

**People v Carzoglio**

2017 NY Slip Op 32837(U)

October 17, 2017

County Court, Westchester County

Docket Number: 16-0536

Judge: Larry J. Schwartz

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK,  
COUNTY OF WESTCHESTER

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

-against-

**FILED** *IP*

OCT 18 2017

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER  
Defendant.

ANGELO CARZOGLIO,

FILED  
AND  
ENTERED  
ON OCTOBER 17, 2017  
WESTCHESTER COUNTY CLERK

**SECOND AMENDED  
DECISION & ORDER**

-----X  
SCHWARTZ, J.,

Indict. No. 16-0536

The following constitutes the opinion, decision and order of the Court.

An indictment has been filed against the defendant charging him with 11 counts of Burglary in the Second Degree, one count of Criminal Possession of Stolen Property in the Third Degree, one count of Conspiracy in the Fourth Degree, one count of Possession of Burglar's Tools, and one count of Unlawful Possession of Radio Devices. The defendant is alleged to have committed a series of eleven residential burglaries at various locations throughout Westchester County, as well having possessed stolen property and other related acts from on or about June 19, 2014 through October 21, 2014, while acting in concert with others.

The People filed notices pursuant to CPL Section 710.30 of their intent to introduce certain statements made by defendant to public servants. At a combined *Huntley/Mapp* hearing the People presented evidence of three of those statements and the circumstances under which each such statement was made.

The first such statements were alleged oral statements made by the defendant at approximately 11:14 AM on September 30, 2014 in the vicinity of South Hill Road and Trolley Road in the Town of Cortland, County of Westchester. The People claim the defendant identified himself to members of the Harrison Police Department as Angelo Carzoglio and stated that he and Raphael Sanchez were in the area looking at houses because he was interested in purchasing a home in the area. The defendant allegedly stated that he was authorized by David Tadjjev to operate and possess the Chevrolet Captiva with Minnesota License Plate Number 936-LUG. The defendant allegedly stated that David Tadjjev's phone number was 347-639-4111. It was further alleged that the defendant stated to a Police Officer that he could call David Tadjjev for verification. While attempting to contact David Tadjjev using his cellular phone, the defendant stated that he did not know his own phone number because it was a new phone and he had forgotten it.

The People allege the second such statement was made orally at approximately 5:15 PM on September 30, 2014, at which time the People claim the defendant while operating a white Ford Expedition bearing NY License Plate Number GSV-3171 in Bronx County made a beckoning hand gesture towards members of the Harrison Police Department and yelled

“Come on!” while fleeing the area at a high rate of speed.

The third such statement was the defendant’s Grand Jury testimony given on or about June 7, 2016 at approximately 1:45 PM after waiving his immunity before the Grand Jury.

On a motion by a defendant to suppress statement evidence, the People must establish the voluntariness of the statements attributed to the defendant beyond a reasonable doubt before they are admissible at trial.

On October 21, 2014, while driving on the Hutchinson River Parkway in the Town of Harrison, in Westchester County the defendant was stopped and arrested. His automobile was searched and a safe alleged to have been stolen from a Connecticut home was discovered in the trunk.

On a motion by a defendant to suppress physical evidence, the People have the burden of going forward to show, by a preponderance of the credible evidence, the legality of the police conduct in the first instance and that the arrest of the defendant was based upon reasonable and probable cause (*People v Whitehurst*, 25 NY2d 389, 391; see *People v Blinker*, 80 AD3d 619, *People v Hernandez*, 40 AD3d 777, 778; *People v Thomas*, 291 AD2d 462, 463; *People v Quinones*, 61 AD2d 765). The defendant, however, “bears the ultimate burden of proving, by a preponderance of the credible evidence, that the evidence should not be used against him” (*People v Thomas*, 291 AD2d 462, 463; see *People v Berrios*, 28 NY2d 361, 367; *People v Whitehurst*, 25 NY2d 389, 391).

