

**People v Dolan**

2023 NY Slip Op 34888(U)

May 2, 2023

Supreme Court, Westchester County

Docket Number: Ind. No. 23-70230-001

Judge: Robert A. Neary

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This opinion is uncorrected and not selected for official publication.

**FILED**  
MAY - 2 2023  
TIMOTHY C. IDÓMI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

**FILED  
AND  
ENTERED  
ON 5-2-2023  
WESTCHESTER  
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

- against -

STEPHEN DOLAN,

Defendant.

-----X  
NEARY, J.

DECISION AND ORDER

Ind. No. 23-70230-001

The defendant, Stephen Dolan, has been charged with the crimes of Leaving the Scene of an Incident Without Reporting – Personal Injury, Vehicular Manslaughter in the Second Degree and Driving While Intoxicated. 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 a Notice of Cross Motion to Amend Indictment, an Affirmation in Opposition and in Support of Cross Motion to Amend Indictment together with a

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

PEOPLE'S CROSS MOTION TO AMEND INDICTMENT

The People's motion to amend the indictment to replace the word "with" to the word "without" in the title of Count One is granted. The Court has reviewed the Grand Jury minutes in this matter which reflects that the Grand Jury charge properly used the word "without" in Count One. The motion to correct the typographical error is, therefore, granted pursuant to CPL 200.70

A. MOTION TO STRIKE NOTICES AND PRECLUDE STATEMENT AND IDENTIFICATION PURSUANT TO CPL ARTICLE 710

This motion is denied. Said notice is in conformity with the statutory requirements of CPL §710.30.

B. MOTION TO SUPPRESS IDENTIFICATION PURSUANT TO CPL ARTICLE 710

This motion is granted to the limited extent of conducting a hearing prior to trial to determine whether or not the noticed identifications are unduly suggestive. [See *United States v. Wade*, 388 US 218, 87 S Ct. 1926, 18 LE2d 1149]. Specifically, the Court shall determine whether the identifications were so improperly suggestive as to taint any in-court identification. In the event the identifications are found to be unduly suggestive, the Court shall then go on to

consider whether the People have proven by clear and convincing evidence that an independent source exists for such witness' proposed in-court identification.

C. MOTION TO SUPPRESS STATEMENT PURSUANT TO CPL ARTICLE 710

This branch of the defendant's motion 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).

D. MOTION TO SUPPRESS USE OF PRIOR CONVICTONS AND IMMORAL, CRIMINAL OR VICIOUS ACTS (SANDOVAL/VENTIMIGLIA HEARING)

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)].

E. MOTION FOR DISCOVERY PURSUANT TO CPL ARTICLE 245

The defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 245. If any items set forth in CPL Article 245 have not been provided to the defendant pursuant to the Consent Discovery Order in the instant matter, said items are to be provided forthwith.

The People recognize their continuing duty to disclose exculpatory material at the earliest possible date. [See *Brady v. Maryland*, 373 US 83, 83 S Ct. 1194, 10 LE2d 215 and *Giglio v. United States*, 405 US 150, 92 S Ct. 763, 31 LE2d 104]. If the People are or become aware of any material which is arguably exculpatory, but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

To any further extent, the application is denied as seeking material or information beyond the scope of discovery. [See *People v. Colavito*, 87 NY2d 423, 639 NYS2d 996, 663 NE2d 308; *Matter of Brown v. Grosso*, 285 AD2d 642, 729 NYS2d 492, *lv. denied* 97 NY2d 605, 737 NYS2d 52, 762 NE2d 930; *Matter of Brown v. Appelman*, 241 AD2d 279, 672 NYS2d 373; *Matter of Catterson v. Jones*, 229 AD2d 435, 644 NYS2d 573; *Matter of Catterson v. Rohl*, 202 AD2d 420, 608 NYS2d 696, *lv. denied* 83 NY2d 755, 613 NYS2d 127, 241 NE2d 279].

F. MOTION TO STRIKE CERTIFICATE OF COMPLIANCE

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 is denied.

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).

G. MOTION TO INSPECT THE GRAND JURY MINUTES AND DISMISS OR REDUCE THE INDICTMENT AS A DEFECTIVE PRESENTATION PURSUANT TO CPL ARTICLE 210

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.

H. MOTION TO SUPPRESS PHYSICAL EVIDENCE PURSUANT TO CPL ARTICLE 710

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 which was not obtained pursuant to a search warrant. [See *Mapp v. Ohio*, 367 US 643, 81 S Ct. 1684, 6 LE2d 1081].

I. MOTION TO STRIKE DEMAND FOR ALIBI NOTICE

This motion is denied. Contrary to the defendant's contentions, it is well-settled that CPL §250.00 is indeed in compliance with the constitutional requirements (see *People v. Dawson*, 185 AD2d 854, 587 NYS2d 358, *appeal denied* 80 NY2d 974, 591 NYS2d 143, 605 NE2d 879; *People v. Cruz*, 176 AD2d 751, 574 NYS2d 1006, *appeal denied* 79 NY2d 855, 580 NYS2d 727, 588 NE2d 762; *People v. Gill*, 164 AD2d 867, 599 NYS2d 376, *appeal denied* 76 NY2d 893, 561 NYS2d 555, 562 NE2d 880; *People v. Peterson*, 96 AD2d 871, 578 NYS2d 358) and provides equality in the required disclosure (see *People v. Peterson*, 90 AD2d 871, 578 NYS2d 358; see generally *Wardius v. Oregon*, 412 US 470, 93 S Ct. 2208, 37 LE2d 82).

J. MOTION FOR DISCLOSURE OF DEALS AND AGREEMENTS

The People recognize their continuing duty to disclose the terms of any deal or agreement made between the People and any prosecution witness at the earliest possible date. [See *Brady v. Maryland*, 373 US 83, 83 S. Ct. 1194, 10 LE2d 215; *Giglio v. United States*, 405

US 150, 92 S. Ct. 763, 31 LE2d 104; *People v. Steadman*, 82 NY2d 1, 603 NYS2d 382, 623 NE2d 509; *People v. Wooley*, 200 AD2d 644, 606 NYS2d 738, *appeal denied* 83 NY2d 878, 613 NYS2d 138, 635 NE2d 307].

K. MOTION TO CONDUCT PRE-TRIAL HEARING TWENTY DAYS IN ADVANCE OF TRIAL

The defendant's motion to schedule pre-trial hearings twenty days prior to trial is denied. 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.

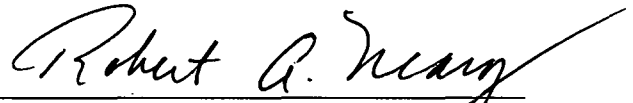
L. MOTION TO RESERVE THE RIGHT TO MAKE ANY AND ALL FURTHER MOTIONS

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  
May 2, 2023

  
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ROBERT A. NEARY  
SUPREME COURT JUSTICE

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