

**DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT CRIMINAL TERM**

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THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

INDEX NO. CR-008511-17NA

against

Present:

NIESHAWN BAZIL,

Hon. Valerie J. Alexander

Defendant.
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The following named papers numbered 3
submitted on this motion

	Papers Numbered
Notice of Motion and Affidavits Annexed	1
Order to Show Cause and Affidavits Annexed	
Affirmation and Memorandum of Law in Opposition	2
Reply Affirmation	3

The defendant is charged under the above docket number with a violation of PL §145.00(1), Criminal Mischief 4°. He moves for the following relief: (1) pursuant to CPL §§100.15, 100.40, 170.30, and 170.35, for dismissal of the accusatory instrument based upon facial insufficiency; (2) for suppression of the use as evidence at trial any statements involuntarily made by the defendant within the meaning of CPL §60.45, and, pursuant to CPL §§ 710.20 and 710.60, for suppression of the use of any statements obtained as a result of the defendant's unlawful arrest or, in the alternative, directing that a *Huntley/Dunaway* hearing be held; (3) for dismissal of the accusatory instrument on the grounds that there was no probable cause for the arrest; (4) for hearings pursuant to *People v. Sandoval*, 34 NY2d 371 (1974), and *People v. Ventimiglia*, 52 NY2d 350 (1981); (5) pursuant to CPL §§240.20 and 200.95 respectively, for discovery and a bill of particulars; (6) for preclusion of the prosecution from the use of certain evidence for failure to comply with the discovery and bill of particulars demands; (7) to preclude the introduction of evidence at trial notice of which was not timely served pursuant to CPL §710.30; and (8) ancillary relief.

The defendant's motion is determined as follows:

1. The defendant argues that the accusatory instrument is insufficient because the supporting deposition fails to provide that the deponent observed the defendant damage the property which is the basis for the complaint.

Pursuant to CPL §100.40, an information is sufficient on its face when:

(a) it substantially conforms to the requirements prescribed in §100.15;
and

(b) the allegations of the factual part of the information, together with those of any supporting depositions which may accompany it, provide reasonable cause to believe that the defendant committed the offense charged; and

(c) non-hearsay allegations of the factual part of the information and/or of any supporting depositions establish, if true, every element of the offense charged and the defendant's commission thereof.

(See, also, *People v. Alejandro*, 70 NY2d 133, 517 NYS2d 927 [1987]).

Allegations provide reasonable cause to believe that a defendant committed an offense "when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight or persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is reasonably likely that such offense was committed and that such person committed it." CPL §70.10(2).

On a motion to dismiss an accusatory instrument, the court must confine its analysis to the allegations contained in the complaint and in any depositions filed in support of it (see *People v. Pelt*, 157 Misc2d 90, 569 NYS2d 301 [Crim. Ct. Kings Co. 1933]; *People v. Alejandro*, 70 NY2d 133, *supra*). Therefore, the facts may establish a *prima facie* case for purposes of pleading an offense, even if those facts would not be legally sufficient to prove guilt beyond a reasonable doubt (see *People v. Jennings*, 69 NY2d 103, 115, 512 NYS2d 652 [1986]).

Further, as stated in *People v. Casey*, "So long as the factual allegations of an information give an accused notice sufficient to prepare a defense and are adequately detailed to prevent a defendant from being tried twice for the same offense, they should be given a fair and not overly restrictive or technical reading." 95 NY2d 354, 360 (2000).

PL §145.00 (1) provides: "A person is guilty of criminal mischief in the fourth degree, when, having no right to do so nor any reasonable ground to believe the he or she has such right, he or she intentionally damages the property of another person."

The supporting deposition of Christopher Myers avers, in pertinent part:

I was at work as the store manager of Best Yet Supermarket located at 492 Atlantic Ave in East Rockaway. I was having a termination meeting with a Stephaine [sic] Castano who I had to fire. After the meeting Nieshawn Bazil who is the boyfriend of Miss Castano and also who I know as an ex-employee of this store kicked my office door open and started screaming profanities at me. Nieshawn then left my office and headed back into the store area knocking down a cake display and before exiting the store Nieshawn picked up a metal magazine rack and threw it at the store front

window causing it to shatter and break. The damage to the window cost \$3,500. Nieshawn then left in an unknown direction. I did not give Nieshawn permission to break the window and want him arrested and I also don't want him back at this store again. . . .

