

**People v Ramos**

2023 NY Slip Op 34890(U)

October 3, 2023

Supreme Court, Westchester County

Docket Number: Indictment No. 23-71904

Judge: Anne E. Minihan

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**FILED** 

**OCT -4 2023**

**TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER**

SUPREME COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

**FILED  
AND ENTERED  
ON 10-4-2023  
WESTCHESTER  
COUNTY CLERK**

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

-against-

ALEXANDRO RAMOS

Defendant.

DECISION & ORDER  
Indictment No. 23-71904

-----X  
MINIHAN, J.

Defendant Alexandro Ramos, charged by Westchester County Indictment Number 23-71904 with Driving While Intoxicated, as an E Felony<sup>1</sup> (Vehicle and Traffic Law § 1192[3]), Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree<sup>2</sup> (Vehicle and Traffic Law § 511[3][a][i]), Stopping, Standing, or Parking on Highway (Vehicle and Traffic Law § 1201[a]), Disobeying a Traffic Control Device (Vehicle and Traffic Law § 1110[a]), and Possession of Alcoholic Beverages in a Motor Vehicle (Vehicle and Traffic Law § 1227[1]) has filed an omnibus motion consisting of a Notice of Motion, an Affirmation in Support, and a Memorandum of Law. In response, the People filed an Affirmation in Opposition together with a Memorandum of Law. Attached thereto is a notice pursuant to CPL 245.20(3).

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]). Defendant argues the People failed to establish the element of “operation.” However, the Grand Jury testimony was that defendant was seated behind the wheel of a motor

<sup>1</sup> By special information attached to the indictment, defendant is alleged to have been previously convicted of the crime of Aggravated Driving While Intoxicated (Vehicle and Traffic Law § 1192[2-a][a]) on or about August 8, 2017, in the Criminal Court of the City of New York.

<sup>2</sup> By special information attached to the indictment, defendant is alleged to have been previously convicted of the crime of Aggravated Driving While Intoxicated (Vehicle and Traffic Law § 1192[2-a][a]) and as a result, defendant’s license and privilege to operate a motor vehicle in the State of New York and defendant’s privilege of obtaining a license issued by the Commissioner of Motor Vehicles was revoked on or about August 8, 2017 and defendant knew, or had reason to know, of said revocation and said revocation was in effect at that time.

vehicle, the keys were in the ignition, and the engine was running.<sup>3</sup> Additionally, the New York State Trooper testified that defendant admitted to driving and said he was coming from Manhattan.

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 Attorney 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]). Defendant argues that the Assistant District Attorney improperly instructed the Grand Jury when she failed to contradict a grand juror’s recitation of the law during a witness’s testimony. During the presentation, a grand juror stated, “All I’m saying, if your keys are in the ignition and the car is running, that’s as good as a DWI, good as if you are driving. That’s what I believe the law is.” After this comment, the Assistant District Attorney told the grand jurors, “So, the charges will be read to you.” Subsequently, during the reading of the charges, the Assistant District Attorney defined “operation.” She instructed the grand jurors directly from the Criminal Jury Instructions of New York, stating, “To operate a motor vehicle means to drive it. A person also operates a motor vehicle when that person is sitting behind the wheel of a motor vehicle for the purpose of placing the vehicle in motion, and when the motor vehicle is, in fact, moving or even if it is not moving, the engine is running.” The proper legal definitions and instructions were given to the Grand Jury prior to their deliberation and vote. Notably, the grand juror’s recitation of what they believed to be the law was accurate, in sum and substance.

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

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<sup>3</sup> It is necessary for the Court to discuss specific testimony from the Grand Jury proceedings in deciding the instant motion (*see* CPL 190.25[4]).

and/or colloquies, the Court denies that branch of the motion. With respect to defendant's request that the Court retain a sealed copy of the Grand Jury minutes as a court exhibit for inclusion in the record of appeal, that request is denied. The People are to retain a complete set of Grand Jury minutes, including their instructions, within their file.

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. Attached to their papers, the People filed notice indicating that during cross-examination of defendant, they seek to introduce evidence of defendant's prior Aggravated Driving While Intoxicated conviction from 2017 and Driving While Ability Impaired violation from 2008. 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 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, the defendant's motion is granted and such discovery, including both *Brady* material<sup>4</sup> and *Rosario* material, shall be provided forthwith. Leave is granted for either party to seek a protective order (CPL Article 245).

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<sup>4</sup> 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

The People filed a Certificate of Compliance on or about July 25, 2023, 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.<sup>5</sup>

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]).

IV.

#### MOTION to SUPPRESS NOTICED STATEMENTS

The People, pursuant to CPL 710.30(1)(a), noticed two statements allegedly made by defendant to members of the New York State Police on November 20, 2022. Defendant moves to suppress these noticed statements as involuntary, the product of an unlawful arrest, and made without being adequately apprised of *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 statements were 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 statements were obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

V.

#### MOTION to SUPPRESS PHYSICAL EVIDENCE

Defendant moves for suppression of all evidence, including his refusal to submit to a chemical test, the trooper's observations of him before, during, and after the Standardized Field Sobriety Tests, and physical evidence seized from his vehicle. 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]). 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]).

The Court directs that a Refusal Hearing be conducted prior to trial to determine, among other things, that the DWI refusal warnings were provided in accordance with VTL 1194 (*see People v Smith*, 18 NY3d 544, 547 [2012]; *People v Williams*, 99 AD3d 955 [2d Dept 2012]).

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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. The Court has served a *Brady* Order on the People, dated August 29, 2023, which details the time period their disclosure must be made in accordance with the standards set for in the United States and New York State Constitutions and CPL Article 245.

<sup>5</sup> In fact, the People filed a supplemental Certificate of Compliance and Statement of Readiness on or about August 21, 2023.

VI.

MOTION to DISMISS  
CPL 30.30

In defense counsel's Notice of Motion, she included "Dismissing the indictment pursuant to C.P.L. § 30.30," but did not include any argument in support in her Affirmation or Memorandum of Law. Thus, defendant's motion to dismiss on this basis is summarily denied.

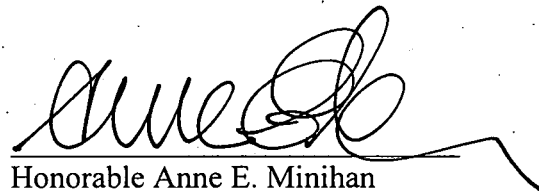
VII.

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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