

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 her, on the ground 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 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 reveals that a quorum of the grand jurors was present during the presentation of evidence and that the Assistant District Attorneys 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.

VIII.

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]).

IX.

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.

X.

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).

XI.

NOTICE OF PSYCHIATRIC EVIDENCE
CPL 250.10

Attached to defendant's motion is a Notice of Intent to Proffer Psychiatric Evidence, pursuant to CPL 250.10(2), dated July 25, 2022. The People ask the Court to reject this notice as

untimely. The People argue that defendant had to serve and file "written notice of [her] intention to present psychiatric evidence… not more than thirty days after entry of the plea of not guilty to the indictment" (CPL 250.10[2]) which was on May 31, 2022. Therefore, defendant had to serve and file a written notice of such intention on or before June 30, 2022. However, the People acknowledge that the Court can permit defendant to file a late notice "[i]n the interest of justice and for good cause shown" (CPL 250.10[2]). Although defendant has not proffered good cause, the Court accepts the late filing based on the fact defendant was undergoing a 730 examination prior to the arraignment on May 31, 2022 until on or about September 29, 2022 when she was found fit to proceed (defendant had previously been found incapacitated). It was not until October 25, 2022 that defendant was arraigned as a fit person. As such, defendant's notice was clearly within the statutory timeframe of that arraignment. Moreover, the decision of whether to accept a late filing of the notice rests within the sound secretion of the trial court (*see People v Berk*, 88 NY2d 257, 266 [1996]). "Exclusion of relevant and probative testimony as a sanction for a defendant's failure to comply with a statutory notice requirement implicates a defendant's constitutional right to present witnesses in his own defense" and "[i]n making its determination, the trial court must therefore weigh this right against the resultant prejudice to the People from the belated notice" (*Berk*, 88 NY2d at 266). The People do not allege any prejudice arising from the late notice. For these reasons, the Court accepts defendant's CPL 250.10 notice.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
January 10, 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 Annmarie Stepancic
AStepancic@westchesterda.net

The Office of Clare J. Degnan
Legal Aid Society of Westchester County
150 Grand Street, Suite 100
White Plains, NY 10601
Attn: April A. Mckenzie, Esq.
AMckenzie@laswest.org
Attorney for defendant, Alexis Adams