

People v Alberto

2017 NY Slip Op 33198(U)

April 14, 2017

Supreme Court, Orange County

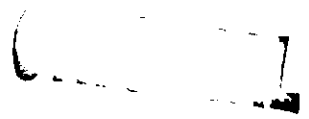
Docket Number: 647/17

Judge: Nicholas De Rosa

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT : ORANGE COUNTY
STATE OF NEW YORK



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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

IND. NO. 2017-006
INDEX NO. 647/17

ALAN ALBERTO,

DECISION AND ORDER

Defendant.

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DE ROSA, N.

Defendant is charged in this indictment with the crimes of **Robbery in the First Degree** (2 counts), Class B Felonies, in violation of §160.15(1) and (3); **Robbery in the Second Degree** (2 counts), Class C Felonies, in violation of §160.10(3) and (1); **Assault in the First Degree** (2 counts), Class B Felonies, in violation of §120.10(4) and (3); **Assault in the Second Degree**, a Class D Felony, in violation of §120.05(2); **Criminal Possession of a Weapon the Third Degree**, a Class D Felony, in violation of §265.02(1) and **Reckless Endangerment in the First Degree** (2 counts), Class D Felonies, in violation of §120.25 of the Penal Law of the State of New York.

Defendant has moved for certain pre-trial relief which the Court, having considered: 1) the defendant's notice of motion and affirmation, submitted by Kevin M. Dunlap, Esq., Gribetz & Loewenberg, PLLC 2) the People's affirmation in response, submitted by Christopher M. Kelly, Esq., Assistant District

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Attorney, Orange County District Attorney's Office, and 3) the transcript of Grand Jury proceedings, decides as follows.

MOTION TO INSPECT GRAND JURY MINUTES

Defendant's motion is granted to the extent that the Court has reviewed the minutes of the Grand Jury *in camera*. The Court finds that release of the minutes is not necessary to the determination of this motion. The Court further finds that the indictment is based upon legally sufficient evidence and that the Grand Jury was properly instructed with respect to the applicable law.

MOTION TO SUPPRESS STATEMENTS

Defendant's motion is granted to the extent that a hearing is hereby ordered on the limited issue of the voluntariness of any statements made by the defendant to law enforcement personnel.

MOTION TO PRECLUDE

Defendant's motion to preclude the introduction of any statements of defendant and/or identification evidence not noticed pursuant to CPL §710.30 is denied with leave to renew at a time when the People seek to use any such evidence.

MOTION TO SUPPRESS PHYSICAL EVIDENCE

Defendant's motion to suppress physical evidence is denied. Defendant has not submitted any sworn allegations of fact supporting said motion pursuant to CPL Section 710.60.

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MOTION FOR DISCOVERY AND INSPECTION

Defendant's motion is granted to the extent that the information was previously provided or inspection was consented to in the People's Voluntary Disclosure Form and/or Affirmation in Response. In all other respects, defendant's application is denied.

DEMAND FOR ROSARIO MATERIAL

This branch of defendant's motion is granted to the extent that the People are ordered to comply with CPL §240.44 and CPL §240.45.

MOTION FOR A SANDOVAL AND VENTIMIGLIA HEARING

Defendant's motion is granted to the extent that a hearing is hereby ordered which will be held to determine which, if any, bad acts or convictions may be used as impeachment in the event that the defendant elects to testify at trial. The Court will also order a hearing to determine, which, if any, bad acts or convictions may be used as evidence in the People's direct case. The District Attorney is ordered to disclose, in accordance with CPL Section 240.43, any and all acts which he intends to use for purposes of impeaching defendant at trial, as well as any and all acts and/or convictions to be presented as evidence in chief.

MOTION FOR BRADY MATERIAL

Defendant's motion is granted to the extent that the District Attorney is directed to disclose to defendant any and

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all documents, materials and/or information, if any, required to be disclosed pursuant to Brady v. Maryland.

HEARINGS IN ADVANCE OF TRIAL

Pre-trial hearings will be scheduled and conducted in a manner consistent with the rights of the defendant and in the interests of judicial economy.

MOTION FOR RESERVATION OF FURTHER MOTIONS

CPL Section 255.20 provides defendant with the procedure to make further motions. No order of the Court is necessary at this time.

CONFERENCE/HEARING DATE

This matter is scheduled for a pre-trial hearing to be held on April 27, 2017. All parties are directed to be present.

The foregoing constitutes the Decision and Order of the Court.

Dated: Goshen, New York
April 12, 2017

E N T E R.



HON. NICHOLAS DE ROSA
COUNTY COURT JUDGE

TO: DAVID M. HOOVLER, ESQ.
ORANGE COUNTY DISTRICT ATTORNEY
Attorney for the People
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Goshen, New York 10924