

**People v Vazquez**

2022 NY Slip Op 34935(U)

June 14, 2022

County Court, Westchester County

Docket Number: Indictment No. 22-70385

Judge: Anne E. Minihan

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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.

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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

-against-

ALEX VAZQUEZ

Defendant.

-----X  
MINIHAN, J.

FILED  
AND ENTERED  
ON JUNE 14 2022  
WESTCHESTER  
COUNTY CLERK

DECISION & ORDER  
Indictment No. 22-70385

Defendant, Alex Vazquez, charged by Westchester County Indictment Number 22-70385 with Driving While Intoxicated, as an E Felony<sup>1</sup> (Vehicle and Traffic Law § 1192[3]), Moving from Lane Unsafely (Vehicle and Traffic Law § 1128[a]), and Failure to Use Signal (Vehicle and Traffic Law § 1163[d]), has filed an omnibus motion consisting of a Notice of Motion, an Affirmation in Support, and a Memorandum of Law. In response, the People filed an Affirmation in Opposition together with a Memorandum of Law.

I.

MOTION to INSPECT, DISMISS, and/or REDUCE  
CPL ARTICLE 190

FILED  
JUN 14 2022  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Defendant moves pursuant to CPL 210.20 to dismiss the indictment, or reduce the counts charged against him, on the grounds that the evidence before the Grand Jury was legally insufficient, and the Grand Jury proceeding was defective within the meaning of CPL 210.35. On consent of the People, the court has reviewed the minutes of the proceedings before the Grand Jury.

The court denies defendant’s motion to dismiss or reduce the counts in the indictment for legally insufficient evidence because a review of the minutes reveals that the evidence presented, if accepted as true, would be legally sufficient to establish every element of the offenses charged, including that defendant was intoxicated and that he was previously convicted of Driving While Intoxicated within the past 10 years (*see* CPL 210.30 [2]). Pursuant to CPL 190.65(1), an indictment must be supported by legally sufficient evidence which establishes that the defendant committed the offenses charged. “Courts assessing the sufficiency of the evidence before a grand jury must evaluate whether the evidence, viewed most favorably to the People, if unexplained and uncontradicted--and deferring all questions as to the weight or quality of the evidence-- would warrant conviction” (*People v Mills*, 1 NY3d 269, 274-275 [2002]). Legally sufficient evidence means competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant’s commission thereof (CPL 70.10[1]; *see People v Flowers*, 138 AD3d 1138, 1139 [2d Dept 2016]). “In the context of a Grand Jury proceeding,

<sup>1</sup> By special information attached to the indictment, defendant is alleged to have been previously convicted of the crime of Driving While Intoxicated (Vehicle and Traffic Law § 1192[3]) as a misdemeanor, on or about March 29, 2017, in Nassau County Court, New York.

legal sufficiency means prima facie proof of the crimes charged, not proof beyond a reasonable doubt” (*People v Jessup*, 90 AD3d 782, 783 [2d Dept 2011]). “The reviewing court’s inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of every element of the charged crimes, and whether the Grand Jury could rationally have drawn the guilty inference. That other, innocent inferences could possibly be drawn from those facts is irrelevant to the sufficiency inquiry as long as the Grand Jury could rationally have drawn the guilty inference” (*People v Bello*, 92 NY2d 523, 526 [1998]). Here, the evidence presented, if accepted as true, is legally sufficient to establish every element of the offenses charged (CPL 210.30[2]).

Specifically, defendant, referencing *People v Van Buren*, 82 NY2d 878 (1993), argues that there was “insufficient prima facie proof before the Grand Jury of the predicate misdemeanor DWI conviction” since the certificate of disposition from Nassau County showed defendant’s name and date of birth but no other unique identifier of defendant. However, in *Van Buren*, the court found the certificate of disposition was insufficient to identify defendant because it contained only defendant’s name and no other identifier. Here, the certificate of disposition before the Grand Jury contained defendant’s name as well as his date of birth, which provided “connecting evidence tending to show that defendant was the same [person] named in the certificate [of disposition]” and therefore, the certificate of disposition was sufficient to establish that it was defendant previously convicted (*Id.* at 881).<sup>2</sup>

Defendant also argues that the evidence presented to the Grand Jury was not legally sufficient to establish intoxication because Trooper Uba testified “merely that Mr. Vazquez ‘failed’ all three [Standardized Field Sobriety Tests] without offering any testimony whatsoever regarding how he failed said tests and how he came to conclude that this equated to intoxication.” Although testimony of *how* defendant failed each test might have furthered the proof of intoxication, the Court finds that there was sufficient evidence for a Grand Jury to reasonably infer that defendant was intoxicated. Trooper Uba testified that a motorist had alerted him that defendant was driving erratically, the trooper observed defendant swerving abruptly in between lanes without using a directional signal, defendant did not stop for a mile and a half after the trooper attempted to pull him over, there was a strong odor of an alcoholic beverage emanating from defendant’s breath, defendant’s eyes were watery and glassy, his face was flushed, and his speech was impaired. Further, Trooper Uba testified that defendant had difficulty exiting his car and he stumbled out of his vehicle before performing Standardized Field Sobriety Tests (hereinafter SFSTs). Based on this evidence, as well as the fact defendant failed the three SFSTs administered to him, the Grand Jury could reasonably infer that defendant was driving while intoxicated and the Court finds the evidence presented was legally sufficient.

