

**People v Pillacela-Jiminez**

2023 NY Slip Op 34807(U)

March 23, 2023

Supreme Court, Westchester County

Docket Number: Ind. No. 22-73089-001

Judge: Robert A. Neary

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**FILED  
AND  
ENTERED  
ON 3-23-2023  
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

MANUEL PILLACELA-JIMINEZ,

Ind. No. 22-73089-001

Defendant.

-----X

NEARY, J.

The defendant, Manuel Pillacela-Jiminez, has been charged with the crimes of Driving While Intoxicated as a felony, Aggravated Unlicensed Operation of a Motor Vehicle in the First Degree and Failure to Use Signal Lights. 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

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TIMOTHY C. IBOVI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Memorandum of Law. Having read all of the submitted papers and reviewed the court file, this Court makes the following determination.

A. MOTION TO DISMISS FACIALLY INSUFFICIENT INDICTMENT PURSUANT TO CPL ARTICLE 210

This motion is denied. The indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's commission thereof with sufficient precision as to clearly apprise the defendant of the conduct which is the subject of the indictment [CPL §200.50]. The indictment charges each and every element of the crimes, and alleges that the defendant committed the acts which constitute the crimes at a specified place during a specified time period and, therefore, is sufficient on its face. [*People v. Iannone*, 45 NY2d 589, 412 NYS2d 110, 384 NE2d 656; *People v. Cohen*, 52 NY2d 584, 439 NYS2d 321, 421 NE2d 813].

B. MOTION TO INSPECT GRAND JURY MINUTES AND DISMISS OR REDUCE THE INDICTMENT AS A DEFECTIVE PRESENTATION PURSUANT TO CPL ARTICLE 210

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.

C. MOTION TO SUPPRESS STATEMENTS PURSUANT TO CPL ARTICLE 710

This branch of the defendant's motion is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL §710.30 (1)(a), were involuntarily made by the defendant within the meaning of CPL §60.45 (see CPL §710.20(3), CPL §710.60[3][b]; *People v. Weaver*, 49 NY2d 1012, 429 NYS2d 399, 406 NE2d 1335), obtained in violation of 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, 99 S. Ct. 2248, 60 LE2d 824).

D. MOTION TO SUPPRESS ALLEGED REFUSAL OF CHEMICAL TEST

This branch of the defendant's motion is granted to the extent that a hearing will be conducted to determine the admissibility of any chemical test refusal made by the defendant. The hearing will address whether the defendant was given clear and unequivocal warnings of the effect of his refusal to submit to a chemical test and persisted in his refusal to take the test. [See Vehicle and Traffic Law §1194(2)(b); *People v. Cousar*, 226 AD2d 740; *People v. Cragg*, 71 NY2d 926; *People v. Thomas*, 46 NY2d 100; *People v. Bratcher*, 165 AD2d 906; *People v. Torrey*, 144 AD2d 865; *People v. Boudreau*, 115 AD2d 652].

E. MOTION TO SUPPRESS USE OF PRIOR CONVICTIONS AND IMMORAL, CRIMINAL OR VICIOUS ACTS (SANDOVAL VENTIMIGLIA HEARING

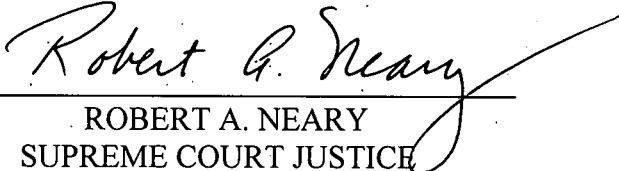
Immediately prior to commencement of jury selection, the prosecutor shall, upon request of the defendant, notify the defendant of any prior criminal act which the People seek to use in the cross-examination of the defendant as well as all specific instances of the defendant's prior uncharged criminal, 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 NY2d 371 (1974); *People v. Ventimiglia*, 52 NY2d 350 (1981); *People v. Molineux*, 168 NY 264 (1901)].

F. MOTION FOR EXCULPATORY

The People recognize their continuing duty to disclose exculpatory material at the earliest possible date. [See *Brady v. Maryland*, 373 US 83, 83 S Ct. 1194, 10 LE2d 215 and *Giglio v. United States*, 405 US 150, 92 S Ct. 763, 31 LE2d 104]. If the People are or become aware of any material which is arguable exculpatory, but they are not willing to consent to its disclosure, they are directed to disclose such material to the Court for its *in camera* inspection and determination as to whether such will be disclosed to the defendant.

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

Dated: White Plains, New York  
March 23, 2023

  
ROBERT A. NEARY  
SUPREME COURT JUSTICE

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