

**People v Brown**

2023 NY Slip Op 34926(U)

July 28, 2023

County Court, Westchester County

Docket Number: Indictment No. 70810-23

Judge: Robert J. Prisco

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

-against-

DECISION & ORDER

TROY BROWN,

Indictment No: 70810-23

Defendant.

-----X  
ROBERT J. PRISCO, J.

Defendant **TROY BROWN** is charged by Indictment Number 70810-23 with Burglary in the Third Degree pursuant to Penal Law [PL] § 140.20 [Count One]. The charge pertains to Defendant allegedly unlawfully entering a construction work storage facility located at 316 Huguenot Street, in the City of New Rochelle, and stealing tools at approximately 5:02 p.m., on April 20, 2022.

On April 11, 2023, the People served and filed, via email, a Certificate of Compliance pursuant to CPL § 245.50 (1), with an attached "Discovery Disclosure Index" that identifies the items and materials that have reportedly been disclosed or provided to defense counsel. Also attached to the Certificate of Compliance is a demand for Reciprocal Discovery pursuant to CPL § 245.20 (4), and Discovery Package Transmittal Notices from the Westchester County District Attorney's Office which delineate the dates, times and methods of such disclosures. Within the People's Certificate of Compliance is a "Statement of Readiness," wherein the People state that they "confirm and announce their readiness for trial on all counts charged."

On May 1, 2023, Defendant was arraigned by this Court on the charge contained in Indictment Number 70810-23.<sup>1</sup> Attached to the Indictment are two (2) CPL § 710.30 (1) (a) Notices regarding the People's intent to offer evidence of statements allegedly made by the

<sup>1</sup> During Defendant's arraignment, the People again served their Certificate of Compliance dated April 11, 2023 on defense counsel. The People also confirmed their readiness for trial on the record when the Court made inquiry thereof pursuant to CPL § 30.30 (5).

**FILED** <sup>TR</sup>

JUL 28 2023

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

defendant to members of the New Rochelle Department,<sup>2</sup> four (4) CPL § 710.30 (1) (b) Notices,<sup>3</sup> and the People’s Demand for a Notice of Alibi pursuant to CPL § 250.20.

On May 11, 2023, the People served and filed, via email, a Supplemental Certificate of Compliance, which includes a “Statement of Readiness,” wherein “[t]he People confirm and announce their readiness for trial on all counts charged in this matter.” Attached thereto is a Discovery Package Transmittal Notice from the Westchester County District Attorney’s Office.

During a Court appearance on May 19, 2023, the People served and filed a second Supplemental Certificate of Compliance, which includes a “Statement of Readiness,” wherein “[t]he People confirm and announce their readiness for trial on all counts charged.”<sup>4</sup> Attached to thereto are two (2) Discovery Package Transmittal Notices from the Westchester County District Attorney’s Office. The People also confirmed their readiness for trial on the record when the Court made inquiry thereof pursuant to CPL § 30.30 (5).

On June 27, 2023, the Court received Defendant’s Notice of Motion, an Attorney’s Affirmation in Support of Omnibus Motion, and a Memorandum of Law in Support of Defendant’s Omnibus Motion (hereinafter “Memorandum of Law”), seeking various forms of judicial intervention and relief.

On July 5, 2023, this Court received the People’s Affirmation in Opposition and a Memorandum of Law in response to Defendant’s motion for omnibus relief.

The Court is also in receipt of an unredacted certified copy of the stenographic transcript of the March 23, 2023 Grand Jury proceeding, along with a copy of the Grand Jury exhibit that was received in evidence.

After consideration of the above referenced submissions and the unredacted certified

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<sup>2</sup> The first CPL § 710.30 (1) (a) Notice pertains to electronically recorded oral statements that were allegedly made by Defendant in the booking area of the New Rochelle Police Department, at approximately 11:30 a.m., on June 21, 2022. A DVD of such alleged statements has been provided to the Court. The second CPL § 710.30 (1) (a) Notice pertains to oral statements that were allegedly made by Defendant in the Property Theft Unit Office of the New Rochelle Police Department, at approximately 12:15 p.m., on June 21, 2022.

<sup>3</sup> Two (2) of the CPL § 710.30 (1) (b) Notices pertain to video identifications that allegedly occurred during the Grand Jury proceeding on March 23, 2023. The other two (2) CPL § 710.30 (1) (b) Notices pertain to a video and photographic array identification that allegedly occurred at the New Rochelle Police Department on May 2, and May 25, 2022.

