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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION & ORDER
Indictment No.: 18-0746

YAJEIN SPENCER
ISIAH HURSTON
AMBROSE DARDEN,

Defendant.

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FUFIDIO, J.

The Defendant, AMBROSE DARDEN, having been indicted on or about July 5, 2018 for two counts of robbery in the first degree (Penal Law § 160.15[2] and [4]); and one count of robbery in the second degree (Penal Law § 160.10[1]) has filed an omnibus motion which consists of a Notice of Motion, an Affirmation in Support and a Memorandum of Law. In response thereto, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Upon consideration of these papers, the stenographic transcript of the grand jury minutes and the Consent Discovery Order entered in this case, this court disposes of this motion as follows:

A. MOTION TO INSPECT, DISMISS AND/OR REDUCE THE INDICTMENT

The Court grants the Defendant's motion to the limited extent that the Court has conducted, with the consent of the People, an *in camera* inspection of the stenographic transcription of the grand jury proceedings. Upon such review, the Court finds no basis upon which to grant defendant's application to dismiss or reduce the indictment, nor does the Court find any reason to dismiss the indictment in the interests of justice.

The grand jury was properly instructed (*see People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]).

With respect to each of the counts of the indictment, the evidence presented, if accepted as true, is legally sufficient to establish every element of each offense charged (CPL 210.30[2]). "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]).

Additionally, the minutes reveal a quorum of the grand jurors was present during the presentation of evidence, that the Assistant Attorney General properly instructed the grand jury on the law, and only permitted those grand jurors who heard all the evidence to vote the matter.

To the extent that the Defendant is challenging the sufficiency of the felony compliant on the grounds that he was arrested illegally, his motion is denied. Once the felony complaint was superseded by the indictment any issue as to its sufficiency is irrelevant (*People v. Wilkens*, 176 AD2d 978 [2nd Dept. 1991]), nor would a *Payton* violation, that the Defendant is seemingly alleging, be a sufficient ground for dismissing the indictment (*People v. Young*, 55 NY2d 419 [1982]).

Finally, based upon the *in camera* review, since this Court does not find release of the grand jury minutes or any portion thereof necessary to assist it in making any determinations and as the Defendant has not set forth a compelling or particularized need for the production of the grand jury minutes, Defendant's application for a copy of the grand jury minutes is denied (*People v Jang*, 17 AD3d 693 [2d Dept 2005]; CPL 190.25[4][a]).

B. MOTION FOR DISCOVERY, DISCLOSURE AND INSPECTION
CPL ARTICLE 240

Except where the People have already disclosed or consented to the inspection and discovery of certain evidence, the Defendant's motion for discovery is granted to the extent provided for in CPL 240. If there any further items discoverable pursuant to Criminal Procedure Law Article 240 which have not been provided to defendant pursuant to this Order, they are to be provided forthwith or the People shall seek a protective order explaining to the Court why certain items have not been provided to the Defendant pursuant to CPL 240.

As to the defendant's demand for exculpatory material, the People have acknowledged their continuing duty to disclose exculpatory material at the earliest possible date upon its discovery (*see, Brady v Maryland*, 373 US 83 [1963]; *Giglio v United States*, 405 US 150 [1972]). In the event that the People are, or become, aware of any material which is arguably exculpatory and they are not willing to consent to its disclosure to the defendant, they are directed to immediately disclose such material to the court to permit an *in camera* inspection and determination as to whether the material must be disclosed to the defendant.

Except to the extent that the defendant's application has been specifically granted herein, it is otherwise denied as seeking material or information beyond the scope of discovery (*see*, *People v Colavito*, 87 NY2d 423 [1996]; *Matter of Brown v Grosso*, 285 AD2d 642 [2d Dept 2001]; *Matter of Brown v Appelman*, 241 AD2d 279 [2d Dept 1998]; *Matter of Catterson v Jones*, 229 AD2d 435 [2d Dept 1996]; *Matter of Catterson v Rohl*, 202 AD2d 420 [2d Dept 1994]).

