

**People v Marte**

2024 NY Slip Op 35142(U)

March 14, 2024

County Court, Westchester County

Docket Number: Indictment No. 73237-23

Judge: Maurice Dean Williams

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 OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

**FILED** 

**DECISION & ORDER**

-against-

**MAR 19 2024**

Indictment No. 73237-23

DERLY MARTE,

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Defendant.

-----X  
Williams, J.C.C.

Defendant, Derly Marte, is charged by Indictment No. 73237-23 with one count of Grand Larceny in the Third Degree (P.L. § 155.35 [1]), and one count of Attempted Grand Larceny in the Third Degree (P.L. § 110/155.35 [1]). It is alleged that on or about, September 15, 2023, in the Town of Harrison, County of Westchester, State of New York, the Defendant while aiding, abetting and acting in concert with co-defendant, Jaime Castillo, stole \$9,000.00 as part of a scam from the victim by alleging the money was needed to post bail for the victim's relative, and attempting to steal an additional \$11,000 from the same victim.

By notice of motion, affirmation and accompanying memorandum of law, the Defendant moves for omnibus relief seeking 1) demand for discovery; 2) inspection of the Grand Jury minutes and dismissal and/or reduction of the charges in the indictment; 3) a *Sandoval* and *Ventimiglia* hearing; 4) to strike the statement notice served by the People; 5) the suppression of statements made by the Defendant, or a *Huntley* hearing; 6) the suppression of any physical evidence; 7) to sever the indictment; 8) to strike the alibi notice as unconstitutional; 9) Brady material; and 10) to strike certain language from the indictment.

The People have submitted an affirmation and memorandum of law in opposition which consents to the inspection of the Grand Jury minutes, and the request for a *Huntley*

(voluntariness), *Sandoval* and *Ventimiglia* hearing. Upon consideration of these papers, as well as the review of the Grand Jury minutes, the Defendant's motion is decided as follows:

**I. Motion for Discovery**

This motion is denied as moot. Defendant sought the production of the materials downloaded from his cell phone. The People have represented that they provided the requested materials on or about February 2, 2024. To the extent the materials have already been provided there is no issue for the Court to resolve. The parties are reminded of their respective discovery obligations under the Criminal Procedure Law.

**II. Motion to Inspect the Grand Jury Minutes and to Dismiss and/or Reduce the Indictment**

Pursuant to CPL §§ 210.20[1][b] and 210.30, Defendant requests an *in camera* inspection of the Grand Jury minutes and if the Court finds the evidence was not legally sufficient to sustain all or a portion of the charges, or finds that the Grand Jury proceedings were defective, seeks dismissal of the indictment. The People have consented to an *in camera* inspection of the Grand Jury minutes stating that a review of the minutes will demonstrate the Grand Jury was presented competent evidence sufficient to support every charge within the indictment, and that the proceedings were legally proper.

The application is granted only to the extent that the Court has conducted an *in camera* inspection of the minutes of the Grand Jury proceedings and finds as follows: that the indictment is supported by legally sufficient evidence and there were no procedural irregularities. 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" (*People v. Jensen*, 86 N.Y.2d 248, 251, 630 N.Y.S.2d 989 [1995]). Judicial scrutiny is limited to determining "whether the evidence viewed in the light most favorable to the People, if unexplained and

uncontradicted, would warrant conviction by a petit jury” (*People v. Mayer*, 1 A.D.3d 461, 463, 768 N.Y.S.2d 222, 225 [2<sup>nd</sup> Dept. 2003]; see *People v. Jennings*, 69 N.Y.2d 103, 512 N.Y.S.2d 652).

Upon review of the evidence presented, this Court finds that all counts of the indictment were supported by sufficient evidence (*People v. Calbud, Inc.*, 49 N.Y.2d 389, 426 N.Y.S.2d 238 [1980]), that the Grand Jury was properly instructed (*People v. Valles*, 62 N.Y.2d 36, 476 N.Y.S.2d 50 [1984]), and a quorum of grand jurors were present throughout the People’s presentation (*People v. Collier*, 72 N.Y.2d 298, 532 N.Y.S.2d 718 [1988]). Moreover, there was sufficient evidence connecting the Defendant to the crimes charged and there were no other defects within the meaning of CPL § 210.35 which would warrant dismissal of the instant indictment.

Accordingly, this branch of the Defendant’s motion seeking dismissal and/or the reduction of any charges in the indictment is denied.

### **III. Motion for a Sandoval/Ventimiglia Hearing**

Defendant’s request for a *Sandoval/Ventimiglia* hearing is granted, on consent, and shall be conducted immediately prior to trial as to any prior criminal convictions, or prior uncharged crimes, vicious or immoral or bad acts.

The People must notify the Defendant, in compliance with CPL § 245.20, not less than fifteen days prior to the first scheduled date for trial, of all specific instances of the Defendant’s criminal, prior uncharged criminal, bad acts, vicious or immoral conduct of which the People have knowledge and intend to use at trial for purposes of impeaching the credibility of the Defendant, or as substantive proof of any material issue in the case. The People shall specifically designate the way such act will be used.

**IV & V. Motion to Strike the Statement Notice and Motion to Suppress Statements**

Defendant has moved to strike the statement notice as insufficient and to suppress the statements made to law enforcement officials which were the subject of the CPL § 710.30 notice served by the People. The People served a notice with respect to oral statements that were made by the Defendant to Town of Harrison Police Department Detectives Christopher Murabito and Antony Salvo on September 26, 2023 at 12:06 p.m and were recorded electronically. Defendant contends that the statement notice fails to provide the circumstances or identities as required.