While the supporting deposition recites the alleged action of the defendant, it fails to provide evidentiary facts that the conduct was observed by the deponent. The accusatory instrument is thus rendered insufficient. **The People therefore have thirty days to file a sufficient information or the accusatory instrument will be dismissed.**

It should be noted that while the defendant asserts that it is incumbent upon the People to provide the defendant with a copy of the accusatory instrument, no such duty exists. Rather, it is the responsibility of the court to provide the defendant with the accusatory instrument which forms the basis of these charges. If the defendant is not yet in receipt of such accusatory instrument, it will be provided by the court upon request.

2. The defendant's motion for an order suppressing statements obtained from the defendant by law enforcement personnel upon the grounds contained in CPL §710.20(3), namely that they were involuntarily made within the meaning of CPL §60.45, and for a hearing to determine if there was probable cause for this arrest, pursuant to *Dunaway v. New York* (442 US 200 [1979]), is granted to the extent that this matter will be set down for a hearing to be held on the eve of trial.

3. Pursuant to CPL §710.20, a codification of the exclusionary rule (See, *Wong Sun v. US*, 371 US 471, [1963]), a defendant who believes that he has been the subject of unlawful police action may move to suppress evidence which he believes will be used against him in a criminal action. Suppression of evidence is the sole remedy afforded to the defendant when these rights have been so violated.

Here, the defendant moves to dismiss the accusatory instrument, a remedy unavailable under the exclusionary rule. A *Dunaway* hearing has previously been granted to determine suppression issues. Accordingly, the defendant's motion to dismiss the accusatory instruments based upon lack of probable cause is hereby denied.

4. Defendant's motion for hearings pursuant to *People v. Sandoval* (34 NY2d 371 [1974]) and *People v. Ventimiglia*, 52 NY2d 350 (1981) is granted on consent and shall be conducted immediately before trial at which time the People shall provide the defendant with notice pursuant to CPL §240.43.

5. The People have failed to provide the defendant with a bill of particulars. The People are hereby ordered to provide the bill of particulars, pursuant to CPL §200.95, **within 30 (thirty) days of the date of this decision.**

The People state that they have provided the defendant voluntary disclosure forms. The People are directed to provide the defendant with any additional discovery which is not yet in their possession, but which is discoverable pursuant to CPL §240.20 **within 30 (thirty) days of the date of this decision.** The People have stated that they respectfully refuse to comply with defendant's discovery demands outside of CPL §240.20. The defendant's demand for additional discovery is denied at this time, as the defendant has failed to provide

specific information as to what items of discovery, pursuant to CPL §240.20, have not been provided.

Defendant's motion to compel the People to comply with any additional requests is premature. The law requires that the defendant initially submit a demand for a bill of particulars and for discovery. Should the People refuse to respond to any particular request, the defendant may then move to compel disclosure of the item of information the People refused to provide. There is no allegation that the People have declined to respond to any request made pursuant to CPL §240.20. Accordingly, that portion of the defendant's motion is denied without prejudice to renew upon the People's refusal to disclose information required by law to be disclosed. Upon renewal of the motion, the defendant must (1) specify the item(s) of information which the People have not disclosed, (2) warrant that such information is relevant and applicable to this case, and (3) specify the provision of law or authority requiring disclosure of such information. The defendant's motion to preclude is denied as premature.

6. The defendant's motion to preclude evidence not noticed pursuant to CPL §710.30 is denied as moot. The People have not proffered any evidence which would apply to this application.

7. Defendant's application for *Brady* material is granted to the extent that the People are directed to provide the defense with all exculpatory material in their possession pursuant to *Brady v. Maryland*, 373 US 83.

8. The defendant's motion for leave to make additional motions is denied as premature. CPL 255.20(3).

9. The defendant's motion is, in all other respects, denied.

SO ORDERED.


DISTRICT COURT JUDGE

Dated: July 25, 2018

cc: Madeline Singas, District Attorney
Att: ADA Danielle Robinson

Frederick K. Brewington, Esq.