

People v Valencia

2023 NY Slip Op 34808(U)

May 22, 2023

Supreme Court, Westchester County

Docket Number: Ind. No. 23-70483-001

Judge: Robert A. Neary

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.

**FILED
AND
ENTERED
ON 5-22-2023
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

EDUARDO VALENCIA,

Ind. No. 23-70483-001

Defendant.

-----X

NEARY, J.

The defendant, Eduardo Valencia, has been charged with the crimes of Driving While Intoxicated as a felony (two counts), violation of Section 1180 (b) of the Vehicle and Traffic Law (Speeding), violation of Section 144-a(a) of the Vehicle and Traffic Law (failing to exercise due care to avoid colliding with emergency vehicle) and violation of Section 1128(a) of the Vehicle and Traffic Law (operating a motor vehicle upon a roadway, failed to drive as nearly as practicable within a single lane and moved from such lane without ascertaining that such

FILED ^{TR}
MAY 22 2023
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

movement could be made with safety). 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 TO DISMISS AND/OR REDUCE EACH COUNT OF THE INDICTMENT AS NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE PURSUANT TO CPL 210.20(1)(B) AND 210.30

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 FROM USE AS EVIDENCE AT ANY TRIAL CERTAIN STATEMENTS NOTICED PURSUANT TO CPL ARTICLE 710 OR IN THE ALTERNATIVE FOR A HUNTLEY HEARING

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).

C. MOTION TO SUPPRESS FROM USE AS EVIDENCE AT ANY TRIAL ANY PHYSICAL EVIDENCE ALLEGEDLY SEIZED FROM DEFENDANT OR HIS VEHICLE PURSUANT TO CPL ARTICLE 710 OR IN THE ALTERNATIVE FOR A MAPP/DUNAWAY HEARING

This branch of the 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 results of any blood alcohol testing (see *Mapp v. Ohio*, 367 US 643, 81 S Ct. 1684, 6 LE2d 1081) and whether any evidence was 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*, 42 US 200, 99 S Ct. 2248, 60LE2d 824].

D. MOTION FOR A SANDOVAL/VENTIMIGLIA HEARING TO DETERMINE THE ADMISSIBILITY OF ANY PRIOR CRIMINAL OR BAD ACTS

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)].

E. 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
May 22, 2023



ROBERT A. NEARY
SUPREME COURT JUSTICE

Timothy O'Hara
Assistant District Attorney
Westchester County
Office of the District Attorney
Richard J. Daronco Courthouse
111 Martin Luther King Blvd.
White Plains, New York 10601
TOHara@westchesterda.net

Matthew P. Lipinsky, Esq.
Attorney for Defendant
271 North Avenue, Suite 1017
New Rochelle, New York 10801
matthew@lipinskyfirm.com