

**People v McElla**

2021 NY Slip Op 33987(U)

June 10, 2021

Supreme Court, Westchester County

Docket Number: Ind. No. 20-00629-01

Judge: Robert A. Neary

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**FILED  
AND  
ENTERED  
ON 6-10-2021  
WESTCHESTER  
COUNTY CLERK**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

- against -

DECISION AND ORDER

GADIEL McELLA,

Ind. No. 20-00629-01

Defendant.

-----X

NEARY, J.

The defendant, Gadiel McElla, has been charged with the crime of Criminal Possession of a Weapon 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. Lastly, the defendant has filed a Reply Affirmation. Having read all of the submitted papers and reviewed the court file, this Court makes the following determination.

**FILED** 

JUN 10 2021

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

1. MOTION TO INSPECT GRAND JURY MINUTES AND DISMISS OR REDUCE INDICTMENT

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, and the proceedings were properly conducted. [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]. Moreover, 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.

2. MOTION TO SUPPRESS IDENTIFICATION

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. The Court will also consider whether the identification was obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment right. [See *Dunaway v. New York*, 442 US 200, 99 S. Ct. 2248, 60 LE2d 824].

3. MOTION FOR BRADY MATERIAL

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 arguable 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.

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].


4. MOTION TO SUPPRESS PRIOR CONVICTIONS AND IMMORAL ACTS

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)].

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

Dated: White Plains, New York  
June 10, 2021

  
ROBERT A. NEARY  
SUPREME COURT JUSTICE

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