By Decision and Order of the Honorable Robert A. Neary, dated August 19, 2016, pre-trial *Huntley*, *Mapp* and *Sandoval* hearings were ordered. These hearings were held before this Court on October 4<sup>th</sup> and 5<sup>th</sup> 2017. A minimization and audibility hearing was held on consent of the parties on October 2, 2017.

Regarding the combined *Huntley* and *Mapp* hearing, I give full credence to the testimony of the People’s witnesses Detective Salvador Rigano, Detective Ralph Forgione, Police Officer Patrick Vabero, and Detective Kevin Wong whom I found to be candid, plausible and fully credible.

The defense presented no evidence.

The People’s exhibits in evidence include:

- Certified Transcript of the defendant’s Grand Jury Testimony (People’s Ex. 56-A-1).
- Photos of 5 Azalea Circle in Harrison, NY (People’s Exhibits 14-A-1 through 14-A-21)
- Search Warrant Application dated October 21, 2014 (People’s Ex. 34-A-1)
- Eavesdropping Warrant dated October 10, 2015 (People’s Ex. 34-B-6)
- Search Warrant Application dated September 24, 2014 (People’s Ex. 34-C-1)
- Photos of 20 Harmony Trail, New Milford, CT (People’s Ex. 16-A-1 through 16-A-8).
- Photos of 77 Cricker Brook Lane in Fairfield, CT (People’s Ex. 17-A-1 through

18-A-24)

- Photos of the vehicle operated by the defendant and its contents at the time of his arrest taken at Harrison Police Headquarters (People's Ex. 1-A-1 through 1-A-10).
- Wiretap Procedures (People's Ex. 32-A-1)
- Target Report (People's Ex. 32-A-2)
- Duplicate Report (People's Ex. 32-A-3)
- No Conversation Report (People's Ex. 32-A-4)

AND I make the following FINDINGS of FACT:

### FINDINGS OF FACT

On September 22, 2014, the owners of 5 Azalea Circle in the Town of Harrison reported a burglary of their home to the Harrison Police Department. When Detective Forgione arrived on the scene, he observed that the front door of the house was forced open. He processed the scene and took photographs. . On September 23, 2014 Detectives William Curow and Louis Arlotta, of the Harrison Police Department viewed a September 22, 2014 surveillance video recorded by a camera at 6 Azalea Circle, the house to the right of 5 Azalea Circle. The video captured a dark blue SUV, with distinctive shiny five spoke rims, and a license plate with a white background. The license plate number could not be discerned in the video. The video showed that at 11:46 a.m. the vehicle drove past 6 Azalea Circle and into the driveway of 5 Azalea Circle. Fifteen minutes later at 12:01 p.m. the same vehicle drove away. Detective Forgione then learned that a Town of Harrison patrol car equipped with a license plate reader ("LPR") recorded a vehicle at 12:06 p.m. about 2 miles away travelling on Purchase Street at Coventry Court heading toward the Hutchinson River Parkway. Purchase Street is a main road off of which is Azalea Circle. The SUV had a Minnesota license plate numbered 936LUG and was a dark-colored.

On September 23, 2014, Detectives Curow and Arlotta also found a September 22, 2014 surveillance video taken from 4 White Oak Circle which is less than a mile from 5 Azalea Circle. At 11:30 a.m. the same SUV was captured on video driving past 4 White Oak Circle, which is less than a mile from 5 Azalea Circle. The SUV bore a rear Minnesota license plate numbered 936LUG. The police used the license plate number to identify the vehicle and found it was an Enterprise Rent-A-Car ("Enterprise") vehicle. Harrison Police contacted Enterprise and a representative identified the person who rented the vehicle, a dark blue 2014 Chevrolet Captiva SUV (the "Captiva"), as David Tadjijev.

Detective Forgione was familiar with Mr. Tadjijev because in December of 2013 he was called to process a burglary scene at 103 Andover Road in Harrison, New York. A month after that burglary the victim's jewelry was discovered by the Harrison Police Department in possession of Dimitry Nezhinksky, the proprietor of a jewelry store in midtown Manhattan. Mr. Nezhinsky advised the police he obtained the stolen jewelry from David Tadjijev.

