

**People v Alberto**

2017 NY Slip Op 33199(U)

March 1, 2017

Supreme Court, Orange County

Docket Number: 2017-006

Judge: Nicholas De Rosa

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This opinion is uncorrected and not selected for official publication.

Original  
647-17

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.

ALAN ALBERTO,

**DECISION AND ORDER**

Defendant.

-----x  
DE ROSA, N.

Defendant moves for an order requiring the People to turn over to the Court and to the defendant a copy of a report of the division of criminal justice services (DCJS) or any police department report with respect to the defendant's prior arrest record at arraignment in County Court.

Upon reading and filing the within Order to Show Cause dated February 1, 2017, submitted by David A. Lindine, Esq., Legal Aid Society of Orange County, Inc., Attorney for defendant; Affirmation in Response, dated February 23, 1017, submitted by Christopher Kelly, Esq., Assistant District Attorney, Orange County District Attorney's Office and all other papers and proceedings had herein, defendant's application is decided as follows.

Defendant was indicted by an Orange County Grand Jury and charged with Robbery in the First Degree, 2 counts; Robbery in the Second Degree, 2 counts; Assault in the First Degree, 2 counts; Assault in the Second Degree; Criminal Possession of a

[\* 2]

Weapon in the Third Degree and Reckless Endangerment in the First Degree, 2 counts.

On January 26, 2017, the defendant was arraigned with his attorney, David A. Lindine, Esq. of the Legal Aid Society of Orange County, Inc.

Defendant requests an order requiring the People to supply the Court and defendant with a DCJS criminal history report or a police department report as to defendant's criminal history at arraignment. In support of his argument, defendant cites CPL §§ 210.15(6), 530.40(4) and 530.20(2)(b)(ii).

The People oppose on the ground that there is no statutory authority to require them to supply such a report to a defendant or to the Court.

CPL §210.15(6) provides that the Court must, as provided in §530.40, issue a securing order releasing the defendant on his own recognizance or fixing bail or committing him to the custody of the sheriff upon his arraignment on an indictment before a superior court.

CPL §530.40(4) provides that a superior court may not order recognizance or bail when a defendant is charged with a felony unless and until the district attorney has had an opportunity to be heard and the Court has been furnished with a report as described in CPL §530.20(2)(b)(ii). The report is defined as a report of the DCJS concerning a defendant's criminal record or a

police department report with respect to defendant's prior arrest record. If neither report is available, the Court, with the consent of the People may dispense with this requirement provided that, in an emergency, the People's consent shall not be required if, for reasons stated on the record, the court deems the requirement unnecessary. In the event that the Court has been furnished with any such report or record, the Court shall furnish a copy to counsel for the defendant or if defendant is not represented by counsel, to the defendant.

A clear reading of the foregoing requires a court to provide defense counsel or an unrepresented defendant with a report only when one has been provided to it by the People. The statute does not require the People to provide the report or record directly to the defendant. The clear purpose of the law is to make sure that the Court has as much information about the defendant's criminal history as possible before it renders a decision releasing a defendant or setting bail. The requirement of a criminal history report is limited to the issue of defendant's release or incarceration and can be waived with the People's consent. It is not for the benefit of the defendant and has no bearing on defendant's constitutional rights.

The Court notes that the People have now provided defendant with his criminal history report as his fingerprinting was delayed due to his hospitalization.


[\*4]

Based upon the foregoing, defendant's Order to Show Cause is denied.

The above constitutes the Decision and Order of the Court.

Dated: Goshen, New York  
March 7, 2017

E N T E R.



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HON. NICHOLAS DE ROSA  
COUNTY COURT JUDGE

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