

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

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THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

INDEX NO. 2015NA023201

against

Present:

Hon. Valerie J. Alexander

NAHSHON WHITE,

Defendant.
-----X

The following named papers numbered 1 - 2
submitted on this motion

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

The defendant is charged under the above docket number with a violation of the following sections of the Penal Law: §120.00(1), Assault 3°; and §265.01(1) Criminal Possession of a Dangerous Weapon. 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 710.20, or, in the alternative, that a *Huntley/Dunaway* hearing be held; (3) for dismissal of the informations on the grounds that the police lacked probable cause to arrest the defendant; (4) for hearings pursuant to *People v. Sandoval*, 34 NY2d 371 (1974) and *People v. Molineux*, 168 NY 264 (1901); (5) pursuant to 100.45 and 200.95, for a bill of particulars; (6) for discovery, pursuant to CPL §240.20; (7) precluding the prosecution from introducing evidence for failure to comply with CPL §710.30; and, (8) for ancillary relief.

The defendant's motion is determined as follows:

1. The defendant argues that the informations are insufficient because the accusatory instruments are not accompanied by supporting depositions which would provide non-hearsay allegations that the defendant committed the crimes charged. In addition, and

as to the charge of Assault 3°, the defendant argues that the accusatory instrument does not set forth allegations that would establish that the defendant sustained physical injury within the meaning of PL §10.00(9), "impairment of physical condition or substantial pain."

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]).

As a preliminary matter, the defendant acknowledges having received a copy of the supporting deposition of the complainant from the records of the court. Therefore, the motion to dismiss the accusatory instruments based upon the lack of a supporting deposition is denied as moot.

The "To Wit" clause and the supporting deposition are the same for both accusatory instruments. It states:

On the aforementioned time, date and location the defendant, Nahshon White, was involved in an altercation with his brother-in-law. During the altercation, the defendant did use a small pocket knife to cause a laceration to the victims jaw and abdomen. The victim the[n] fled across the street to an urgent care center, where he was met by responding officers and transported to South Nassau Community Hospital. The victim received an unknown amount of stitches to his jaw and abdomen.

The above is based on information and belief. The source of said information and belief being the DCJS3221 and the supporting depositions of the victim, your deponents observation, photos of the victims injuries, oral statement of the defendant, statement of admission made to your deponent and Det O'Brien and a Police investigation.

The supporting deposition of Chauncey Durant reads:

I had a doctors appointment at 101 S. Bergen PL at South Ocean Care to get a physical. I parked my car in the rear parking lot behind CitiBank which is on the corner of W. Merrick Rd and S. Bergen Pl. When I came out of my doctors appointment I was walking to my car and I saw my brother in law Nashoun [sic] White sitting in his car parked a few spaces away. We made eye contact and I got in my car. I drove up towards NaShoun and got out. NaShoun then got out of his car and we started to fight and I threw a few punches and then I felt something on my face. I touched my chin on the left side and it was bleeding I pushed away from NaShoun and got in my car and pulled in front of the doctors office. I got inside of the office and doctor Hawthorne who gave me my physical started to help me. Dr. Hawthorne held pressure to my chin and then asked me to lift my shirt and I saw I was cut on my left side stomach. The doctors called the police. I want NaShaun White arrested for stabbing me.

Assault 3°

PL § 120.00(1) reads: "A person is guilty of assault in the third degree when, with intent to cause physical injury to another person, he causes such injury to such person or to a third person."

Allegations as charged in an accusatory instrument must be viewed in the light most favorable to the People. *People v. Martinez*, 16 Misc.3d 1111(A) (Dist. Ct. Nassau Cty [2007]); *People v. Delmonaco*, 16 Misc.3d 526 (Dist. Ct. Nassau Cty [2007]). 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); *People v. Konieczny* 2 NY3d 569 (2004).

