

**People v Brown**

2023 NY Slip Op 34881(U)

July 31, 2023

Supreme Court, Westchester County

Docket Number: Ind. No. 70981-23

Judge: Susan M. Capeci

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

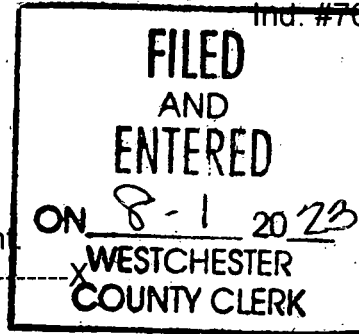
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THE PEOPLE OF THE STATE OF NEW YORK,

DECISION AND ORDER  
Ind. #70981-23

-against-

DARREN BROWN,

Defendant



Ind -70981-23  
**FILED** *JP*

AUG - 1 2023

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

The defendant, charged by indictment with criminal possession of a weapon in the second degree (P.L. 265.03 (3)), assault in the second degree (P.L. 120.05 (2)), criminal possession of a weapon in the third degree (P.L. 265.02 (1)), criminal possession of a firearm (P.L. 265.01-B-1), and criminal possession of a weapon in the fourth degree (P.L. 265.01(1)), makes this omnibus motion seeking: 1) inspection of the Grand Jury minutes by the Court and the defendant, and thereafter, for the dismissal of the indictment and/or reduction of the charges contained therein; 2) motion for discovery compliance and to strike the Certificate of Compliance; 3) suppression of the statements alleged to have been made by him, or in the alternative, for a Huntley hearing; 4) suppression of physical evidence on the ground that it was recovered as the result of his unlawful arrest based upon a lack of probable cause, or a Mapp/Dunaway hearing; 5) a Sandoval/Ventimiglia/Molineux hearing; 6) motion to strike the People's alibi demand; and 7) a reservation of rights to make further pre-trial motions as necessary.

The People consent to an in camera review by the Court of the Grand Jury minutes for legal sufficiency and the release of the grand jury testimony to the defendant, consent to a Huntley hearing, Sandoval/Ventimiglia/Molineux hearing, and

consent to provide Brady material, but otherwise oppose the motion. The Court now finds as follows.

1. MOTION TO INSPECT THE GRAND JURY MINUTES  
AND TO DISMISS AND/OR REDUCE THE INDICTMENT

Defendant moves pursuant to CPL §210.20(1)(b) and [c] to dismiss the indictment, or counts thereof, on the grounds that the evidence before the Grand Jury was legally insufficient and that the Grand Jury proceeding was defective within the meaning of CPL 210.35. The Court has reviewed the minutes of the proceedings before the Grand Jury.

Pursuant to CPL §190.65(1), an indictment must be supported by legally sufficient evidence which establishes that the defendant committed the offenses charged. Legally sufficient evidence is competent evidence which, if accepted as true, would establish each and every element of the offense charged and the defendant's commission thereof (CPL §70.10[1]); People v Jennings, 69 NY2d 103 [1986]). "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 Bello, 92 NY2d 523 (1998); People v Ackies, 79 AD3d 1050 (2<sup>nd</sup> Dept 2010)). In rendering a determination, "[t]he reviewing court's inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of each element of the charged crimes and whether the grand jury could rationally have drawn the inference of guilt" (Bello, *supra*, quoting People v Boampong, 57 AD3d 794 (2<sup>nd</sup> Dept 2008-- internal quotations omitted).

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]). Accordingly, Defendant's motion to dismiss or reduce for lack of sufficient evidence is denied.

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 supports a finding 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, that the grand jurors who voted to indict heard all the Aessential and critical evidence (see People v Collier, 72 NY2d 298 [1988]; People v Julius, 300 AD2d 167 [1<sup>st</sup> Dept 2002], *lv den* 99 NY2d 655 [2003]), and that the Grand Jury was properly instructed (see People v Calbud, 49 NY2d 389 [1980] and People v Valles, 62 NY2d 36 [1984]).

