

**People v Martinez**

2023 NY Slip Op 34889(U)

October 3, 2023

Supreme Court, Westchester County

Docket Number: Indictment No. 23-71450

Judge: Anne E. Minihan

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

CHRISTOPHER MARTINEZ

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MINIHAN, J.

FILED  
AND ENTERED  
ON 10-4 2023  
WESTCHESTER  
COUNTY CLERK

X  
FILED  
OCT - 4 2023  
JUSTICE C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER  
Defendant  
X

DECISION & ORDER  
Indictment No. 23-71450

Defendant, Christopher Martinez, charged by Westchester County Indictment Number 23-71450 with Attempted Assault in the First Degree (Penal Law § 110/12.10[1]); Attempted Assault in the First Degree (Penal Law § 110/120.10[2]), Assault in the Second Degree (Penal Law § 120.05[2]), Attempted Assault in the Second Degree (Penal Law § 110/120.05[1]), 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.

I.

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 him, on the grounds 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.

## II.

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

III.

MOTION to PRECLUDE NOTICED IDENTIFICATION TESTIMONY  
CPL 710

Pursuant to CPL § 710.30(1)(b), the People served defendant with notice of one alleged identification of him made by single photo on March 16, 2023 at the Westchester Medical Center in Valhalla, NY. Defendant's motion to suppress testimony of the noticed identification 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 procedure was unduly suggestive. Where suggestiveness is shown, the People must show the existence of an independent source by clear and convincing evidence. The hearing will address the People's claim that the identifying witness had a sufficient prior familiarity with defendant as to render the witness impervious to police suggestion (*see People v Rodriguez*, 79 NY2d 445 [1992]).

In his Notice of Motion, defense counsel merely cites to the Sixth Amendment to suppress the identification but sets forth no facts in support of his claim. At the time the witness identified defendant, no accusatory instrument had been filed, no attorney actually entered the case, and defendant had not invoked his right to counsel. As such, defendant's motion to suppress on Sixth Amendment grounds is summarily denied. Moreover, the photo procedure was conducted prior to any seizure of defendant and therefore, the photo 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 procedure, is without merit.

IV.

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 September 14, 2023. The People ask the Court to reject this notice as untimely. The People argue that defendant had to serve and file "written notice of his intention [to present psychiatric evidence] not more than thirty days after entry to the plea of not guilty to the indictment" (CPL 250.10[2]) which was on August 25, 2023. Therefore, defendant had to serve and file a written notice of such intention on or before August 25, 2023. However, 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]). Defendant is considering Mental Health Court and is in the process of obtaining medical records regarding his psychiatric and mental health history. The decision of whether to accept a late filing of the notice rests within the sound discretion 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" (*People v 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.

V.

HEARINGS CONDUCTED PRIOR to TRIAL

Defendant requests that pre-trial hearings be scheduled no less than two weeks before trial. The hearings will be scheduled at a time that is convenient to the court, upon due consideration of all its other cases and obligations.

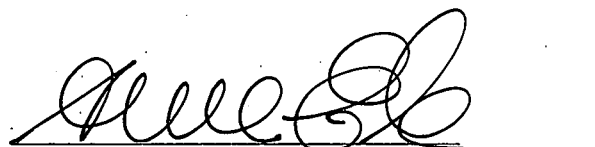
VI.

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).

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York  
October 3, 2023

  
Honorable Anne E. Minihan  
Justice of the Supreme Court

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