On September 24, 2014, because Mr. Tadjijev was the renter of the Captiva observed on video in the driveway of 5 Azalea Circle the day that home was burglarized, he was placed under surveillance. While under surveillance Mr. Tadjijev was observed driving a 2012 Acura

MDX and not the Captiva.

Based in part on this information, the Honorable Barry Warhit, Westchester County Court Judge issued an order on September 24, 2014 authorizing the installation and use of GPS tracking devices on the Captiva bearing Minnesota license plate 936LUG and the Acura MDX bearing New York license plate GCL2901 (People's Ex. 34-C-1). The order authorized the monitoring of the GPS devices "seven days a week, 24 hours a day, for a period of 30 days commencing..." (*see id.*).

On September 27, 2014, Detective Forgione and other members of the Harrison Police participated in surveillance of the Captiva. The defendant was observed operating the Captiva and driving to pawn shops in New York City. Around this time, Detective Forgione learned of the defendant's criminal history including his conviction for a January 2009 burglary in Oakland, New Jersey. At around that time he also learned that the defendant had two vehicles registered in his name: a Ford Expedition and a Mercedes Benz.

On September 29, 2014, the defendant was surveilled and observed driving the Captiva. The Captiva came to stop in the common driveway shared by 53 and 67 Fini Drive in Carmel, Putnam County, New York at about 10:47 a.m. It remained there for about 15 minutes. After the Captiva left, the members of the Harrison Police surveilling the defendant contacted the Carmel Police and suggested they investigate. The Carmel Police initially reported nothing suspicious at the homes, but the homeowner of 53 Fini Drive came home later that day and reported there was a burglary at the house and that jewelry and other items were missing.

On September 30, 2014, the surveillance of the defendant by Detective Forgione and other members of the police department continued and the defendant was observed in the Cortlandt-Yorktown area of Westchester County in the vicinity of South Hill Road and Trolley Road. Around 11:02 a.m. the defendant was observed driving through the neighborhood, stopping and going from street to street. Detective Forgione was in a vehicle equipped with light and sirens. As he drove up to the area with his partner Detective Arlotta, he observed the Captiva parked on the side of the road. He swung his vehicle around and the Captiva began to move. He activated his lights and stopped the vehicle to inquire about "what was going on". As Detective Forgione approached the vehicle with his partner, he observed the defendant sitting in the driver's seat. He had a passenger who identified himself as Raphael Sanchez.

The defendant gave Detective Forgione his license and registration upon request. When the detective asked him if had paperwork for the vehicle, the defendant produced a rental company contract on which the authorized driver was listed as David Tadjjev. The defendant was asked to call Mr. Tadjjev so the detectives could find out if Mr. Carzoglio was authorized to drive the vehicle. The defendant did so but there was no answer. When the defendant was asked for his own phone number, he indicated that he did not know it because the phone was new. Detective Forgione asked Mr. Sanchez if he knew the defendant's phone number. Mr. Sanchez stated he did. The detective asked him to call Mr. Carzoglio and Mr. Sanchez proceeded to dial a number. As he was dialing Detective Arlotta, observed the number Mr. Sanchez dialed and was able to capture the phone number. Detective Forgione, who was near the defendant, was able to capture Mr. Sanchez's number when it appeared on defendant's phone.

Shortly thereafter a person who identified himself as Mr. Tadjjev called Mr. Carzoglio's phone. Detective Forgione spoke to Mr. Tadjjev who gave some pedigree information pertaining to the rental agreement and confirmed he gave Mr. Carzoglio permission to drive the car. After his conversation with Mr. Tadjjev, Detective Forgione returned the phone to Mr. Carzoglio and told him he was free to leave and the defendant drove off. The entire time during this interaction both Mr. Carzoglio and Mr. Sanchez remained in the vehicle, were not taken out of the vehicle, and were not placed into custody. No weapons were drawn. Later that day, members of the Harrison police observed Mr. Carzoglio meeting Mr. Tadjjev at a bar in Bronx, New York named Sin City.

