

People v Lopez-Alarcon
2016 NY Slip Op 33249(U)
April 18, 2016
Supreme Court, Westchester County
Docket Number: Ind. No. 15-00813-01
Judge: Robert A. Neary
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

FILED
APR 18 2016
COUNTY OF WESTCHESTER

FILED
AND
ENTERED
ON 4-18-2016
WESTCHESTER
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

APR 18 2016
COUNTY CLERK
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK

- against -

DECISION AND ORDER

MIGUEL LOPEZ-ALARCON,

Ind. No. 15-00813-01

Defendant.

-----X
NEARY, J.

The defendant, Miguel Lopez-Alarcon is charged with the crimes of Driving While Intoxicated as a felony (three counts), Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree (two counts), Criminal Possession of a Controlled Substance in the Seventh Degree, Turning Movements and Required Signals in violation of Vehicle and Traffic Law Section 1163(b) and Consumption or Possession of Alcoholic Beverage in Certain Motor Vehicle in violation of Vehicle and Traffic Section 1227(1). 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

People v. Miguel Lopez-Alarcon
Indictment No. 15-00813-01

with a Memorandum of Law. Having read all of the submitted papers and reviewed the court file, this Court makes the following determination.

MOTION TO INSPECT AND DISMISS OR REDUCE INDICTMENT BASED ON INSUFFICIENT EVIDENCE PURSUANT TO CPL SECTION 210 and MOTION TO INSPECT AND DISMISS OR REDUCE INDICTMENT BASED ON DEFECTIVE GRAND JURY PRESENTATION PURSUANT TO CPL SECTION 210, SECTION 210.10 AND SECTION 210.35(5)

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 (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) and 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.

The Court does not find that the release of the Grand Jury minutes or certain portions thereof to the parties was necessary to assist the Court in making this determination.

MOTION FOR A BILL OF PARTICULARS PURSUANT TO CPL SECTION 710

This motion is denied. The Bill of Particulars set forth in the Consent Discovery Order provided to the defendant has adequately informed the defendant of the substance of his alleged conduct and in all respects complies with CPL §200.95.

MOTION FOR DISCOVERY, DISCLOSURE AND INSPECTION PURSUANT TO CPL SECTION 240

The defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 240. If any items set forth in CPL Article 240 have not been provided to the defendant pursuant to the Consent Discovery Order in the instant matter, said items are to be provided forthwith.

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 arguably 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.

To any further extent, the application is denied as seeking material or information beyond the scope of discovery. [See *People v. Colavito*, 87 NY2d 423, 639 NYS2d 996, 663 NE2d 308; *Matter of Brown v. Grosso*, 285 AD2d 642, 729 NYS2d 492, *lv. denied* 97 NY2d

People v. Miguel Lopez-Alarcon
Indictment No. 15-00813-01

605, 737 NYS2d 52, 762 NE2d 930; *Matter of Brown v. Appelman*, 241 AD2d 279, 672 NYS2d 373; *Matter of Catterson v. Jones*, 229 AD2d 435, 644 NYS2d 573; *Matter of Catterson v. Rohl*, 202 AD2d 420, 608 NYS2d 696, *lv. denied* 83 NY2d 755, 613 NYS2d 127, 241 NE2d 279].

MOTION TO SUPPRESS STATEMENTS PURSUANT TO CPL SECTION 710

This branch of the defendant's motion 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, 429 NYS2d 399, 406 NE2d 1335), 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, 99 S. Ct. 2248, 60 LE2d 824).

MOTION FOR SANDOVAL/VENTIMIGLIA HEARING

This branch of the defendant's motion 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, 429 NYS2d 399, 406 NE2d 1335),

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, 99 S. Ct. 2248, 60 LE2d 824).

MOTION TO SUPPRESS PHYSICAL EVIDENCE

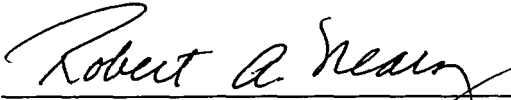
This branch of the defendant's motion is granted solely to the extent of conducting a *Mapp/Ingle/Dunaway* hearing prior to trial to determine the propriety of the stop of the defendant's vehicle and any subsequent search resulting in the collection of evidence (see *People v. Ingle*, 36 NY2d 413; *Mapp v. Ohio*, 367 US 643, 81 S. Ct. 1684, 6 LE2d 1081), and/or whether such evidence was obtained in violation of the defendant's Fourth Amendment rights. [See *Dunaway v. New York*, 442 US 200, 99 S. Ct. 2248, 60 LE2d 824].

With respect to the defendant's motion to suppress his chemical test refusal, the motion is granted to the limited extent of conducting a pretrial hearing to determine the admissibility of any chemical test refusal at which time the Court will examine whether the defendant was sufficient apprised of the consequences of his failure to submit to the chemical test pursuant to Vehicle and Traffic Law Section 1994(2)(f).

People v. Miguel Lopez-Alarcon
Indictment No. 15-00813-01

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

Dated: White Plains, New York
April 18, 2016



ROBERT A. NEARY
ACTING SUPREME COURT JUSTICE

John Z Astarita
Assistant District Attorney
Westchester County
Office of the District Attorney
Richard J. Daronco Courthouse
111 Martin Luther King Blvd.
White Plains, New York 10601

Christina Swatzell, Esq.
Attorney for Defendant
Office of Clare J. Degnan, Esq.
Legal Aid Society
150 Grand Street, Suite 100
White Plains, New York 10601