<sup>4</sup> During this Court appearance, defense counsel acknowledged receipt of the People’s Supplemental Certificate of Compliance dated May 11, 2023.

stenographic transcript of the March 23, 2023 Grand Jury proceeding, the Court decides Defendant's Motion as follows:

**1. MOTION FOR INSPECTION OF GRAND JURY MINUTES AND DISMISSAL OF INDICTMENT NUMBER 70810-23 DUE TO THE LEGAL INSUFFICIENCY OF THE EVIDENCE PRESENTED.**

Citing CPL §§ 210.20 (1) (b), (1-a) and 210.30, Defendant requests that the Court inspect the minutes of the Grand Jury proceeding and dismiss Indictment Number 70810-23 or certain counts thereof "as not supported by legally sufficient evidence" (*see* Page 1, Paragraph (a), of Defendant's Notice of Motion, and Point I, Page 2, of Defendant's Memorandum of Law). Defendant also requests "transcription and an inspection of the Grand Jury minutes" to determine if, among other things, the provided instructions were legally sufficient and proper, and whether the Grand Jury proceeding was defective (*see* Point I (a) - (t), Pages 2-5, of Defendant's Memorandum of Law).

In their response, the People consent to an in-camera inspection of the Grand Jury minutes by the Court, oppose inspection thereof by Defendant (*see* Point A, Pages 1-2, of the People's Memorandum of Law), contend that the indictment is supported by legally sufficient evidence (*Id.* at Page 2), and assert that "Defendant has failed to meet his high burden of showing the existence of any error in the grand jury proceeding which rendered it defective" (*Id.* at Page 3).

To the extent that Defendant is requesting the Grand Jury minutes in their entirety, CPL § 245.20 (1) (b) provides for automatic discovery of "[a]ll transcripts of the *testimony* of a person who has testified before a grand jury" (emphasis added). "The language of the statute is clear and unambiguous; it requires the People to turn over the transcript of the testimony" (*People v Sellars*, 73 Misc3d 248, 250 [County Ct, Orange County 2021]; *see People v Askin*, 68 Misc3d 372, 382 [County Ct, Nassau County [2020]; *People v Rondon*, 67 Misc3d 1228(A), 2020 NY Slip Op. 50663(U) [County Ct, Orange County 2020]). Similarly, CPL § 210.30 (3), which addresses motions to inspect grand jury minutes, speaks only to the release of "grand jury *testimony*" (emphasis added). Accordingly, as there exists no statutory authority for the release to Defendant of those portions of the Grand Jury minutes that constitute colloquy or instructions, and as the People have complied with the discovery mandate of CPL § 245.20 (1) (b) by providing the defendant with the transcript of the grand jury testimony on May 11, 2023 (*see* Point A, Page 2,

of the People’s Memorandum of Law), the defendant’s request for the Grand Jury minutes in their entirety is denied.

The Court has conducted an in-camera review of the entirety of the Grand Jury proceeding, having examined an unredacted certified copy of the stenographic transcript of the March 23, 2023 presentation.

On March 23, 2023, prior to the commencement of the given sworn testimony, the People specifically inquired of and confirmed with the foreperson that twenty-two (22) grand jurors were present. Prior to instructing the grand jurors on the applicable law, the People confirmed with the foreperson that twenty-two (22) grand jurors were present throughout the presentation of the case. These measures by the People satisfy this Court that the twenty-two (22) grand jurors who deliberated and voted on the charge contained in Indictment Number 70810-23 were present throughout the one-day presentation of the case.

“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 [2003], quoting *People v Carroll*, 93 NY2d 564, 568 [1999]; see *People v Edwards*, 36 NY3d 946, 947 [2020]; *People v Deleon*, 34 NY3d 965, 966 [2019]; *People v Bello*, 92 NY2d 523, 525 [1998]; *People v Booker*, 164 AD3d 819, 820 [2d Dept 2018]; *People v Pino*, 162 AD3d 910, 910-911 [2d Dept 2018]; *People v Hulsen*, 150 AD3d 1261, 1262 [2d Dept 2017], *lv. denied* 30 NY3d 950 [2017]; *People v Flowers*, 138 AD3d 1138, 1139 [2d Dept 2016]). Legally sufficient evidence is “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 Deleon*, 34 NY3d at 966; *People v Mills*, 1 NY3d at 274; *People v Harwood*, 183 AD3d 1281, 1282 [4th Dept 2020]; *People v Booker*, 164 AD3d at 820; *People v Pino*, 162 AD3d at 911; *People v Arcila*, 152 AD3d 783, 784 [2d Dept 2017], *lv. denied* 30 NY3d 978 [2017]; *People v Hulsen*, 150 AD3d at 1262; *People v Franov*, 146 AD3d 978, 979 [2d Dept 2017]). “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 Gaworecki*, 37 NY3d 225, 230 [2021], quoting *People v Grant*, 17 NY3d 613, 616 [2011]; see *People v Mills*, 1 NY3d at 274; *People v Bello*, 92 NY2d at 526; *People v Holloway*, 210 AD3d 1007, 1008 [2d Dept 2022]; *People v Castro*, 202 AD3d 815, 816 [2d Dept 2022]; *People v Booker*, 164 AD3d at 820). This

