

**People v Williamson**

2023 NY Slip Op 34931(U)

October 11, 2023

Supreme Court, Westchester County

Docket Number: Indictment No. 23-71885

Judge: Anne E. Minihan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

FILED

OCT 27 2023

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

SUPREME COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

FILED  
AND ENTERED  
ON 10-11-2023  
WESTCHESTER  
COUNTY CLERK

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

-against-

MARQUISE WILLIAMSON

Defendant.

DECISION & ORDER  
Indictment No. 23-71885

-----X  
MINIHAN, J.

Defendant, Marquise Williamson, charged by Westchester County Indictment Number 23-71885 with Criminal Possession of a Weapon in the Second Degree (Penal Law § 265.03[3]), Criminal Possession of Stolen Property in the Second Degree (Penal Law § 165.52), Criminal Possession of Stolen Property in the Fourth Degree (Penal Law § 165.45[5]), and Unauthorized Use of a Vehicle in the Third Degree (Penal Law § 165.05[1]), has filed an Omnibus Motion consisting of a Notice of Motion and an Affirmation in Support. In response, the People filed an Affirmation in Opposition together with a Memorandum of Law.

I.

MOTION to DISMISS for FACIAL INSUFFICIENCY

Defendant moves to dismiss the indictment pursuant to CPL 210.25(1) on the ground that it is facially insufficient. This motion is denied.

The indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offenses charged and defendant's commission thereof with sufficient precision as to clearly apprise him of the conduct which is the subject of the indictment (CPL 200.50). The indictment charges each and every element of the crimes, and alleges that defendant committed the acts which constitute the crimes at a specified place during a specified time period and, therefore, is sufficient on its face (*People v Cohen*, 52 NY2d 584 [1981]; *People v Iannone*, 45 NY2d 589 [1978]). However, the phrase "THIS IS AN ARMED FELONY OFFENSE" appears under Counts 1, 2, and 3 of the indictment. The Court will entertain a motion by the People to strike that language as appropriate.

II.

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, provided by the People on October 2, 2023.

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 Attorney properly and clearly instructed the Grand Jury on the law, including advising them that the presumption in Penal Law § 265.15 is a permissive one and they were "not required to" follow it (*see People v Williams*, 136 AD2d 132 [2d Dept 1988]). Moreover, the Assistant District Attorney 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.

III.

#### MOTION for a BILL OF PARTICULARS

Defendant's request for a Bill of Particulars is denied as untimely (CPL 200.95). Moreover, in accordance with CPL Article 245, defendant has a large amount of discovery which will allow him to prepare and conduct a defense. Additionally, defendant is entitled to and has, or will have, a copy of the Grand Jury minutes and exhibits. The People have also provided specific facts of the case in their Affirmation in Opposition. As such, defendant's motion for a Bill of Particulars is denied.

IV.

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, defendant's motion is granted and such discovery, including both *Brady* material<sup>1</sup> and *Rosario* material, shall be provided forthwith. Leave is granted for either party to seek a protective order (CPL Article 245).

If the People have fulfilled their discovery obligations but have not yet filed a Certificate of Compliance, they are directed to do so forthwith 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.

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]).

V.

BRADY MATERIAL

The People acknowledge their continuing duty to disclose exculpatory material (*Brady v Maryland*, 373 US 83 [1963]; *see Giglio v United States*, 405 US 150 [1971]). The People also acknowledge that they have or will comply with their obligations under CPL 245.20(1) (k), (l), and (p). Again, if the People are or become aware of any such material which is arguably subject to disclosure under *Brady* and its progeny and Criminal Procedure Law Article 245 which they are unwilling to consent to disclose, they are directed to bring it to the immediate attention of the Court and to submit it for the Court's in camera inspection and determination as to whether it constitutes *Brady* material discoverable by defendant.

VI.

MOTION to PRECLUDE UNNOTICED STATEMENTS and  
UNNOTICED IDENTIFICATIONS

The motion to preclude the People from introducing statements and identifications at trial that were not noticed is denied as premature. The People acknowledge the statutory requirements of CPL 710.30. To the extent the People choose to cross-examine defendant, should he elect to

---

<sup>1</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 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 18, 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.

testify, the People are instructed to obtain a ruling from the trial court should they seek to impeach him with any unnoticed statements.

VII.

MOTION to SUPPRESS NOTICED STATEMENT

The People, pursuant to CPL 710.30(1)(a), noticed one statement allegedly made by defendant to members of the Westchester County Department of Public Safety on October 15, 2022 at approximately 9:45 P.M. Defendant moves to suppress this noticed statement as involuntary, the product of an unlawful arrest, made without being adequately apprised of *Miranda* warnings, and in violation of defendant's right to counsel. 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 statement was 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 statement was obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]), or his Sixth Amendment right to counsel.

VIII.

MOTION to SUPPRESS PHYSICAL EVIDENCE

Defendant moves to suppress physical evidence on the grounds that such evidence was seized pursuant to an illegal arrest not supported by probable cause. 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]).

Insofar as defendant challenges the seizure of evidence not obtained from his person, the pre-trial hearing will address whether defendant had a reasonable expectation of privacy in any of the locations searched to constitute standing to challenge the seizure of any physical evidence (*see Rakas v Illinois*, 439 US 128 [1978]; *People v Ramirez-Portoreal*, 88 NY2d 99 [1996]; *People v Ponder*, 54 NY2d 160 [1981]; *People v White*, 153 AD3d 1369 [2d Dept 2017]; *People v Hawkins*, 262 AD2d 423 [2d Dept 1999]). If it is determined that defendant has standing, then the *Mapp* hearing will also determine the propriety of the subject search and seizure.

IX.

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.

Pursuant to CPL § 160.40(2), defendant has asked the Court to provide him with a copy of his Division of Criminal Justice Services report (“RAP sheet”) to enable him to prepare for a *Sandoval* hearing. The Court does not have defendant’s RAP sheet and therefore directs the People to provide a copy to defendant, as required pursuant to CPL § 245.20(1)(p).

X.

HEARINGS CONDUCTED PRIOR to TRIAL

Defendant requests that pre-trial hearings be scheduled no less than twenty days before trial. 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.

XI.

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 11, 2023



Honorable Anne E. Minihan  
Justice of the Supreme Court