

**People v Alicea**

2022 NY Slip Op 34902(U)

October 4, 2022

Supreme Court, Westchester County

Docket Number: Ind. No. 22-70746-01

Judge: Robert A. Neary

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This opinion is uncorrected and not selected for official publication.

FILED  
OCT 04 2022  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

FILED  
AND  
ENTERED  
ON 10-4-2022  
WESTCHESTER  
COUNTY CLERK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

- against -

DECISION AND ORDER

JOSE ALICEA,

Ind. No. 22-70746-01

Defendant.

-----X  
NEARY, J.

The defendant, Jose Alicea, has been charged with the crimes of Criminal Possession of Stolen Property in the Third Degree, Criminal Possession of Stolen Property in the Fourth Degree (two counts) and Unauthorized Use of a Motor Vehicle in the Second Degree. 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 with a Memorandum of Law. Having read all of the submitted papers and reviewed the court file, this Court makes the following determination.

A. MOTION TO INSPECT THE GRAND JURY MINUTES AND DISMISS THE INDICTMENT FOR INSUFFICIENT EVIDENCE AS THE EVIDENCE BEFORE THE GRAND JURY WAS LEGALLY INSUFFICIENT TO SUPPORT THE OFFENSES CHARGED

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.

B. MOTION TO SUPPRESS THE PRETRIAL IDENTIFICATIONS OF THE DEFENDANT AS THE IDENTIFICATION PROCEDURES WERE UNDULY SUGGESTIVE OR IN THE ALTERNATIVE FOR A WADE HEARING

This motion is granted to the limited extent of conducting a hearing prior to trial to determine whether or not the noticed identifications are unduly suggestive. [See *United States v. Wade*, 388 US 218, 87 S Ct. 1926, 18 LE2d 1149]. Specifically, the Court shall determine whether the identifications were so improperly suggestive as to taint any in-court identification. In the event the identifications are found to be unduly suggestive, the Court shall then go on to consider whether the People have proven by clear and convincing evidence that an independent source exists for such witness' proposed in-court identification.

C. MOTION TO DETERMINE THE SCOPE OF CROSS-EXAMINATION OF THE DEFENDANT CONCERNING ANY PRIOR CONVICTIONS OR PROOF OF THE COMMISSION OF SPECIFIC CRIMINAL, VICIOUS OR IMMORAL ACTS AND TO DETERMINE THE ADMISSIBILITY OF ANY SO-CALLED UNCHARGED CRIMES OR PRIOR SIMILAR ACTS THE PEOPLE INTEND TO INTRODUCE AT TRIAL (SANDOVAL/VENTIMIGLIA HEARING)

Immediately prior to commencement of jury selection, the prosecutor shall, upon request of the defendant, notify the defendant of any prior criminal act which the People seek to use in the cross-examination of the defendant as well as all specific instances of the defendant's prior uncharged criminal, vicious or immoral conduct of which the prosecutor has knowledge and which the prosecutor intends to use at trial for the purposes of impeaching the credibility of the defendant. Thereafter, upon the defendant's request, the trial court shall conduct a *Sandoval* and/or *Ventimiglia* hearing prior to the commencement of trial. [See *People v. Sandoval*, 34

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NY2d 371 (1974); *People v. Ventimiglia*, 52 NY2d 350 (1981); *People v. Molineux*, 168 NY 264 (1901)].

D. MOTION TO RESERVE THE RIGHT TO MAKE FURTHER MOTIONS PURSUANT TO CPL 255.20(2) AND (3)

Upon a proper showing, the Court will entertain appropriate additional motions based upon grounds of which the defendant could not, with due diligence, have been previously aware, or which, for other good cause, could not reasonably have been raised in this motion.

[See CPL §255.20(3)].

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

Dated: White Plains, New York  
October 4, 2022

  
ROBERT A. NEARY  
SUPREME COURT JUSTICE

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