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'" (*People v Bello*, 92 NY2d at 526, quoting *People v Deegan*, 69 NY2d 976, 979 [1987]; see *People v Castro*, 202 AD3d at 816; *People v Booker*, 164 AD3d at 821; *People v Pino*, 162 AD3d at 911; *People v Arcila*, 152 AD3d at 784).

Here, the evidence presented to the Grand Jury, when viewed in the light most favorable to the People, was legally sufficient to establish and support the charge contained in Indictment Number 70810-23

A Grand Jury proceeding is "defective," warranting dismissal of the indictment, only where the "proceeding . . . fails to conform to the requirements of CPL Article 190 to such degree that the integrity thereof is impaired and prejudice to the defendant may result" (CPL § 210.35 (5); see *People v Jimenez*, 39 NY3d 74 [2022]; *People v Elmore*, 211 AD3d 1536, 1539 [4th Dept 2022]; *People v Palma*, 208 AD3d 801, 802 [2d Dept 2022]; *People v Sealy*, 181 AD3d 893, 894 [2d Dept 2020], *lv. denied* 35 NY3d 1070 [2020]; *People v Arevalo*, 172 AD3d 891, 892 [2d Dept 2019]; *People v Williams*, 171 AD3d 804, 805 [2d Dept 2019]). "The exceptional remedy of dismissal of an indictment is warranted only where prosecutorial misconduct, fraudulent conduct or errors created a possibility of prejudice" (*People v Palma*, 208 AD3d at 802, quoting *People v Addimando*, 197 AD3d 106, 121 [2d Dept 2021]; see *People v Huston*, 88 NY2d 400, 409 [1996]; *People v Sealy*, 181 AD3d at 894; *People v Williams*, 171 AD3d at 805; *People v Burch*, 108 AD3d 679, 680 [2d Dept 2013], *lv. denied* 22 NY3d 1087 [2014]; *People v Thompson*, 81 AD3d 670, 671 [2d Dept 2011], *aff'd* 22 NY3d 687 [2014]). Here, the Court finds that no such misconduct, conduct or errors occurred.

Further, while a prosecutor is required to instruct the grand jury on the law with respect to matters before it (*People v Valles*, 62 NY2d 36, 38 [1984]; *People v Tunit*, 149 AD3d 1110, 1110 [2d Dept 2017]; *People v Samuels*, 12 AD3d 695, 698 [2d Dept 2004]; see CPL § 190.25 (6)), "a Grand Jury need not be instructed with the same degree of precision that is required when a petit jury is instructed on the law" (*People v Calbud, Inc.*, 49 NY2d 389, 394 [1980]; see *People v Caracciola*, 78 NY2d 1021, 1022 [1991]; *People v Batashure*, 75 NY2d 306, 311 [1990]; *People v Goetz*, 68 NY2d 96, 115 [1986]; *People v Valles* 62 NY2d 36, 38 [1984]; *People v Ruvalcaba*, 187 AD3d 1553, 1554 [4th Dept 2020], *lv. denied* 36 NY3d 1053 [2021]; *People v Tunit*, 149 AD3d at 1110; *People v Castaldo*, 146 AD3d 797, 798 [2d Dept 2017]; *People v Burch*, 108 AD3d

at 680; *People v Malan-Pomaeyna*, 72 AD3d 988 [2d Dept 2010]). It is well settled that such instructions are sufficient so long as they provide “enough information to enable [the grand jury] intelligently to decide whether a crime has been committed and to determine whether there exists legally sufficient evidence to establish the material elements of the crime” (*People v Calbud, Inc.*, 49 NY2d at 394-395; see *People v Valles* 62 NY2d at 38; *People v Tunit*, 149 AD3d at 1110-1111; *People v Patterson*, 73 AD3d 1215, 1215 [2d Dept 2010], *lv. denied* 15 NY3d 776 [2010]; *People v Malan-Pomaeyna*, 72 AD3d at 988).