On October 6, 2014, Detective Forgione applied for an eavesdropping warrant for a phone used by Mr. Carzoglio and the application was granted for the number captured from the encounter on September 30, 2014 (see People's Ex. 34-B-6).

On October 11, 2015 at 1:35 p.m. the Harrison police intercepted a call between Mr. Carzoglio and Mr. Sanchez. They were speaking about the types of homes they preferred to target for burglaries. The detective stated the defendant said he preferred townhouses or "towns" because it was easier to go in and out and because of the vehicles he operates and the way he dresses, he would blend in.

At around this time the Harrison Police Department identified Marie Nikgjonaj ("Baby") pursuant to the authorized wiretap as having multiple calls with defendant concerning what the police believed to be burglaries. Ms. Nikgjonaj resided on Valentine Avenue, Bronx, New York.

On October 14, 2014, the Harrison police observed the defendant, Mr. Sanchez and Marie Nikgjonaj, leave the Bronx and drive towards Long Island, specifically to Victoria Court in Suffolk County. They were travelling in a white Ford Expedition operated by the defendant. The Harrison police observed the Expedition drive onto Victoria Court, stay for about 15 to 20 minutes, and leave shortly thereafter. The Harrison police contacted the Suffolk County police who responded and investigated but did not find anything suspicious. Later that day the Harrison police were advised that there had been a burglary on Victoria Court.

After leaving Victoria Court, the defendant, Mr. Sanchez, and Ms. Nikgjonaj went to the Smith Haven Shopping Mall on Long Island. While there the police intercepted a phone conversation between Mr. Carzoglio and David Tadjjev. Mr. Carzoglio was explaining that he was "eluding" the police and that he needed to "lay low". Mr. Carzoglio and Ms. Nikgjonaj were then observed going to the DXL men's clothing store for about 20 to 30 minutes. The police had intercepted another call wherein the defendant stated he was looking to change his clothing to avoid detection. When the two exited the store, the defendant had a bag in his hand. Detective Forgione observed the defendant throw the bag into a trash, can enter his vehicle and leave the area. The detective went to the trash can and retrieved a gray jacket and pants worn by Mr. Carzoglio earlier that day.

On October 20, 2014 at 11:07 a.m. the police intercepted a communication prior to commencing surveillance of the defendant. Mr. Carzoglio speaking to Ms. Nikgjonaj stated

that he was going out to possibly “grab a quickie” in Westchester, possibly Irvington. Ms. Nikgjonaj stated “what are you doing there, you’re crazy, that area is hot”. At about 1:00 p.m. the police observed the defendant in Ossining driving a Mercedes Benz through various residential streets, townhouse locations and cul-de-sacs, stopping at locations.

During the course of the investigation, the Detective Forgione became aware that on September 24<sup>th</sup> or 25<sup>th</sup>, 2017, an iPad has been stolen in an Irvington burglary and later recovered. The person who was in possession of it stated he believed he purchased a stolen iPad and that he bought it from a large man and a woman that resides on Valentine Avenue with short hair. The person described the entrance that was used. The detective stated the location as described was where Ms. Nikgjonaj lived in Bronx, New York.

On October 21, 2014, at around 9:30 a.m., while under GPS surveillance, it was determined that the defendant’s Mercedes Benz had headed to New Milford, Connecticut. As part of the surveillance, Detective Forgione had likewise driven to Connecticut and saw on the GPS system that the defendant’s Mercedes was on Harmony Trail in New Milford for four or five minutes without moving. The Detective went to that location and saw the Mercedes parked in the driveway of 20 Harmony Trail occupied only by Mr. Sanchez in the passenger seat. The detective positioned his car in front of the Mercedes and honked the horn two or three times. Mr. Sanchez stared blankly at the detective and did not react. The detective then drove up the road to turn his vehicle around. His window was down and about 60 to 75 feet from the residence he heard an audible home alarm sounding. The Detective then looked at the house and observed Mr. Carzoglio wearing a black suit jacket and blue shirt come from around the back of the house, walk to the Mercedes and drive away. The detective notified all of his units that the defendant had left the area, contacted the New Milford Police and waited for their arrival.

