

**People v Atkinson**

2023 NY Slip Op 34932(U)

October 19, 2023

County Court, Westchester County

Docket Number: Indictment No. 71611-23

Judge: Robert J. Prisco

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.

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

-against-

LAMONT ATKINSON,

**FILED**

OCT 20 2023

JOSEPH C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

DECISION & ORDER

Indictment No: 71611-23

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

Defendant LAMONT ATKINSON is charged by Indictment Number 71611-23, with one count of Criminal Possession of a Controlled Substance in the Second Degree pursuant to Penal Law [PL] § 220.18 (2) [Count One], one count of Criminal Possession of a Controlled Substance in the Third Degree pursuant to PL § 220.16 (7) [Count Two], two counts of Criminal Possession of a Controlled Substance in the Third Degree pursuant to PL § 220.16 (13) [Counts Three and Five], two counts of Criminal Possession of a Controlled Substance in the Fourth Degree pursuant to PL § 220.09 (13) [Counts Four and Six], one count of Criminal Sale of a Controlled Substance in the Fourth Degree pursuant to PL § 220.34 (6) [Count Seven], one count of Criminal Possession of a Controlled Substance in the Fifth Degree pursuant to PL § 220.06 (1) [Count Eight], and one count of violating Vehicle and Traffic Law [VTL] § 375 (2) (a) (3) [Count Nine].

Counts One, Two, and Nine pertain to Defendant's alleged possession of methamphetamines with an aggregate weight of two ounces or more, and his operation of a motor vehicle with a broken tail lamp, at approximately 9:15 p.m., on April 16, 2023, on the Bronx River Parkway, in the City of White Plains.

Counts Three and Four pertain to Defendant's alleged unlawful possession of phencyclidine, weighing one thousand two-hundred fifty milligrams or more, with intent to sell such substance within an apartment located at 77 Ferris Avenue, in the City on White Plains, at approximately 12:30 p.m., on February 16, 2022.

Counts Five and Six pertain to Defendant's alleged unlawful possession of phencyclidine, weighing one thousand two-hundred fifty milligrams or more, with intent to sell such substance within a Cadillac located in the vicinity of Water Street and Cottage Avenue, in the City of White Plains, at approximately 8:40 a.m., on February 16, 2022.

Counts Seven and Eight pertain to Defendant's alleged unlawful possession of phencyclidine and the sale of such substance at approximately 4:44 p.m., on February 3, 2022, in the vicinity of 100 Fisher Avenue, in the City of White Plains.

On June 23, 2023, Defendant was arraigned by this Court on the charges contained in Indictment Number 71611-23. Attached to the Indictment is an Information accusing Defendant of having previously been convicted of Criminal Possession of a Controlled Substance in the Seventh Degree, on or about November 20, 2018, in the White Plains City Court. Also attached to the Indictment are three CPL § 710.30 (1) (a) Notices,<sup>1</sup> three (3) CPL § 710.30 (1) (b) Notices,<sup>2</sup> and the People's Demand for a Notice of Alibi pursuant to Criminal Procedure Law [CPL] § 250.20.

On June 30, 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.<sup>3</sup> Also attached to the Certificate of Compliance is an additional CPL 710.30 (1) (b) Notice,<sup>4</sup> 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 July 25, 2023, the People served and filed a Supplemental Certificate of Compliance, which also includes a "Statement of Readiness," wherein "[t]he People re-confirm and continue to announce their readiness for trial on all counts charged." Attached to the Supplemental Certificate

---

<sup>1</sup> The first and second CPL § 710.30 (1) (a) Notices pertain to electronically recorded oral statements and a signed statement, that were allegedly made by Defendant to members of the White Plains Police Department at approximately 8:40 a.m., and 4:00 p.m., on February 16, 2022. The third CPL § 710.30 (1) (a) Notice pertains to electronically recorded oral statements that were allegedly made by Defendant to members of the White Plains Police Department at approximately 9:15 p.m., on or about April 16, 2022.