C. MOTION FOR *SANDOVAL* AND *VENTIMIGLIA* HEARINGS

The 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 the Defendant's prior criminal convictions, prior uncharged criminal act, and vicious or immoral conduct (see, *People v Sandoval,* 34 NY2d 371[1974]). The People have consented to, and it is now ordered that immediately prior to trial the court will conduct

a *Sandoval* hearing.

At the hearing, the People are required to notify the Defendant of all specific instances of his criminal, prior uncharged criminal acts and vicious or immoral conduct of which they have knowledge and which they intend to use in an attempt to impeach the Defendant's credibility if he elects to testify at trial (CPL 240.43). The Defendant shall then 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. The Defendant shall be required to identify the basis of his belief that each event or incident may be unduly prejudicial to him should he decide testify as a witness on his own behalf and thereby prevent him from exercising this right (*see*, *People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

The Defendant's application for a *Ventimiglia* hearing is denied as premature, because the People have not indicated an intention to use any evidence of prior bad act or uncharged crimes of the Defendant in its case in chief (*see, People v Molineaux*, 168 NY2d 264 [1901]; *People v Ventimiglia*, 52 NY2d 350 [1981]). The People have stated that if they do intend to use any *Molineaux* evidence that they will inform the defense and the court of their intention and at that point the Defendant may renew this aspect of his motion.

D. MOTION FOR SEVERANCE

When charges against co-defendants are properly joined in a single indictment, motions for separate trials are addressed to the discretion of the trial court (*see People v Mahboubian*, 74 NY2d 174, 183 [1989]). When such a motion is made, "severance is compelled where the core of each defense is in irreconcilable conflict with the other and where there is a significant danger, as both defenses are portrayed to the trial court, that the conflict alone would lead the jury to infer defendant's guilt" (*People v Mahboubian*, 74 NY2d at 184). Inasmuch as the defenses asserted by the defendant and the co-defendants are not in irreconcilable conflict with each other such that there is a danger that the conflict alone would lead a jury to infer the defendant's guilt, his motion to sever is denied (*see People v Terry*, 78 AD3d 1207 [2d Dept 2010]).

The defendant was properly joined in the same indictment (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" (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"(*People v Bornholdt*, 33 NY2d 75, 87 [1973]; *People v Kevin Watts*, 159 AD2d 740 [2d Dept 1990]). 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 [1989]).

The Court does not find, at this time, that the Defendant would be unduly prejudiced by being tried with his co-defendants. However, decision on the Defendant's motion is reserved for the trial judge pending resolution on all pretrial hearings, including, among others, *Huntley* and *Sandoval* hearings which might impact a ruling on whether the defendants should be severed.

E. MOTION TO SUPPRESS PHYSICAL EVIDENCE

The Defendant moves to suppress any evidence obtained as a result of the arrest and search and seizure of evidence. With respect to the evidence recovered as a result of a warrant, the Court finds that the warrant was issued upon probable cause. Accordingly, a *Mapp/Dunaway* hearing will be conducted prior to trial to determine the propriety of the search resulting in the seizure of property (*Mapp v. Ohio*, 367 US 643 [1961]). The hearing will also address whether any evidence was obtained in violation of the defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

F. MOTION TO SUPPRESS NOTICED STATEMENTS
CPL ARTICLE 710

This branch of the Defendant's motion seeking to suppress statements on the grounds that they were unconstitutionally obtained 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 [1980]), 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 [1979]). Additionally, the People are precluded from using any statements that have not been disclosed to the Defendant unless they can show good cause for late notice pursuant to CPL 710.30.

G. MOTION RESERVING THE RIGHT TO FILE ADDITIONAL MOTIONS

Defendant's motion reserving the right to file additional motions is denied. Should the Defendant file any other motions that were not raised in his *Omnibus* motion, then they will need to be in compliance with CPL 255.20(2).

The foregoing constitutes the opinion, decision and order of this court.

Dated: White Plains, New York
October 29, 2018

Honorable George E. Fufidio, J.C.C.

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