Here, after an in-camera review of the unredacted certified copy of the stenographic transcript of the Grand Jury presentation on March 23, 2023, this Court determines that the Grand Jury proceeding was not defective and that the instructions given during the presentation were legally sufficient and proper.

Accordingly, for the reasons set forth above, Defendant’s motion to dismiss or reduce the charge contained within Indictment Number 70810-23 is denied.

## **2. MOTION TO SUPPRESS STATEMENTS.**

Defendant seeks suppression of the statements noticed pursuant to CPL § 710.30 (1) (a) on the grounds that “all statements made by the defendant were involuntary, and were taken in violation of his constitutional rights pursuant to *Miranda v Arizona*” (see Point II, Page 6, of Defendant’s Memorandum of Law).<sup>5</sup> In the alternative, Defendant requests a “pretrial hearing pursuant to *People v Huntley*” (*Id.* at Page 7).

In response, the People conclude their counter arguments by stating, “[a]s no conduct requiring suppression occurred prior to or during defendant’s statements and his statements were entirely voluntary, defendant’s motion to suppress his statements should be denied after a *Huntley* hearing” (see Point B, Page 11, of the People’s Memorandum of Law).

As the People have impliedly consented to a hearing to address Defendant’s claims regarding the voluntariness of his alleged statements, and based upon the issues raised by the parties, Defendant’s motion to suppress his statements is granted to the extent that a hearing

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<sup>5</sup> While Defendant references that he will also move to suppress his statements as violative of his Fourth Amendment rights (see Page 1, Paragraph (b), of Defendant’s Notice of Motion), no factual allegations or arguments in support of such ground are made in his Memorandum of Law and, consequently, that contention is not addressed by the Court.

pursuant to *People v Huntley*, 15 NY2d 72 [1965], will be conducted to determine the voluntariness and admissibility of the noticed statements.

### 3. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY.

Citing CPL Article 710 and *United States v Wade*, 338 US 218 (1967), Defendant moves to suppress “any identification of the defendant as being unreasonable and overly suggestive and in violation of defendant’s Fourth, Fifth and Sixth Amendment rights as guaranteed by the United States Constitution and the New York Constitution, Article 1, Section 6” (*see* Page 2, Paragraph (c), of Defendant’s Notice of Motion, and Point III, Pages 8-9, of Defendant’s Memorandum of Law). In the alternative, Defendant requests that the Court conduct a “pretrial *Wade* hearing” (*see* Page 2, Paragraph (c), of Defendant’s Notice of Motion).

In response, the People assert that Defendant’s motion should be denied for failure to allege sworn allegations of fact (*see* Point C, Page 12, of the People’s Memorandum of Law). The People further contend that the identifications pertain to the officer’s viewing of surveillance video subsequent to the crime on May 2, 2022, and during the grand jury presentation on March 23, 2023, and as the officer was “previously familiar with defendant,” the noticed identifications do not constitute identification procedures within the meaning of CPL § 710.30 (*Id.* at Page 13). Instead, the People aver that the officer was offering lay opinion testimony that the person depicted in the surveillance videos “entering unlawfully and stealing tools was defendant,” and that “[t]he witness’s prior familiarity with defendant [ ] renders any identification impervious to suggestion” (*Id.*). Lastly, the People state that they are “withdrawing the CPL 710.30 identification notice provided for the blind or double blind photographic array on May 25, 2022, at approximately 11:10 a.m., by NRPD to an employee of ASF Construction” (*Id.* at Page 12, Footnote 6).

Based upon the issues raised by the parties, and because the People contend that the officer’s familiarity with Defendant negates any possibility of suggestiveness regarding the three (3) remaining noticed identifications dated May 2, 2022, and March 23, 2023 (*see* Point C, Page 13 of the People’s Memorandum of Law), Defendant’s motion to suppress is granted to the extent that a hearing pursuant to *People v Rodriguez*, 79 NY2d 445, 454 [1992], will be conducted in connection with such identifications. If the People fail to make the required showing of sufficient familiarity, a *Wade* hearing will be held to determine whether those identification procedures were

unduly suggestive.