<sup>2</sup> The three CPL § 710.30 (1) (b) Notices pertain to identifications that allegedly occurred subsequent to the commission of the crimes on or about February 3, 16, and April 16, 2022.

<sup>3</sup> During a Court appearance on July 14, 2023, defense counsel acknowledged receipt of the People's Certificate of Compliance dated June 30, 2023, and the additional CPL § 710.30 (1) (b) Notice. The People confirmed their readiness for trial on the record when the Court made inquiry thereof pursuant to CPL § 30.30 (5).

<sup>4</sup> The CPL § 710.30 (1) (b) Notice pertains to a single photo identification that allegedly occurred on or about February 16, 2022.

of Compliance are Discovery Package Transmittal Notices from the Westchester County District Attorney's Office which delineates the dates, times and methods of such disclosures.

On September 15, 2023, the Court received Defendant's Notice of Motion, an Attorney's Affirmation in Support of Omnibus Motion (hereinafter "Defendant's Affirmation"), and a Memorandum of Law in Support of Defendant's Pre-Trial Motions (hereinafter "Defendant's Memorandum of Law"), seeking various forms of judicial intervention and relief.

On September 29, 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 the unredacted certified copies of the stenographic transcripts of the Grand Jury proceedings dated June 6, and 12, 2023, along with copies of the Grand Jury exhibits that were received in evidence. The Court has further been provided with Search Warrant Applications and Orders dated February 12, and 16, 2022. Lastly, the Court is in receipt of a letter from the People dated September 29, 2023, with an attached list "of defendant's prior bad acts and criminal convictions, and a designation of whether the People will use these acts to impeach defendant should he testify (*Sandoval*) or use them on [the People's] direct case (*Molineux/Ventimiglia*)."

After consideration of the above referenced submissions and unredacted certified stenographic transcripts, the Court decides Defendant's Motion as follows:

**1. MOTION FOR INSPECTION OF THE GRAND JURY MINUTES AND DISMISSAL OR REDUCTION OF THE CHARGES CONTAINED IN INDICTMENT NUMBER 71611-23 DUE TO THE LEGAL INSUFFICIENCY OF THE EVIDENCE PRESENTED AND THE INSTRUCTIONS PROVIDED.**

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 71611-23, or certain counts thereof, "as not supported by legally sufficient evidence" (*see* Paragraph (a), Page 1, of Defendant's Notice of Motion, and Point I, Page 2, of Defendant's Memorandum of Law).<sup>5</sup> Defendant also requests inspection of the minutes of the Grand Jury proceeding to determine

---

<sup>5</sup> Defendant also requests that the Court "determine whether the evidence was sufficient to establish that defendant, LAMONT ATKINSON, was properly identified as the perpetrator of the alleged crimes" (*see* Point I, Page 2, of Defendant's Memorandum of Law).

whether the provided instructions were legally sufficient and proper and whether the Grand Jury proceeding was defective (*see* Point I (a)- (u), 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 (*see* Point I, Page 1, 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 transcripts of the grand jury testimony, to the extent that Defendant is requesting the Grand Jury minutes in their entirety, such request is denied.

The Court has conducted an in-camera review of the entirety of the Grand Jury proceeding, having examined the unredacted certified copies of the stenographic transcripts of the June 6, and 12, 2023 presentations.

On June 6, 2023, prior to the commencement of the given sworn testimony, the People specifically inquired of and confirmed with the foreperson that twenty (20) grand jurors were present. On June 12, 2023, prior to instructing the grand jurors on the applicable law, the People confirmed with the foreperson that eighteen (18) grand jurors were present throughout the presentation of the case. These measures satisfy this Court that the eighteen (18) grand jurors who deliberated and voted on the charges contained in Indictment Number 71611-23 were present throughout the two-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 charges contained in Indictment Number 71611-23.

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 copies of the stenographic transcripts of the Grand Jury presentations on June 6, and 12, 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

charges contained within Indictment Number 71611-23 is denied.