The motion to strike the notice is denied. The information provided in the notice that was served is sufficient to provide the Defendant with the required notice to adequately prepare for a suppression hearing (*see* CPL 710.30 [1][a]). The notice informs Defendant of the type of statement made-oral and electronically recorded, and provides the date, time, place and to whom they were made. Further, a copy of the statements in disk format was served with the notice.

Defendant further contends any statements were involuntarily made and there was not a knowing and voluntary waiver of his 5<sup>th</sup> or 6<sup>th</sup> amendment rights. The People contend all noticed statements were voluntary and there was no violation of the defendant's rights. A copy of Miranda warnings in Spanish, purportedly signed by the Defendant are annexed to the opposition papers.

This branch of Defendant's motion is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine the admissibility and voluntariness of any statements allegedly made by the defendant that were noticed by the People pursuant to CPL § 710.30[1][a] (*see* CPL § 710.60[4]; 60.45; CPL § 710.20[3]; *People v. Weaver*, 49 N.Y.2d 1012, 429 N.Y.S.2d 399 [1980]).

## VI. Motion to Suppress Physical Evidence

Defendant moves to suppress all physical evidence seized by law enforcement officers following his arrest, namely a cell phone, a tablet and bag of clothing. The People assert the Defendant's fourth amendment motion should be summarily denied for failure to assert sworn allegations of fact as required.

Pursuant to CPL § 710.60, a motion for suppression must state the grounds for the motion and contain sufficient sworn allegations of fact otherwise it may be summarily denied. The sufficiency of the factual allegations will be "(1) evaluated by the face of the pleadings, (2) assessed in conjunction with the context of the motion and (3) evaluated by defendant's access to information" (*see People v. Bryant*, 8 N.Y.3d 530, 533, 838 N.Y.S.2d 7 [2007]). Although summary denial of a suppression motion may be permissible, it is not mandatory even where the factual allegations within the motion are deficient (*see People v. Mendoza*, 82 N.Y.2d 415, 604 N.Y.S.2d 922 [1993]). Ultimately, even if the factual allegations are sparse, it is left within the sound discretion of the Court to determine if a hearing should be granted.

This branch of Defendant's motion is granted as a sufficient factual dispute has been raised regarding whether there was probable cause for the arrest. Defendant contends the victim described an individual matching the description of his co-defendant collecting the funds requested as part of the scam on September 15, 2023. The arrest of Defendant occurred on September 26, 2023, while he was sitting in a car with the individual who matched the victim's description. Defendant contends there was no probable cause for his arrest. This is sufficient to raise a factual dispute warranting a hearing being held pursuant to (*Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct.1684, 6 L.Ed.2d 1081 [1961]) and *Dunaway v. New York*, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), to determine whether there was probable cause for the Defendant's

arrest and whether evidence obtained from Defendant as a result of the arrest should be suppressed as the product of an unlawful seizure or other violation of his rights.

**VII. Motion to Sever**

Next, Defendant moves for severance of the trial from that of his co-defendant alleging undue prejudice would result if they were tried together. This motion is denied without prejudice to renew if circumstances change. The co-defendant, Jaime Castillo, plead guilty before this Court on February 7, 2024 and is scheduled to be sentenced in May. Considering the co-defendant's guilty plea and anticipated sentence, this renders moot the request for severance.

**VIII. Motion to Strike Alibi**

Regarding the Defendant's motion to strike the alibi demand alleging it is unconstitutional, the motion is denied. The People's demand pursuant to CPL § 250.20 meets due process requirements (*see People v. Peterson*, 96 A.D.2d 871, 465 N.Y.S.2d 743 [2<sup>nd</sup> Dept. 1983]). There is no merit to the Defendant's contention that CPL § 250.20 is unconstitutional (*see People v. Dawson*, 185 A.D.2d 854, 587 N.Y.S.2d 358 [2<sup>nd</sup> Dept. 1992]; *People v. Cruz*, 176 A.D.2d 751, 574 N.Y.S.2d 1006 [2<sup>nd</sup> Dept. 1991]; *People v. Gill*, 164 A.D.2d 867, 559 N.Y.S.2d 376 [2<sup>nd</sup> Dept 1990]).

**IX. Motion for Exculpatory Information**

With respect to the Defendant's request for the People to produce exculpatory material or impeachment material within the meaning of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.E.2d 215 [1963] and *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.E.2d 104 [1972] within their possession: The People have acknowledged and are reminded of their continuing obligation to disclose any exculpatory evidence and impeachment material at the earliest possible date.

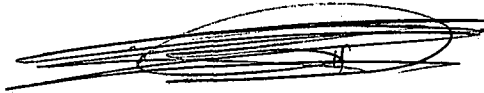
**X. Motion to Strike Language in the Indictment**

Finally, the Defendant's motion to strike allegedly prejudicial language from the indictment is denied. The phrase "against the peace and dignity of the People of the State of New York" merely identifies the Defendant's alleged acts as public, rather than private, wrongs (see *People v. Winters*, 194 A.D.2d 703, 599 N.Y.S.2d 293 [2<sup>nd</sup> Dept. 1993]; *People v. Gill*, 164 A.D.2d 867, 559 N.Y.S.2d 376 [2<sup>nd</sup> Dept. 1990]).

This constitutes the decision and order of this Court.

Dated: White Plains, New York

*March 14, 2024*



Hon. Maurice Dean Williams  
County Court Judge

**Hon. Maurice Dean Williams**  
**County Court Judge**

CLERK OF COURT  
COUNTY OF WESTCHESTER  
CLERK OF COURT  
COUNTY OF WESTCHESTER  
CLERK OF COURT  
COUNTY OF WESTCHESTER