When, members of the New Milford Police Department arrived. Detective Forgione accompanied them to the house at 20 Harmony Trail and observed that a window was pried open and a footprint was inside (see People’s Ex. 16-A-1 through 16-A-8). The New Milford Police called the homeowner who came home and confirmed there was a burglary. The detective then left to go to White Plains to meet with an assistant district attorney in the Westchester County District Attorney’s office to review and sign an affidavit for the October 21, 2014 search warrant for locations including Ms. Nikgjonaj’s home and the defendant’s two vehicles (People’s Ex. 34-A-1). The search warrant was signed later that day after the defendant’s arrest.

The same day on October 21, 2014, at about 1:00 p.m. Officer Vabero, of the Harrison Police Department, was in Fairfield, CT conducting surveillance of Mr. Carzoglio. When he arrived at Cricker Brook Lane, he saw the defendant’s Mercedes occupied by Mr. Carzoglio. The officer drove past the defendant, turned around and drove by again to see him in the same position in the vehicle. Officer Vabero proceeded to make a left off Cricker Brook Lane to await further instructions.

Sometime thereafter, the Mercedes left and Officer Vabero and his partner Officer Palais canvassed the residences on Cricker Brook Lane to see if any burglaries had occurred.

They observed the front door of 77 Cricker Brook Lane was ajar about two to four inches. They went around to the rear of the residence and the observed a window screen lying on the deck and the kitchen window ajar. They notified Fairfield Police who responded, entered the home, and advised the officers that the master bedroom had been ransacked. The homeowner arrived home, and Officers Vabero and Palais, went into the home with the Fairfield Police officers. The homeowner advised that there was a safe in his bedroom by the bathroom which was missing, along with a pillow case from the bed, as well as jewelry (see People's Ex. 17-A-1 through 17-A-24). These observations were communicated to the rest of the Harrison surveillance team.

At approximately 1:45 p.m. that same day, Detective Kevin Wong, of the Harrison Police Department, assisted in a vehicle and traffic stop of the Mercedes driven by the defendant. The defendant was stopped on the Hutchinson Parkway in New York southbound between Lincoln Avenue and Purchase Street. The detective was made aware prior to the stop of the 77 Cricker Brook Lane burglary and that a safe was taken from that house. He also was made aware of an intercepted phone call where the defendant, seemingly referring to the safe, and while speaking to Ms. Nigkjonaj stated that she should get his saws and hand truck ready.

When the vehicle was stopped Mr. Carzoglio was driving and Mr. Sanchez was in the passenger seat. Six vehicles assisted in the stop which blocked both lanes of traffic on the parkway. Both the defendant and Mr. Sanchez were taken into custody and arrested. Detective Wong initially participated in a search of the vehicle and observed a white Century safe in the trunk of the vehicle. It was determined the safe was from the home at 77 Cricker Brook Lane. The Detective photographed the vehicle and a subsequent search of the vehicle was conducted pursuant to the search warrant that was signed later that day.

Pursuant to those findings of fact, I make the following **CONCLUSIONS of LAW:**

## CONCLUSIONS of LAW

### Huntley Hearing

On this record, and the credible evidence adduced at the *Huntley* branch of these combined hearings the first noticed statements made to a public servant at approximately 11:14 AM on or about September 30, 2014 are admissible at trial.

Pursuant to the standard set forth by the Court of Appeals in *People v Bryant*, 59 NY2d 786 (1983) interrogation consists of both express questioning and also any words or actions on the part of the police which the police should know are reasonably likely to elicit an incriminating response.

However, various forms of express questioning do not constitute interrogation, such as:

- legitimate on-the-scene questioning by a police officer which is designed to clarify the situation encountered
- questions designed to protect the officer's welfare
- questions seeking pedigree information such as identity and other information ordinarily taken at booking.