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

Citing CPL Article 710, Defendant moves to suppress “evidence of statements made by the defendant” (*see* Paragraph (b), Page 1, of Defendant’s Notice of Motion, and Point II, Page 6, of Defendant’s Memorandum of Law). In the alternative, Defendant requests that the Court conduct a “Huntley hearing” (*see* Paragraph (b), Page 1, of Defendant’s Notice of Motion, and Page 2, Paragraph 5, of Defendant’s Affirmation).

As the People have consented to a hearing to address Defendant’s claims regarding the voluntariness of his alleged statements, Defendant’s motion to suppress such statements is granted to the extent that a *Huntley* hearing will be conducted to determine their voluntariness and admissibility.

## **3. MOTION TO SUPPRESS PHYSICAL EVIDENCE AND TO CONTROVERT THE SEARCH WARRANTS.**

Citing CPL Article 710, *Mapp v Ohio*, 367 US 643 [1961], and *Dunaway v New York*, 442 US 200 [1979], Defendant moves to suppress any “tangible property seized from [him] and any items, property or statements derived therefrom as such seizure occurred in violation of rights secured to [him] under the Constitutions of the United States and the State of New York” (*see* Paragraph (c), Page 1, of Defendant’s Notice of Motion, and Point III, Page 7, of Defendant’s Memorandum of Law). In the alternative, Defendant seeks a *Mapp/Dunaway* hearing” (*Id.*).

Defendant also moves to controvert the search warrants issued on February 12, and 16, 2022, as “based on insufficient probable cause” (*see* Pages 3-4 of Defendant’s Affirmation, and Point III, Page 7, of Defendant’s Memorandum of Law). Defendant contends that “the basis for the warrant ... specifically, the alleged police observations and subsequent arrest of the alleged buyer, raise substantial doubt as to the validity of the warrant” (*see* Point III, Page 7, of Defendant’s Memorandum of Law). Further, with respect to the search of the fourth-floor apartment located at 77 Ferris Avenue, Defendant contends that the police took keys from him during his arrest on February 16, 2022, and used the keys to open the apartment, even though they did not have a warrant at that time to search the apartment (*see* Page 4 of Defendant’s Affirmation).

In response, “[t]he People consent to a *Mapp* hearing, [but contend] that no *Mapp* hearing

should be held with respect to [a] Ziploc bag with PCP that was seized from Timothy Dubois on February 3, 2022” because “the defendant has no standing to challenge [that] search or seizure of evidence” (*see* Point III, Page 11, of the People’s Memorandum of Law).

The People further state that a *Mapp* hearing should not be held in connection with the evidence seized pursuant to the search warrant dated February 16, 2022, as “[t]he police had probable cause to arrest [the defendant] ... because of their observations of his sale of PCP to Timothy Dubois on February 3, 2022, and because the police had a warrant to seize the defendant, as granted by Judge Collins in the search warrant” (*see* Point III, Pages 11-12, of the People’s Memorandum of Law). According to the People, upon Defendant’s arrest, the police seized evidence, which included keys to his apartment (*Id.* at Page 12).<sup>6</sup>