#### 4. MOTION FOR *SANDOVAL* AND *VENTIMIGLIA* HEARINGS.

Relying on *People v Sandoval*, 34 NY2d 371 [1974], and *People v Ventimiglia*, 52 NY2d 350 [1981], Defendant requests pretrial hearings to determine the scope and admissibility of “so-called acts of misconduct” during cross-examination of the defendant and of “so-called uncharged crimes and/or prior similar acts... which the People intend to introduce on their direct case or case-in-chief” (*see* Point IV, Page 10, of Defendant’s Memorandum of Law). Citing repealed CPL § 240.43, Defendant also requests timely notification of the acts of misconduct or criminality which the People intend to use for such purposes (*Id.* at Page 11).<sup>6</sup>

In response, the People acknowledge their *Sandoval* and *Ventimiglia* obligations and consent to hearings on same if such disclosure is made (*see* Point D, Page 15, of the People’s Memorandum of Law). The People also indicate that should they “seek to introduce defendant’s prior bad acts on their direct case [pursuant to *People v Molineux*, 168 NY 264 [1901]], the People will inform defense counsel and the Court and request a hearing before introducing such *Molineux* evidence” (*Id.*).

CPL § 245.20 (3) (a) provides, in substance and pertinent part, that “[t]he prosecution shall disclose to the defendant a list of all misconduct and criminal acts of the defendant not charged in the indictment, which the prosecution intends to use at trial for purposes of impeaching the credibility of the defendant.” To the extent that the People seek to use any of Defendant’s prior acts of misconduct or criminality on their direct case as substantive proof of any material issue in the case, CPL § 245.20 (3) (b) likewise obligates “[t]he prosecution [to] disclose to the defendant a list of all misconduct and criminal acts of the defendant not charged in the indictment, which the prosecution intends to use at trial [for such purpose].” Lastly, CPL § 245.20 (3) further requires that “the prosecution shall designate whether it intends to use each listed act for impeachment and/or as substantive proof.”

As the People have concededly not yet disclosed to the defendant a list of his acts of

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<sup>6</sup> This portion of Defendant’s motion is interpreted as having been made pursuant to CPL Article 245, which replaced CPL Article 240, effective January 1, 2020.

misconduct and criminality which the prosecution intends to use at trial for impeaching his credibility or as substantive proof of any material issue in the case, nor designated their intended use thereof, this Court will not order the requested *Sandoval* and *Ventimiglia* hearings at the present time. Should the People seek to use at trial any prior acts of misconduct or criminality of the defendant for CPL § 245.20 (3) (a) or (b) purposes, they are directed to disclose to Defendant a list of all such acts of misconduct and criminality and to designate the intended purpose of each listed act. Pursuant to CPL § 245.10 (1) (b), the People “shall perform [these] supplemental discovery obligations *as soon as practicable* but not later than fifteen (15) calendar days prior to the first scheduled trial date” (emphasis added). If the People do so, Defendant may renew his application to preclude the People’s use of such acts of misconduct or criminality at trial or, in the alternative, request a hearing thereon to determine the admissibility thereof. If the People fail to do so, no use of such acts will be permitted at trial.

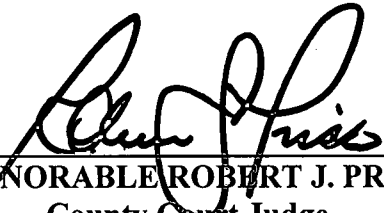
#### **5. RESERVATION OF RIGHTS TO MAKE ADDITIONAL PRE-TRIAL MOTIONS.**

Defendant’s request to make additional pre-trial motions (*see* Page 2 of Defendant’s Notice of Motion, and Point IV, Page 11, of Defendant’s Memorandum of Law) is granted to the extent that, if sought, he will be required to serve and file an Order to Show Cause detailing the reason(s) why said motions were not brought in conformity with the time provisions and motions practice set forth in CPL § 255.20 (1) and (2), respectively.

However, notwithstanding the provisions of CPL § 255.20 (1) and (2), this Court will “entertain and decide on its merits, at any time before the end of the trial, any appropriate pre-trial motion 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 within the period specified in [CPL § 255.20 (1)] or included within the single set of motion papers as required by [CPL § 255.20 (2)]” (CPL § 255.20 (3); *see People v Wisdom*, 23 NY3d 970, 972 [2014]; *People v Marte*, 197 AD3d 411, 413 [1st Dept 2021]; *People v Burke*, 174 AD3d 915, 915 [2d Dept 2019]; *People v Milman*, 164 AD3d 609, 610 [2d Dept 2018]).

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York  
July 28, 2023

  
HONORABLE ROBERT J. PRISCO  
County Court Judge

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