Based upon the evidence adduced at this *Huntley* hearing, this Court concludes that these noticed statements made by the defendant pursuant to legitimate on-the-scene questioning to clarify the situation encountered. The approach of the vehicle was permissible because the police had a reasonable cause to believe that the occupants of the Captiva, and specifically the defendant, had, *inter alia*, committed a crime at 5 Azalea Court in the Town of Harrison in the County of Westchester on September 22, 2014 (CPL 140.10). In any event, and importantly, the statements the defendant made at approximately 11:14 AM on or about September 30, 2014 were not the product of custodial interrogation or its functional equivalent.

The noticed statement made at approximately 5:36 PM on September 30, 2014 is also admissible at trial as it was spontaneous and volunteered by the defendant without prompting or without any affirmative conduct to induce a statement. There was no evidence that it was a product of police conduct or its functional equivalent. Truly spontaneous communications which are not the product of police activity are voluntary statements which do not trigger Miranda warning requirements and thus are not subject to suppression on the ground that the defendant had not been advised of those rights prior to making the statement so long as the People have borne the burden of proving beyond a reasonable doubt that the statement was spontaneous (see *People v Murphy*, 163 AD2d 425 [2d Dept 1990]). They have done so here.

The defendant's Grand Jury testimony is also admissible at trial. The defendant had chosen to represent himself in the Grand Jury proceedings and decided to appear before the Grand Jury and waive immunity after consulting with his legal advisor.

Accordingly, the defendant's motion to suppress the three noticed statements discussed above is denied. However, regarding statements for which the defendant was provided notice by the People pursuant to CPL 710.30, and for which no evidence was presented at the joint *Mapp/Huntley* hearing, the People are precluded from introducing evidence of those

statements on their direct case.

### Mapp Hearing

Based upon the evidence adduced at the hearing, the Court concludes that the People met their burden of establishing the legality of the police conduct. Probable cause to arrest is present when the facts and circumstances known to the arresting officer are sufficient to support a reasonable belief that an offense has or is being committed (*People v Maldonado*, 86 NY2d 631 [1995]). In determining probable cause, it must appear to be at least more probable than not that a crime has taken place and that the one arrested is its perpetrator, for conduct equally compatible with guilt or innocence does not suffice (*People v Carrasquillo*, 54 NY2d 248, 254 [1981]).

Here, the police had probable cause when they stopped the vehicle operated by the defendant and placed him under arrest based on all the observations and the investigation of the above-referenced burglaries as outlined above. These include, in part, and without limitation:

- the September 22, 2014 surveillance video of 5 Azalea Court in Harrison placing the Captiva in the driveway of that home for 15 minutes on the day it was burglarized, and which defendant was authorized to drive by David Tadjjive and had been observed driving on several subsequent occasions;
- the defendant driving the Captiva to pawn shops on September 27, 2014;
- the observation of defendant on September 29, 2014 at 53 Fini Drive in Carmel (Putnam County) the day it was burglarized;
- the observation of defendant on October 14, 2014 at Victoria Court in Suffolk County on Long Island on the day a home on Victoria Court was burglarized;
- the recorded phone conversation after the defendant left Victoria Court wherein the defendant said he was alluding the police;
- defendant's visit to a Long Island shopping mall after leaving Victoria Court, where he purchased and changed into new clothing and discarded the clothing he had been wearing earlier that day in the trash;
- the observation of the defendant and his Mercedes, on the morning of October 21, 2014, at 20 Harmony Trail in New Milford, Connecticut immediately before a burglary of that home was discovered, prior to his arrest
- The observation of the defendant and his Mercedes at around 1 PM on October 21, 2014 on Cricker Brook Lane in Fairfield, Connecticut immediately before a burglary at 77 Cricker Brook Lane was discovered, during which a safe was stolen.
- the recorded phone conversations, after the defendant left Crickerbrook Lane

but before his arrest, where he directed Marie Nikgjonaj to get his saw and hand truck ready.