“The invocation of the right to be secure against unreasonable searches and seizures and its exclusionary enforcement require personal standing to challenge the government’s action” (*People v Rice*, 204 AD3d 834, 836 [2d Dept 2022], quoting *People v Rodriguez*, 69 NY2d 159, 161 [1987]). “There is no legal basis for suppression ... unless the accused alleges facts that, if true, demonstrate standing to challenge the search or seizure” (*People v Santiago*, 176 AD3d 744, 745 [2d Dept 2019], quoting *People v Burton*, 6 NY3d 584, 587 [2006]; *see People v Scully*, 14 NY3d 861, 864 [2010]; *People v Gilmore*, 183 AD3d 838, 838 [2d Dept 2020]; *People v Kluge*, 180 AD3d 705, 707 [2d Dept 2020]). “Standing exists where a defendant was aggrieved by a search of a place or object in which he or she had a legitimate expectation of privacy” (*People v Burton*, 6 NY3d at 587, citing *People v Ramirez–Portoreal*, 88 NY2d 99, 108 [1996]; *see People v Harris*, 192 AD3d 151, 157 [2d Dept 2020]; *People v McCullum*, 159 AD3d 8, 13 [2d Dept 2018], *aff’d* 34 NY3d 1022 [2019]), which “society recognizes as reasonable” (*People v Leach*, 21 NY3d 969, 971 [2013], quoting *People v Ramirez–Portoreal*, 88 NY2d at 108; *see People v Diaz*, 33 NY3d 92, 98 [2019]; *People v. Santiago*, 176 AD 3d at 745; *People v Worrell*, 170 AD3d 1048, 1050 [2d Dept 2019]; *People v McCullum*, 159 AD3d at 13).” “A person who is aggrieved by an [alleged] illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person’s premises or property has not had any of his Fourth

---

<sup>6</sup> The People state that, although “[t]he defendant contends that the police used keys seized from the defendant to open a door not listed in the original warrant, [t]he police [ ] never entered the apartment, and never conducted a search” (*see* Point III, Page 11, Footnote 4, of the People’s Memorandum of Law). The People further state that the police “only verified which apartment was the defendant’s using this key, which was lawfully obtained pursuant to a search incident to an arrest, and thus supplied probable cause for the search of Apartment #4 as set forth in the amended search warrant.” (*Id.*)

Amendment rights infringed” (*People v Rice*, 204 AD3d 834, 836 [2d Dept 2022], quoting *Rakas v Illinois*, 439 US 128, 134 [1978]) and “[a] defendant seeking suppression of evidence has the burden of establishing standing” (*People v Rice*, 204 AD3d at 836, quoting *People v Ramirez-Portoreal*, 88 NY2d at 108; see *People v Wesley*, 73 NY2d 351, 359 [1989]; *People v Rodriguez*, 69 NY2d 159, 163 [1987]; *People v McCullum*, 159 AD3d at 13; *People v Oliver*, 39 AD3d 880, 880 [2007], *lv. dismissed* 9 NY3d 868 [2007]). “This burden is satisfied if the accused subjectively manifested an expectation of privacy with respect to the location or item searched that society recognizes to be objectively reasonable under the circumstances” (*People v Burton*, 6 NY3d at 588; see *People v Rice*, 204 AD3d at 836; *People v Kluge*, 180 AD3d at 707).

With respect to the alleged recovery of a Ziploc bag from Timothy Dubois on February 3, 2022, the People assert that Defendant “has no standing to challenge this search or seizure of evidence” (see Point III, Page 11, of the People’s Memorandum of Law). Defendant has not refuted the People’s assertion and he has failed to satisfy his burden of establishing standing to challenge the search of a third party. Accordingly, Defendant’s motion to suppress any evidence recovered from Mr. Dubois is denied.

Turning to the search warrants at issue, a court reviewing a search warrant is required to give the issuing court “great deference” in determining whether there was probable cause, as a presumption of validity attaches to a search warrant approved by a magistrate who reviewed the underlying application and found sufficient evidence of probable cause (*People v Castillo*, 80 NY2d 578, 585 [1992], *cert. denied* 507 U.S. 1033 [1993]; see *People v Griminger*, 71 NY2d 635, 640 [1988]; *People v Conway*, 218 AD3d 1286, 1289 [4th Dept 2023]; *People v Crupi*, 172 AD3d 898, 898 [2d Dept 2019], *lv. denied* 34 NY3d 950 [2019]; *People v Jemmott*, 164 AD3d 953, 953-954 [3d Dept 2018], *lv. denied* 32 NY3d 1112 [2018]). To establish probable cause, “[t]he search warrant application must provide the court with information sufficient to support a reasonable belief that evidence of illegal activity will be present at the specific time and place of the search” (*People v Rivera*, 210 AD3d 805, 806 [2d Dept 2022], quoting *People v Corr*, 28 AD3d 574, 575 [2d Dept 2006], *lv. denied* 7 NY3d 787 [2006]; see *People v Bigelow*, 66 NY2d 417, 423 [1985]; *People v Fraser*, 210 AD3d 697, 698 [2d Dept 2022]; *People v Fernandez*, 210 AD3d 693, 693-694 [2d Dept 2022]; *People v Abad*, 208 AD3d 892, 893 [2d Dept 2022]; *People v Morel*, 195 AD3d 946, 947 [2d Dept 2021]; *People v Hedrington*, 186 AD3d 1245, 1245 [2d Dept 2020], *lv. denied* 36 NY3d 929 [2020]; *People v Lambey*, 176 AD3d 1232, 1233 [2d Dept 2019]; *People v*

