

**People v Long**

2022 NY Slip Op 34819(U)

October 26, 2022

Supreme Court, Westchester County

Docket Number: Ind. No. 22-71500-02

Judge: Robert A. Neary

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COUNTY CLERK  
COUNTY OF WESTCHESTER**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X

THE PEOPLE OF THE STATE OF NEW YORK

- against -

DECISION AND ORDER

ALFRED LONG, ALEXANDER WILSON and  
TYRESE ROBINSON aka NYKEM ALSTON,

Ind. No. 22-71500-02

Defendants.

-----X

NEARY, J.

The defendant, Alexander Wilson, has been charged with the crimes of Robbery in the Second Degree, Grand Larceny in the Second Degree, Burglary in the Third Degree, Criminal Possession of Stolen Property in the Second Degree and Criminal Mischief in the Second Degree. The defendant has made an omnibus motion which consists of a Notice of Motion and an Affirmation and Memorandum of Law in support thereof. In response, the People

have filed an Affirmation in Opposition together with a Memorandum of Law. Having read all of the submitted papers and reviewed the court file, this Court makes the following determination.

A. and B. MOTION FOR DISCOVERY AND INSPECTION OF EACH OF THOSE ITEMS SPECIFIED IN THE REQUEST FOR DISCOVERY THAT HAVE NOT BEEN PROVIDED PURSUANT TO CPL §245.20(C) AND §245.30(3) and MOTION FOR DISCOVERY AND DISCLOSURE PURSUANT TO CPL 200.95(5) AND (6) and MOTION FOR DISCLOSURE OF MATERIAL INFORMATION AND DEMAND FOR EXCULPATORY INFORMATION

The defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 245. If any items set forth in CPL Article 245 have not been provided to the defendant pursuant to the Consent Discovery Order in the instant matter, said items are to be provided forthwith.

The People recognize their continuing duty to disclose exculpatory material at the earliest possible date. [See *Brady v. Maryland*, 373 US 83, 83 S Ct. 1194, 10 LE2d 215 and *Giglio v. United States*, 405 US 150, 92 S Ct. 763, 31 LE2d 104]. If the People are or become aware of any material which is arguably exculpatory, but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

To any further extent, the application is denied as seeking material or information beyond the scope of discovery. [See *People v. Colavito*, 87 NY2d 423, 639 NYS2d 996, 663 NE2d 308; *Matter of Brown v. Grosso*, 285 AD2d 642, 729 NYS2d 492, *lv. denied* 97 NY2d

605, 737 NYS2d 52, 762 NE2d 930; *Matter of Brown v. Appelman*, 241 AD2d 279, 672 NYS2d 373; *Matter of Catterson v. Jones*, 229 AD2d 435, 644 NYS2d 573; *Matter of Catterson v. Rohl*, 202 AD2d 420, 608 NYS2d 696, *lv. denied* 83 NY2d 755, 613 NYS2d 127, 241 NE2d 279].

The defendant's motion for a further Bill of Particulars is denied as the information provided in discovery as well as the People's Affirmation in Opposition more than adequately apprise the defendant of the nature of the charges against him and are sufficient to enable him to prepare a defense. [See CPL 200.85].

C. MOTION TO STRIKE NOTICES/SUPPRESSION OF STATEMENTS PURSUANT TO CPL ARTICLE 710

The motion to strike the notice of statements is denied. Said notice is in conformity with the statutory requirements of CPL §710.30.

This branch of the defendant's motion is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL §710.30 (1)(a), were involuntarily made by the defendant within the meaning of CPL §60.45 (see CPL §710.20(3), CPL §710.60[3][b]; *People v. Weaver*, 49 NY2d 1012, 429 NYS2d 399, 406 NE2d 1335), obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (see *Dunaway v. New York*, 442 US 200, 99 S. Ct. 2248, 60 LE2d 824).

D. MOTION TO SUPPRESS IDENTIFICATION TESTMONY PURSUANT TO CPL ARTICLE 710

This motion is granted to the limited extent of conducting a hearing prior to trial to determine whether or not the noticed identifications are unduly suggestive. [See *United States v. Wade*, 388 US 218, 87 S Ct. 1926, 18 LE2d 1149]. Specifically, the Court shall determine whether the identifications were so improperly suggestive as to taint any in-court identification. In the event the identifications are found to be unduly suggestive, the Court shall then go on to consider whether the People have proven by clear and convincing evidence that an independent source exists for such witness' proposed in-court identification.

E. MOTION TO SUPPRESS PHYSICAL EVIDENCE PURSUANT TO CPL ARTICLE 710

This branch of the 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, 81 S Ct. 1684, 6 LE2d 1081) and whether any evidence was obtained in violation of the defendant's Sixth Amendment right to counsel and/or obtained in violation of the defendant's Fourth Amendment rights. [See *Dunaway v. New York*, 42 US 200, 99 S Ct. 2248, 60LE2d 824].

F. and G. MOTION TO DISMISS PURSUANT TO CPL ARTICLE 210 and MOTION TO INSPECT AND DISMISS OR REDUCE PURSUANT TO CPL ARTICLE 210

The defendant's motion to inspect the Grand Jury minutes is granted. Upon an *in camera* inspection of the Grand Jury minutes by Court, the motion to dismiss the indictment or reduce a charged offense in the indictment is denied.