Most importantly, as applied to allegations of assault, the accusatory instrument must be read in the context of when the supporting deposition is executed. As stated in the New York Court of Appeals case, *People v. Henderson*:

In the normal course of events, the deposition supporting a misdemeanor complaint will be secured within hours or days after the events complained of, thus satisfying the requirements for a valid information. A victim would not necessarily know with any certainty, shortly after an attack, what its lasting effects will be. Under these circumstances, allegations of substantial pain, swelling and contusions, following kicks, must be deemed sufficient to constitute "physical injury" to support a facially valid local criminal court information. (*citations omitted.*)

92 NY2d 677, 680-681 (1999).

While counsel cites numerous cases in which assault level injury was not sustained, these cases deal with decisions after trial. At trial, assault level injury must be proven beyond a reasonable doubt. These cases are therefore inapposite to the case at bar. The accusatory instrument must only establish a *prima facie* case against the defendant. See, *People v. Kalin*, 12 NY3d 225 (2009); *People v. Henderson*, *supra*:

In this case, the complainant alleges that he was bleeding from the chin as well as from a laceration on his stomach. Problematic, however, is that the defendant did not recognize these injuries because of the pain inflicted, but rather because he realized that he was bleeding. There are no allegations which set forth that these injuries actually caused him pain. This renders the information insufficient.

Accordingly, and pursuant to CPL §170.35, **the People must file and serve a sufficient accusatory instrument within thirty (30) days of the date of this motion, or the accusatory instrument will be dismissed.**

Criminal Possession of a Dangerous Weapon 4°

Penal Law §265.01(2) states: "A person is guilty of criminal possession of a weapon in the fourth degree when he possesses any dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, or any other dangerous or deadly instrument or weapon with intent to use the same unlawfully against another."

The weapon in this case was not recovered, nor is there any allegation in the accusatory instrument or the supporting deposition that the defendant was ever observed with the knife in his possession. The sole allegation that the defendant was in possession of a dangerous weapon is asserted by the deponent police officer. The assertion, however, is complete hearsay and is unsupported by the supporting deposition of the complainant/victim, Chauncey Durant. Though the defendant admits in his statement to police that he possessed a pocketknife, this statement is not annexed to the accusatory instrument and, therefore, has no evidentiary effect. Moreover, even if annexed to the accusatory instrument, the defendant, does not admit to an intent to use this pocketknife unlawfully, another element of this crime.

The accusatory instrument is woefully insufficient and, under these facts, may be incapable of being made sufficient. Nevertheless, **the People have thirty (30) days from the date of this decision to file and serve a sufficient information, or this count will be dismissed.**

2. The defendant's motion for an order suppressing as involuntary evidence of statements obtained from the defendant by law enforcement personnel (*People v. Huntley*, 15 NY2d 72, 255 NYS2d 838 [1965]), and seeking suppression of defendant's statements 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. The defendant's motion to dismiss the accusatory instruments on the grounds that the police lacked probable cause to arrest the defendant is hereby denied. 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 at trial. Suppression of evidence is the sole remedy afforded to the defendant when these rights have been so violated.

4. Defendant's motion for hearings pursuant to *People v. Sandoval* (34 NY2d 371 [1974]) and *People v. Molineux* (168 NY 264 [1901]) 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 motion to compel the District Attorney to comply with defendant's request for further information over and above that which has been provided in the People's Bill of Particulars and demand for discovery is denied. The District Attorney has disclosed such information as is required by law to be disclosed.

6. The People state that they have provided the defendant voluntary discovery. 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. The People have stated that they respectfully refuse to comply with defendant's discovery demands outside of CPL §240.20.

Defendant's motion to compel the District Attorney to comply with defendant's request for discovery is premature. The law requires that the defendant initially submit a bill of particulars and a demand for discovery to the District Attorney. Should the District Attorney refuse to respond to any particular request, the defendant may then move to compel disclosure of the item of information the District Attorney refused to provide. There is no allegation that the District Attorney has declined to respond to the defendant's request for specific discovery to which the defendant is entitled 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 District Attorney has 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.

7. The defendant moves to preclude the People from using any statements made by the defendant on the grounds that the People have failed to comply with the requirements of CPL §710.30. However, the defendant has failed to provide any evidentiary support for this allegation. The motion to preclude is hereby denied.

8. 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.

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

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

SO ORDERED.


DISTRICT COURT JUDGE

Dated: October 11, 2016

cc: Madeline Singas, District Attorney
Law Offices of Frederick K. Brewington