*Murray*, 136 AD3d 714, 714 [2d Dept 2016], *lv. denied* 27 NY3d 1003 [2016]. “In reviewing the validity of a search warrant to determine whether it was supported by probable cause or whether it contained a sufficiently particular description of its target, the critical facts and circumstances for the reviewing court are those which were made known to the issuing Magistrate at the time the warrant application was determined” (*People v Gordon*, 36 NY3d 420, 429 [2021], quoting *People v Nieves*, 36 NY2d 396, 402 [1975]; see *People v Edwards*, 69 NY2d 814, 816 [1987]; *People v Conway*, 218 AD3d at 1289; *People v Pitcher*, 199 AD3d 1493, 1494 [4th Dept 2021]; *People v Ferguson*, 136 AD3d 1070, 1072 [3d Dept 2016]).

According to the People, at approximately 9:00 a.m., on February 16, 2022, “members of WPPD began to execute the search warrant [issued by White Plains City Court Justice John Collins on February 12, 2022] at 77 Ferris Avenue Apartment #3, however it was quickly learned that the defendant did not live there, but actually lived one floor above, in Apartment #4” (see Page 3 of the People’s Affirmation in Opposition). “This was confirmed by members of WPPD when speaking with residents of the building, re-interviewing the defendant’s parole officer, and testing, without entering, that the house key the defendant had with him was able to unlock the door to Apartment #4” (see Pages 3-4, of the People’s Affirmation in Opposition). Further, the People state that, “[a]fter it was confirmed that the defendant actually lived in Apartment #4, Detective Bucci amended a portion of the [February 12, 2022] search warrant application,<sup>7</sup> [and sought] authorization to search Apartment #4 of 77 Ferris Avenue, which was granted by Justice Collins on February 16, 2022, at 12:05 p.m.” (*Id.* at Page 4).

After reviewing the critical facts and circumstances that were made known to Justice Collins on February 12, and 16, 2022, the dates that the search warrant applications were determined, this Court finds that such applications were supported by probable cause and contained sufficiently particular descriptions of the items and property to be searched. Accordingly, Defendant’s motion to suppress any and all evidence seized pursuant to the search warrants is denied.

---

<sup>7</sup> On February 12, 2022, a search warrant was issued, authorizing the search of an apartment located at “77 Ferris Avenue, Third Floor;” “the person of Lamont Atkinson;” “a black 4-door 2004 BMW 530i;” “any telephones seized as a result of the searches of the above-described premises and persons;” and “any person located therein.” On February 16, 2022, an amended search warrant was issued authorizing the search of an apartment located at “77 Ferris Avenue, *Fourth Floor*” (emphasis added).

However, as the People have consented to a *Mapp* hearing, Defendant's motion is granted to the extent that hearings pursuant to *Mapp v Ohio*, 367 US 643 [1961], and *Dunaway v New York*, 442 US 200 [1979], will be conducted to determine the admissibility of any evidence that was recovered outside the purview of the search warrants and not from the person of Timothy Dubois.