The Court has reviewed the minutes of the proceeding before the Grand Jury. The Grand Jury was properly instructed (see *People v. Calbud*, 49 NY2d 389, 426 NYS2d 389, 402 NE2d 1140 and *People v. Valles*, 62 NY2d 36, 476 NYS2d 50, 464 NE2d 418) and the evidence presented, if accepted as true would be legally sufficient to establish every element of the offenses charged. [See CPL §210.30(2)]. In addition, the minutes reveal that a quorum of the grand jurors was present during the presentation of evidence and at the time the district attorney instructed the Grand Jury on the law, and that it was instructed that only those grand jurors who had heard all the evidence could participate in voting on the matter.

The Court does not find that the release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court in making this determination.

H., I. and J. MOTION FOR VENTIMIGLIA HEARING, MOTION FOR SANDOVAL HEARING and MOTION FOR DISCLOSURE OF UNCHARGED BAD ACTS, PURSUANT TO PEOPLE V. MOLINEUX, 168 NY264 264 1901

Immediately prior to commencement of jury selection, the prosecutor shall, upon request of the defendant, notify the defendant of any prior criminal act which the People seek to use in the cross-examination of the defendant as well as all specific instances of the defendant's

prior uncharged criminal, vicious or immoral conduct of which the prosecutor has knowledge and which the prosecutor intends to use at trial for the purposes of impeaching the credibility of the defendant. Thereafter, upon the defendant's request, the trial court shall conduct a *Sandoval* and/or *Ventimiglia* hearing prior to the commencement of trial. [See *People v. Sandoval*, 34 NY2d 371 (1974); *People v. Ventimiglia*, 52 NY2d 350 (1981); *People v. Molineux*, 168 NY 264 (1901)].

K. MOTION TO RESERVE RIGHTS

Upon a proper showing, the Court will entertain appropriate additional motions 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 in this motion. [See CPL §255.20(3)].

L. MOTION TO SEVER PURSUANT TO CPL ARTICLE 200

The defendant moves for a severance from his co-defendants. The defendant was properly joined in the same indictment. [See CPL §200.40(1)]. The Court may, however, for good cause shown order that defendant be tried separately: Good cause includes a showing that defendant would be “unduly prejudiced by a joint trial.” [See CPL §200.40(1)]. Further, where the proof against all defendants is supplied by the same evidence, “only the most cogent reasons warrant a severance.” [See *People v. Bornholdt*, 33 NY2d 75, 87, *cert. denied* 416 US 95 and *People v. Kevin Watts*, 159 AD2d 740]. And, “. . . a strong public policy favors joinder, because

it expedites the judicial process, reduces court congestion, and avoids the necessity of recalling witnesses. . . ." [*People v. Mahboubian*, 74 NY2d 174, 183].

This Court must determine the admissibility and possibility of the redaction of the co-defendants' statements and whether the co-defendants will be testifying at defendant's trial.

According, the defendant's motion for a severance is denied as premature, with leave to renew upon a determination of the admissibility of co-defendants' alleged statements, and upon a showing that a joint trial will result in unfair prejudice to him and substantially impair his defense.

M. MOTION FOR DISCLOSURE OF INFORMANTS

This motion is denied. The defendant moves for disclosure of the identity of informants and undercover officers without demonstrating what relevant testimony any such witness would have on the issue of his innocence or guilt. [See *People v. Goggins*, 34 NY2d 163, 356 NYS2d 571, 313 NE2d 41, *cert. denied* 419 US 1012, 95 S. Ct. 332, 42 LE2d 286; *People v. Pena*, 37 NY2d 642, 376 NYS2d 452, 339 NE2d 149].

N. MOTION FOR DISCLOSURE OF DEALS AND AGREEMENTS

The People recognize their continuing duty to disclose the terms of any deal or agreement made between the People and any prosecution witness at the earliest possible date. [See *Brady v. Maryland*, 373 US 83, 83 S. Ct. 1194, 10 LE2d 215; *Giglio v. United States*, 405 US 150, 92 S. Ct. 763, 31 LE2d 104; *People v. Steadman*, 82 NY2d 1, 603 NYS2d 382, 623




NE2d 509; *People v. Wooley*, 200 AD2d 644, 606 NYS2d 738, *appeal denied* 83 NY2d 878, 613 NYS2d 138, 635 NE2d 307].

O. MOTION TO STRIKE ALIBI NOTICE

This motion is denied. Contrary to the defendant's contentions, it is well-settled that CPL §250.00 is indeed in compliance with the constitutional requirements (see *People v. Dawson*, 185 AD2d 854, 587 NYS2d 358, *appeal denied* 80 NY2d 974, 591 NYS2d 143, 605 NE2d 879; *People v. Cruz*, 176 AD2d 751, 574 NYS2d 1006, *appeal denied* 79 NY2d 855, 580 NYS2d 727, 588 NE2d 762; *People v. Gill*, 164 AD2d 867, 599 NYS2d 376, *appeal denied* 76 NY2d 893, 561 NYS2d 555, 562 NE2d 880; *People v. Peterson*, 96 AD2d 871, 578 NYS2d 358) and provides equality in the required disclosure (see *People v. Peterson*, 90 AD2d 871, 578 NYS2d 358; see generally *Wardius v. Oregon*, 412 US 470, 93 S Ct. 2208, 37 LE2d 82).

This constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York  
October 26, 2022

  
ROBERT A. NEARY  
SUPREME COURT JUSTICE

*People v. Alexander Wilson*  
Indictment No. 22-71500-02

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