Though not argued by the defendant at the hearing, assuming *arguendo*, there was an improper search of the trunk at the time of the arrest, the safe found in the trunk would have inevitably been discovered as the vehicle was going to be impounded after the arrest and a search warrant for the vehicle was issued later that day. Therefore, evidence found in the trunk should not be suppressed (see *People v Fitzpatrick*, 32 NY2d 499 (1973)).

The defendant argued at the hearing that the officers who surveilled him while in Connecticut were without authority to do so. However, the evidence adduced at the hearing shows the officers did not stop or detain the defendant while he was in Connecticut nor did the Harrison police seize any physical evidence in Connecticut. Therefore, defendant's fourth amendment rights were not implicated by the presence and observations of Harrison Police Officers in that state.

Accordingly, the defendant's motion to suppress physical evidence is denied.

#### **Minimization & Audibility Hearings**

On October 2, 2017, the Court conducted a minimization hearing pursuant to *People v Floyd*, 41 NY2d 245 (1976) and an audibility hearing pursuant to *People v Lubow*, 29 NY2d 58 (1971). The defendant and his stand-by counsel were present as were the assistant district attorneys prosecuting the case.

In a minimization hearing, the People have the burden of showing the legality of police conduct and may satisfy this burden by demonstrating that procedures were established to minimize interception of non-pertinent communications and that a conscientious effort was made to follow such procedures (see *Floyd*).

Here, the monitoring officers were given specific instructions to monitor only calls to and from the subject telephone number that were pertinent to the investigation and not privileged. When the officers minimized non-pertinent conversations for a brief interval, they would go back on the call only to see if the speakers changed or if the call became pertinent and would then minimize the call again pursuant to these instructions. When the officer minimized a call, the call was not recorded. The procedures described and followed by the officers together with the documents in evidence demonstrate compliance with these instructions and the Court finds the People have met their burden. The defendant failed to rebut the People's prima facie showing that minimization procedures were established and complied with and the defendant's application to suppress the intercepted communications is denied.

The purpose of audibility hearing is to determine whether to redact or exclude a recording. The fact that portions of a recording are inaudible does not, however, necessarily render it inadmissible, so long as those portions do not encourage speculation about its contents (see *People v Weaver*, 118 AD3d 1270 (4<sup>th</sup> Dept 2014)). After listening to the recordings proffered at the hearing, I find the recordings are sufficiently audible and intelligible. Accordingly, the

defendant's application to suppress the proffered recordings is denied.

**Sandoval Hearing**

On October 5, 2017, a hearing pursuant to *People v Sandoval*, 34 NY2d 371 (1974) was held to determine the permissible scope of cross-examination concerning the defendant's prior criminal acts should the defendant testify in his own defense. The defendant has the burden of showing that the prejudicial effect of defendant's prior convictions outweighs the probative value (*see People v Sierra*, 167 AD2d 765 [3d Dep't 1990]).

The People seek permission to impeach the defendant's credibility on cross-examination should the defendant testify at trial by asking if he has three prior felony convictions in New York and one prior felony conviction in New Jersey. The Court has weighed the potential for undue prejudice against the probative value of each of the defendant's prior convictions which were revealed at the hearing.

After undertaking that analysis, the court will permit the People to impeach the defendant's credibility on cross examination, should the defendant testify at trial, by referring only to:

- The defendant's conviction of a felony in New Jersey

The Court, in its exercise of discretion, will not permit any reference to the following:

- Defendant's prior felony convictions in New York;
- Any other of defendant's criminal convictions or prior bad acts, if any, except as is expressly permitted by this decision;
- The specific crime or underlying facts of any crime for which defendant was convicted.

If the People believe during trial the defense has opened the door to the introduction of prior convictions and underlying facts precluded by this decision, they may seek the Court's permission to introduce them.

This Decision constitutes the Order of the Court.

Dated: White Plains, New York  
October 17, 2017

  
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HON. LARRY J. SCHWARTZ  
COUNTY COURT JUDGE