#### 4. MOTION TO SUPPRESS IDENTIFICATION TESTIMONY.

Citing CPL Article 710, Defendant moves to suppress any "pre-trial identifications of the defendant noticed by the People" on the ground that they were unduly suggestive (*see* Paragraph (d), Page 2, of Defendant's Notice of Motion, Page 2, Paragraph 6, of Defendant's Affirmation, and Point IV, Page 9, of Defendant's Memorandum of Law). In the alternative, Defendant requests that the Court conduct a "*Wade* hearing" (*see* Paragraph (b), Page 1, of Defendant's Notice of Motion).

In response, the People contend that "the defendant's motion to suppress the identification testimony should be denied as no identification procedure as set forth under CPL 710.30 [1] [b] was had, or otherwise should be denied after a *Wade* hearing" (*see* Point IV, Page 15, of the People's Memorandum of Law). Specifically, the People contend that "[t]he police officers who identified the defendant ... had not previously identified him or a pictorial, photographic, electronic, filmed or video recorded reproduction of him" (*Id.* at Page 14). Therefore, the People contend that "notice of these identifications by members of WPPD was sent only out of an abundance of caution, and that the identifications were noticed does not transform them into an identification procedure" (*Id.*).

Moreover, according to the People, the three (3) CPL § 710.30 (1) (b) notices are based upon "members of WPPD viewing [ ] the defendant prior to, during, and/or just after the commission of the defendant's crime" (*see* Point IV, Page 14, of the People's Memorandum of Law). However, a fourth CPL § 710.30 (1) (b) notice is attached to the People's Certificate of Compliance dated June 30, 2023, and pertains to an identification that allegedly occurred from a single photograph.

Based upon the issues raised by the parties, Defendant's motion to suppress is granted to the extent that a *Wade* hearing will be held in connection with the four (4) noticed identifications.

## 5. MOTION FOR SEVERANCE OF CHARGED COUNTS.

Citing CPL § 200.20 (3), Defendant moves to sever “Counts 1, 2, and 9; Counts 3 through 6; and Counts 7 and 8 of the Indictment” (*see* Paragraph (e), Page 2, of Defendant’s Notice of Motion, and Point V, Page 10, of Defendant’s Memorandum of Law). Specifically, Defendant contends that “the incidents alleged to have taken place involve different ... dates and [ ] different levels of charges,” that “the prejudicial effect of allowing all of these allegations to be tried together is overwhelming,” and that “the defendant may choose to give testimony regarding one incident and not the other incident” (*see* Point V, Page 10, of Defendant’s Memorandum of Law).

In response, the People contend that “Defendant’s motion should be denied because the charges are properly joined pursuant to CPL 200.20 [2] [b]” (*see* Point V, Page 16, of the People’s Memorandum of Law). The People further contend that, in the alternative, “the offenses are joinable pursuant to CPL 200.20 [2] [c] and [d], and [that] the defendant has failed to demonstrate ‘good cause’ for severance” (*see* Point V, Pages 16- 18, of the People’s Memorandum of Law).

Pursuant to CPL § 200.20 (2) (b), “[t]wo offenses are ‘joinable’ when [e]ven though based upon different criminal transactions, such offenses, or the criminal transactions underlying them, are of such nature that either proof of the first offense would be material and admissible as evidence in chief upon a trial of the second, or proof of the second would be material and admissible as evidence in chief upon a trial of the first.”

The People contend that “evidence in each case is material and admissible as evidence in chief for the other counts in the indictment,” as the “proof of one is admissible to show motive, opportunity, intent, preparation, identity, absence of mistake or accident, knowledge, or a common scheme or plan in the other[s]” (*see* Point V, Page 16, of the People’s Memorandum of Law). Here, the People argue that “evidence of the defendant’s sale of PCP to Timothy Dubois on February 3, 2022 is material and admissible as evidence in chief for Counts 3 through 6 because it explains how and why Detective Bucci applied for and was granted a search warrant to search the apartment, to search the black BMW, and to arrest Mr. Atkinson, which led to his removal from the Cadillac vehicle on February 16, 2022, which subsequently led to the transport of the vehicle back to WPPD headquarters” (*Id.*). The People further argue that “the evidence of the February 16, 2022 offenses [is] material and admissible as evidence in chief for Counts 1, 2, and 9 because [it] explain[s] the basis for the defendant’s summary arrest after the traffic stop on April 16, 2022, since the defendant was arrested pursuant to a summary arrest from the PCP that was present in