In making this determination, the Court does not find that release of such portions of the Grand Jury minutes as have not already been disclosed pursuant to CPL Article 245 to the parties was necessary to assist the Court.

## 2. MOTION FOR DISCOVERY / STRIKE CERTIFICATE OF COMPLIANCE

The defendant asserts that the People's initial COC, filed on May 3, 2023, was illusory because they did not provide a copy of the Grand Jury minutes to the defendant at that time. Although the Grand Jury presentation occurred on March 31, 2023, the People did not provide the Grand Jury minutes to the defendant until May 16, 2023, the date they filed a Supplemental COC. The defendant argues that the time between May 3, 2023, and the date they actually produced the Grand Jury minutes on May 16, 2023, should be chargeable time to the People, as their COC was invalid without production of

the minutes.

Further, the defendant argues that the People's COC should be stricken in any event because they are not presently compliant with having produced all discovery to date pursuant to CPL 245.20(1)(k). He argues that they have not provided materials with respect to misconduct of Mt. Vernon police officers, and that of civilian witnesses.

The People respond that they have provided all discovery to date which the defendant is entitled and that his motion to strike their COC should be denied. With respect to the provision of the Grand Jury minutes, they assert they provided them as soon as they were able to obtain a physical copy from the stenographer, and that their initial COC should not be invalidated on that basis. As to the defendant's argument that they failed to provide all materials pursuant to CPL 245.20(1)(k), the People represent that they provided 1k forms for both civilian witnesses, and a criminal history report for the defendant's mother, and that they have no further information in this regard. As for police witnesses, the People also represent they have provided all 1k materials for all officers they intend to call as witnesses, which includes over 50 documents, and nothing remains outstanding.

Turning first to the defendant's contention that the People's initial COC was invalid due to their failure to provide a copy of the Grand Jury minutes, the Court agrees that the People's initial COC, filed on May 3, 2023, was illusory because they did not provide a copy of the Grand Jury minutes to the defendant at that time. Grand Jury minutes are automatically discoverable pursuant to CPL § 245.20(1)(b), and the People were required to disclose such materials to the defendant in order to satisfy their

obligations under CPL § 245.20(1) (see People v Aguayza, 77 Misc3d 482, 487 (Queens Sup. Ct. 2022); People v Scales, 2023 Slip Op 23200 (Queens Sup. Ct. 2023); see also People ex. rel Ferro v Brann, 197 AD3d 787 (2d Dept 2021) [filing of a COC pursuant to CPL 30.30 (5) is not deemed complete until all of the material identified in the certificate is actually produced to the defendant pursuant to CPL 245.50(1) and (3)]).

Here, the Grand Jury presentation occurred on March 31, 2023, and the People did not provide the Grand Jury minutes to the defendant until May 16, 2023, the date they filed a Supplemental COC. Transcription of the minutes is deemed under the prosecutor's control (Judiciary Law §321). Accordingly, the defendant's motion is granted to the extent that the initial COC is invalidated, and the People's actual readiness date will be deemed May 16, 2023, the date they filed a Supplemental COC and produced the minutes. The time between May 3, 2023, and May 16, 2023, the date they actually produced the Grand Jury minutes, is chargeable time to the People as their COC was invalid without production of the minutes.

As to the defendant's argument that the People failed to provide all materials pursuant to CPL 245.20(1)(k), the People represent that they have provided all 1k information for both civilian witnesses and for all officers they intend to call as witnesses, and nothing remains outstanding. The Court accepts the People's representation that they have provided all 1k materials to the defendant and will not invalidate the COC or supplemental COC on this basis.

### 3. MOTION TO SUPPRESS

The defendant has been served with a CPL 710.30 notice, with respect to oral

statements made by him on October 3, 2022, at 9:46 pm to member of the Mount Vernon Police Department at 346 Union Avenue, Mount Vernon, NY. The defendant argues that the noticed statement should be suppressed as involuntarily made.