With respect to defendant’s claim that the Grand Jury proceeding was defective within the meaning of CPL 210.35, a review of the minutes reveal that a quorum of the grand jurors was present during the presentation of evidence, and that the Assistant District Attorney properly and clearly instructed the Grand Jury on the law and only permitted those grand jurors who heard all the evidence to vote the matter (*see People v Collier*, 72 NY2d 298 [1988]; *People v Calbud*, 49

---

<sup>2</sup> Additionally, there was testimony by the arresting officer, Trooper Uba, that defendant was identified by his New York State driver’s license as Alex Vazquez with the same date of birth as on the certificate of disposition.

NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]).

To the extent that defendant's motion seeks disclosure of portions of the Grand Jury minutes beyond the disclosure directed by CPL Article 245, such as the prosecutor's instructions and/or colloquies, the court denies that branch of the motion.

II.

#### MOTION to SUPPRESS NOTICED STATEMENTS

Defendant's motion seeking to suppress statements on the grounds that they were unconstitutionally obtained is granted on consent to the limited extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by defendant, which have been noticed by the People pursuant to CPL 710.30 (1)(a), were involuntarily made by defendant within the meaning of CPL 60.45 (CPL 710.20 [3]; CPL 710.60 [3][b]; *People v Weaver*, 49 NY2d 1012 [1980]), obtained in violation of the 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 [1979]).

III.

#### MOTION to SUPPRESS PHYSICAL EVIDENCE and REFUSAL

Defendant moves for suppression of all evidence, including the SFSTs and his refusal to submit to a chemical test. This branch of defendant's motion is granted solely to the extent of conducting a *Mapp* hearing prior to trial to determine the propriety of any search resulting in the seizure of property including the SFSTs (*see Mapp v Ohio*, 367 US 643[1961]). The hearing will also address whether any evidence was obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

With respect to defendant's allegation that his alleged refusal to submit to a chemical test should be suppressed on constitutional grounds, this Court directs that a Refusal Hearing be conducted prior to trial to determine, among other things, that the DWI refusal warnings were provided in accordance with VTL 1194 (*see People v Smith*, 18 NY3d 544, 547 [2012]; *People v Williams*, 99 AD3d 955 [2d Dept 2012]).

IV.

#### MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

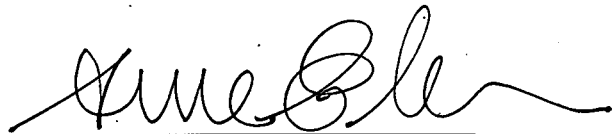
Defendant has moved for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into defendant's prior criminal convictions or prior uncharged criminal, vicious, or immoral conduct. On the People's consent, the court orders a pre-trial *Sandoval* hearing (*see People v Sandoval*, 34 NY2d 371[1974]). At said hearing, the People shall notify defendant, *in compliance with CPL Article 245*, of all specific instances of his criminal, prior uncharged criminal, vicious, or immoral conduct of which they have knowledge and which they intend to use in an attempt to impeach defendant's credibility if he elects to testify at trial, *and, in any event, not less than 15 days prior to the first scheduled trial date.*

Defendant shall bear the burden of identifying any instances of his prior misconduct that he submits the People should not be permitted to use to impeach his credibility. Defendant shall be required to identify the basis of his belief that each event or incident may be unduly prejudicial to his ability to testify as a witness on his own behalf (*see People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

If the People determine that they will seek to introduce evidence at trial of any prior uncharged misconduct and criminal acts of defendant, including acts sought to be used in their case in chief, they shall so notify the court and defense counsel, *in compliance with CPL Article 245, and, in any event, not less than 15 days prior to the first scheduled trial date*, and a *Ventimiglia/Molineux* hearing (*see People v Ventimiglia*, 52 NY2d 350 [1981]; *People v Molineux*, 168 NY 264 [1901]) shall be held immediately prior to trial to determine whether or not any evidence of uncharged crimes may be so used by the People. The People are urged to make an appropriate decision in this regard sufficiently in advance of trial to allow any *Ventimiglia/Molineux* hearing to be consolidated and held with the other hearings herein.

The foregoing constitutes the decision and order of this court.

Dated: White Plains, New York  
June 14, 2022



Honorable Anne E. Minihan  
Acting Justice of the Supreme Court

To:  
Hon. Miriam E. Rocah  
District Attorney, Westchester County  
111 Dr. Martin Luther King, Jr., Blvd.  
White Plains, NY 10601  
Attn: ADA Elizabeth Marcus  
EMarcus@westchesterda.net

The Office of Clare J. Degnan  
Legal Aid Society of Westchester County  
150 Grand Street, Suite 100  
White Plains, NY 10601  
Attn: Darryl Albert, Esq.  
DAlbert@laswest.org  
*Attorney for defendant, Alex Vazquez*