the Cadillac vehicle he was driving on February 16, 2022” (*Id.*). Lastly, the People aver that “[t]his was also the basis to conduct an inventory impound on the black BMW on April 16, 2022, which led to the recovery of the pills containing methamphetamine, for which he is charged in the indictment” (*Id.* at Pages 16-17).

As the Court finds that the offenses are properly joined pursuant to CPL § 200.20 (2) (b), the Court lacks the statutory authority to sever the charges contained within the indictment and cannot consider Defendant’s claim that severance should be granted in the interest of justice and for good cause shown within the meaning of CPL § 200.20 (3) (b) (*see People v Bongarzone*, 69 NY2d 892, 895 [1987]; *People v Dixon*, 211 AD3d 1030, 1031 [2d Dept 2022]; *People v McKay*, 197 AD3d 992, 993 [4th Dept 2021], *lv. denied* 37 NY3d 1060 [2021]; *People v Smith*, 186 AD3d 1106, 1107-1108 [4th Dept 2020]; *People v Animshaun*, 186 AD3d 497, 497 [2d Dept 2020], *lv. denied* 35 NY3d 1111 [2020]; *People v Zinaman*, 259 AD2d 327, 327 [1st Dept 1999], *lv. denied* 93 NY2d 931 [1999]).

Consequently, Defendant’s motion for severance is denied.

#### **6. MOTION FOR PRECLUSION OF DEFENDANT’S PRIOR CRIMES OR BAD ACTS; ASSOCIATED SANDOVAL AND VENTIMIGLIA HEARINGS.**

Relying on *People v Sandoval*, 34 NY2d 371 [1974], and *People v Ventimiglia*, 52 NY2d 350 [1981], Defendant requests “a hearing to determine the admissibility of any prior criminal or bad acts for use by the [P]eople on their direct case or during the cross examination of the defendant” (*see* Paragraph (f), Page 2, of Defendant’s Notice of Motion).

In response, the People consent to *Sandoval* and *Ventimiglia* hearings (*see* Point VI, Pages 19-20, of the People’s Memorandum of Law) and, pursuant to their discovery obligations under CPL § 245.20 (3), previously provided a list of “the defendant’s prior criminal convictions and bad acts that the People intend to use at trial against the defendant for *Sandoval* purposes” (*Id.* at Page 19).

Accordingly, as the People have complied with their discovery obligations under CPL § 245.20 (3), Defendant’s request for *Sandoval* and *Ventimiglia* hearings is granted on consent, and they will be conducted immediately prior to trial.

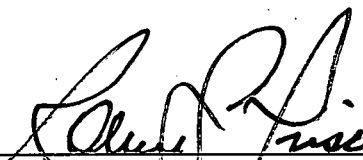
**7. RESERVATION OF RIGHT TO MAKE ADDITIONAL PRE-TRIAL MOTIONS.**

Defendant's request to make additional pre-trial motions (*see* Page 2 of Defendant's Notice of Motion, and Page 13 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 the Court.

Dated: White Plains, New York  
October 19, 2023

  
\_\_\_\_\_  
**HONORABLE ROBERT J. PRISCO**  
County Court Judge

To: HON. MIRIAM E. ROCAH  
Westchester County District Attorney  
111 Dr. Martin Luther King Jr. Blvd.  
White Plains, New York 10601  
Attn: Assistant District Attorney Leigh G. Wellington

RICHARD L. FERRANTE, ESQ.  
Attorney for Defendant Lamont Atkinson  
399 Knollwood Road, Suite 111  
White Plains, New York 10603