

STATE OF NEW YORK  
COUNTY COURT : COUNTY OF ERIE

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THE PEOPLE OF THE STATE OF NEW YORK

v.

DECISION AND ORDER  
Indictment No.72068-23-001

DAREIOUS AKBAR

Defendant.

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APPEARANCES:

MICHAEL J. KEANE, ESQ.  
ACTING ERIE COUNTY DISTRICT ATTORNEY  
*Paul J. Glascott, Esq.*  
*Bethany A. Solek, Esq.*  
*Assistant District Attorneys*  
Appearing for the People.

SEAN P. KELLY, ESQ.  
JAMES Q. AURICCHIO, ESQ.  
Appearing for defendant

Case, J

The indictment accuses defendant with numerous crimes including attempted murder in the first degree (P.L. §§110.00/125.27[1][a][i], aggravated assault upon a police officer (P.L. §120.11); three counts of assault in the first degree (P.L. §120.10[1]; 120.10[3] and 120.10[4], respectively); assault on a police officer (P.L. §120.08) and additional charges pertaining to a theft of a motor vehicle. All of defendant's charges stem from his alleged flight from a car stop in the town of Tonawanda on May 29, 2023.

Defendant has moved to dismiss the indictment, alleging that there is insufficient evidence to support the offenses charged, that the proceeding were defective and that the instructions provided to the grand jurors be disclosed.

For the reasons set forth below, defendant's motions are granted in part and denied in part.

To dismiss an indictment on the basis of insufficient evidence, a court must evaluate whether the evidence, viewed in the light most favorable to the People, if unexplained and uncontradicted, would warrant conviction after trial by petit jury (*People v. Gaworecki*, 154

N.Y.S. 3d 33, 36 [2021]). In determining the legal sufficiency of the indictment, a reviewing court must consider whether the evidence proves a prima facie of the crimes charged. (*People v. Lewinski*, 200 N.Y.3d 590 [4th Dept. 2023]). The standard for evaluating a prima facie case is whether the facts, and the inferences that logically flow from those facts, prove every element of the charged offenses and whether the grand jury could have rationally drawn the guilty inference (*id.*).

The evidence provided to the grand jury shows Tonawanda Police Officer David Piatek initiated a traffic stop of a vehicle driven by defendant and occupied by Mariah Pietrangeli. Officer Piatek approached the driver's side door and spoke with defendant. After defendant complied with instructions to turn off the vehicle, defendant restarted it and accelerated. Officer Piatek, still on the outside the driver's door, grabbed onto the vehicle as it picked up speed.

While Officer Piatek was instructing defendant to stop the car, defendant was heard to state to the officer "get off the car" and defendant physically removed Officer Piatek's hands, causing him to fall off the car and sustain injuries.

To sustain a charge of attempted murder in the first degree (P.L. §110.00/125.27[1][a][i]), the People were required to present competent evidence of defendant's specific intent to cause the death of Officer Piatek. Similarly, to sustain charges of aggravated assault upon a police officer (P.L. §120.11) and assault in the first degree (P.L. §120.10[1]), the People were required to show competent evidence of defendant's specific intent to cause serious physical injury to Officer Piatek. A defendant acts intentionally "when his conscious objective is to cause such result or engage in such conduct," (P.L. §15.05[1]).

Here, the evidence presented to the grand jury supports a finding that defendant acted with "depraved indifference to human life" when he "recklessly engaged in conduct which created a grave risk of death" to the officer, but it fails to show defendant intended to cause the death or serious physical injury to the officer (P.L. §15.05[3]; *People v. Fraser*, 511 N.Y.S.2d 326, 328 [2d Dept. 1987]). The evidence before the grand jury and the rational inferences drawn therefrom establish defendant's intention to flee the traffic stop, even if it required causing a uniformed officer to fall from a vehicle while it sped down the road (*id.*). Such conduct supports a determination by the grand jury that defendant acted recklessly and with depraved indifference.

However, the People charged defendant with specific intent to cause either the death or

the serious physical injury to the officer in the first three counts of the indictment. In failing to offer legally sufficient proof of defendant's mens rea to sustain those charges, the People failed to make a prima facie case with respect to those counts in the indictment charging specific intent.

The remainder of defendant's contentions have been considered and are without merit.

Therefore, it is hereby

**Ordered**, that defendant's motion to dismiss the first count of the indictment charging attempted murder in the first degree (P.L. §§110.00/125.27[1][a][1]) is granted; and it further

**Ordered**, that defendant's motion to dismiss the second count of the indictment charging aggravated assault of a police officer (P.L. §120.11) is granted; and it is further

**Ordered**, that defendant's motion to dismiss the third count of the indictment charging assault in the first degree (P.L. §120.10[1]) is granted; and it is further

**Ordered**, that defendant's motions to dismiss or reduce the remaining counts of the instant indictment are denied; and it is further

**Ordered**, that defendant's motion for disclosure of the instructions provided to the grand jury is denied.

This decision shall constitute the Order of the Court in this matter and no further Order shall be required.

**Dated:** June 6, 2024  
Buffalo, New York

  
HON. KENNETH F. CASE, J.C.C.