

**People v Gonzalez**

2023 NY Slip Op 34852(U)

April 18, 2023

Supreme Court, Westchester County

Docket Number: Ind. No. 23-70064-001

Judge: Robert A. Neary

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This opinion is uncorrected and not selected for official publication.

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AND  
ENTERED  
ON 4-18-2023  
WESTCHESTER  
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER  
-----X  
THE PEOPLE OF THE STATE OF NEW YORK

- against -

BRANDON GONZALEZ,

Defendant.  
-----X

DECISION AND ORDER

Ind. No. 23-70064-001

NEARY, J.

The defendant, Brandon Gonzalez, has been charged with the crimes of Driving While Ability Impaired by Drugs (three counts) and Driving While Ability Impaired by the Combined Influence of Drugs or of Alcohol and any Drug or Drugs. 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

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COUNTY OF WESTCHESTER

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

1. MOTION TO INSPECT, REDUCE OR DISMISS THE INDICTMENT PURSUANT TO CPL SECTIONS 210.20 AND 210.30 DUE TO THE LEGAL INSUFFICIENCY OF THE PROOF SUBMITTED TO THE GRAND JURY

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.

2. MOTION FOR A SANDOVAL AND VENTIMIGLIA HEARING REQUIRING THE DISTRICT ATTORNEY TO DISCLOSE ANY PRIOR CONVICTIONS, VICIOUS ACTS OR IMMORAL ACTS OF THE DEFENDANT WHICH THE DISTRICT ATTORNEY INTENDS TO QUESTION THE DEFENDANT ABOUT

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)].

3. MOTION, PURSUANT TO CPL ARTICLE 710, STRIKING THE NOTICE OF INTENT TO OFFER A STATEMENT AS INSUFFICIENT AND WHICH VIOLATES THE RIGHTS OF DUE PROCESS OF LAW AND EFFECTIVE ASSISTANCE OF COUNSEL OR IN THE ALTERNATIVE TO SUPPRESS THE ALLEGED STATEMENT NOTICED

The defendant's motion to strike the People's notice of intent to offer statements is denied. Said notice is in conformity with the statutory requirements of CPL §710.30.

The defendant's motion to suppress statements 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).

4. MOTION TO SUPPRESS PHYSICAL EVIDENCE, OBSERVATIONS AND FIELD SOBRIETY TESTS AS THE FRUITS OF AN ILLEGAL SEIZURE

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].

5. MOTION, PURSUANT TO CPL ARTICLE 245, STRIKING THE PROSECUTION'S CERTIFICATE OF COMPLIANCE AND STATEMENT OF READINESS AS INVALID AND ILLUSORY

The defendant's motion to strike the People's Certificate of Compliance and Statement of Readiness as illusory, arguing that their filing before all discovery was disclosed was premature.

Perfect compliance is not required by statute before filing a Certificate of Compliance. If the Legislature intended to require complete disclosure of every single discoverable item prior to filing a Certificate of Compliance and Statement of Readiness, it would have explicitly stated as such. [see *People v. Askin*, 68 Misc.3d 372 (County Ct., Nassau County, April 28, 2020) (rejecting claim that complete disclosure of discovery is required before filing Certificate of Compliance as “not reasonable” and “clearly not what the Legislature intended”)]. In fact, CPL Article 245 allows for, and mandates, the filing of multiple Certificates of Compliance and such subsequent filings do not negate or vitiate the prior filing of the People if done in good faith and after diligent efforts were made to obtain the required materials. [See *People v. Cano*, 71 Misc.3d 728, 739 (Sup. Ct., Queens County, December 3, 2020); *People v. Percell*, 67 Misc.3d 190 (Criminal Ct., New York County, February 10, 2020)].

“By allowing for the possibility that the People be deemed ready even when some discovery is outstanding, the legislature acknowledged that unavoidable delays and unforeseen hurdles may prevent a diligent prosecutor from complying fully with their discovery obligations, despite their best efforts to obtain all the relevant material in a timely fashion.” [See *People v. Aquino*, 72 Misc.3d 518 (Criminal Ct., Kings County, May 7, 2021; see also *People v. Weston*, 66 Misc.3d 785 (Criminal Ct., Bronx County, February 20, 2020)].

The motion to strike is denied.

6. MOTION PURSUANT TO CPL SECTION 255.20 TO RESERVE THE RIGHT TO  
MAKE ADDITIONAL PRE-TRIAL MOTIONS

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  
April 18, 2023



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ROBERT A. NEARY  
SUPREME COURT JUSTICE

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