The defendant's motion for suppression of the above statements as set forth in the CPL 710.30 notice is granted to the extent that the Court will conduct a Huntley hearing prior to trial concerning the noticed statements allegedly made by the defendant for the purpose of determining whether Miranda warnings were necessary and, if so, whether he was so advised and made a knowing, intelligent and voluntary waiver thereof, or whether the statements were otherwise involuntarily made within the meaning of CPL 60.45.

4. MOTION TO SUPPRESS PHYSICAL EVIDENCE/ PROBABLE CAUSE HEARING

The defendant asserts that there was no probable cause for his arrest or for the police entry into and search of his home. He contends that the police entered his home without permission of any individual present, and without probable cause or exigent circumstances. He moves for suppression of the two firearms recovered by the police as result of their unlawful entry into the home and search of his person, and any other evidence acquired, or a Mapp/Dunaway hearing.

The People respond that the police arrived at the home after being called about a domestic disturbance and injury, and received consent from the complaining witness (the defendant's mother) and his sister to enter the home, as these individuals believed he had a firearm on his person. Upon seeing the defendant upstairs, they noted an

object sticking out of his pocket, and recovered the firearm from him, a search incident to a lawful arrest.

The defendant's motion for a Dunaway/Mapp hearing on the issue of probable cause for his arrest and the subsequent recovery of evidence from his person and home is granted, in light of the factual questions raised as to the occupants' consent to the police entry into the home, and the officer's subsequent recovery and seizure of firearms within the home and from defendant's person following entry (see People v Mendoza, 82 NY2d 415 (1993); CPL 710.60(3)(b)).

5. MOTION FOR SANDOVAL/VENTIMIGLIA/MOLINEUX HEARING

Granted, solely to the extent that Sandoval/Ventimiglia/Molineux hearings, as the case may be, shall be held immediately prior to trial, as follows:

A. Pursuant to CPL §245.20, the People must notify the Defendant, not less than fifteen days prior to the first scheduled date for trial, of all specific instances of Defendant=s uncharged misconduct and criminal acts of which the People have knowledge and which the People intend to use at trial for purposes of impeaching the credibility of the Defendant, or as substantive proof of any material issue in the case, designating, as the case may be for each act or acts, the intended use (impeachment or substantive proof) for which the act or acts will be offered; and

B. Defendant, at the ordered hearing, must then sustain his burden of informing the Court of the prior misconduct which might unfairly affect him as a witness in his own behalf (see People v Malphurs, 111 AD2d 266 [2<sup>nd</sup> Dept. 1985]).

6. MOTION TO STRIKE THE PEOPLE'S ALIBI DEMAND

The defendant contends that the People's alibi demand should be stricken since the statute it is based on, CPL 250.20, is unconstitutional pursuant to Wardius v Oregon (412 US 470 (1973)). He claims the statute improperly requires the defense to supply names of alibi witnesses in advance of the People's requirement to provide names of rebuttal witnesses to the defense.

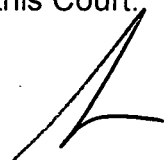
The defendant's motion is denied. New York State courts have specifically found this statute to be constitutional following the United States Supreme Court decision in Wardius v Oregon, supra (People v Dawson, 185 AD2d 854 (2d Dept 1992); People v Gill, 164 AD2d 867 (2d Dept 1990)).

7. MOTION FOR A RESERVATION OF RIGHTS TO FILE FURTHER PRE-TRIAL MOTIONS

The defendant requests leave to make further motions as necessary. The defendant's motion is denied. CPL 255.20 is controlling with respect to the time frame for making pre-trial motions and there have been no allegations of good cause for making further motions outside of those time constraints. Any such request will be considered at the time it is made.

This constitutes the Decision and Order of this Court.

Dated: July 31, 2023  
White Plains, New York

  
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HON. SUSAN M. CAPECI  
A.J.S.C.

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