APPENDIX

People v Cisse
2019 NY Slip Op 01258 [32 NY3d 1198]
February 21, 2019
Court of Appeals
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
As corrected through Wednesday, April 17, 2019

[*1]

The People of the State of New York, Respondent,
v
Ali Cisse, Appellant.

Argued January 10, 2019; decided February 21, 2019

People v Cisse, 149 AD3d 435, affirmed.

APPEARANCES OF COUNSEL

Robert S. Dean, *Center for Appellate Litigation*, New York City (*Matthew Bova* of counsel), for appellant.

Cyrus R. Vance, Jr., *District Attorney*, New York City (*Susan Axelrod* and *Alan Gadlin* of counsel), for respondent.

Brooklyn Defender Services, Brooklyn (*Lisa Schreibersdorf* and *Susannah Karlsson* of counsel), and *Fried, Frank, Harris, Shriver & Jacobson LLP*, New York City (*Aleksandr B. Livshits* and *Arielle F. Evans* of counsel), for Brooklyn Defender Services and others, amici curiae.

Holwell, Shuster & Goldberg LLP, New York City (*Scott M. Danner*, *Daniel M. Horowitz*, *Evan H. Stein* and *Meredith J. Nelson* of counsel), *The Brennan Center for Justice at NYU School of Law*, New York City (*Priya Raghavan*, *Ames Grawert* and *Bryan Furst* of counsel), and *Cato Institute*, Washington, D.C. (*Ilya Shapiro* of counsel), for The Brennan Center for Justice at NYU School of Law and another, amici curiae.

{**32 NY3d at 1198} OPINION OF THE COURT

Memorandum.

[1] The order of the Appellate Division decision should be affirmed. Defendant impliedly consented to the monitoring and recording of his telephone calls (*see United States v Conley*, 531 F3d 56, 58 [1st Cir 2008]; *United States v Verdin-Garcia*, 516 F3d 884, 894 [10th Cir 2008]; *United States v Faulkner*, 439 F3d 1221, 1224-1225 [10th Cir 2006]; *United States v Hammond*, 286 F3d 189, 192 [4th Cir 2002]; *United States v Van Poyck*, 77 F3d 285, 292 [9th Cir 1996]; *United States v Horr*, 963 F2d 1124, 1126 [8th Cir 1992]; *United States v Workman*, 80 F3d 688, 696 [2d Cir 1996]; *United States v Amen*, 831 F2d 373, 378-379 [2d Cir 1987]). Thus, neither the recording of those phone calls nor the admission of excerpts from the recorded calls violated the New York or federal wiretapping statutes (CPL art 700; Penal Law §§ 250.00 [1]; 250.05; 18 USC §§ 2510, 2511 [2] [c]; 2515). Further, the recording of defendant's nonprivileged phone calls did not violate his right to counsel under the New York State Constitution (*see People v Johnson*, 27 NY3d 199 [2016]). Defendant's conclusory argument that his statements were

"involuntarily made" in violation of CPL 60.45 (2) (a) because of the conditions of his confinement is devoid of record support.

[2] The Appellate Division properly considered the suppression hearing record and the colloquy with counsel to determine that the suppression court had concluded that the police engaged in a level one encounter with defendant (*see People v Nicholson*, 26 NY3d 813 [2016]). The Appellate Division's further holding that the officer lawfully approached defendant to request information—not, as defendant argues, to demand that he stop and respond—based on an objective credible reason (*see People v Hollman*, 79 NY2d 181, 191 [1992]; *People v De Bour*, 40 NY2d 210, 223 [1976]), presents a mixed question of law and fact. Because there is record support for the Appellate Division's determination, it is beyond our further review (*see People v Parker*, 32 NY3d 49, 55 [2018]).

Defendant's claim of a violation of a due process right to prepare for trial is unpreserved for our review. His other arguments are unpersuasive.

Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

Order affirmed, in a memorandum.

People v Cisse
2017 NY Slip Op 02724 [149 AD3d 435]
April 6, 2017
Appellate Division, First Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
As corrected through Wednesday, May 31, 2017

[*1]

The People of the State of New York, Respondent,
v
Ali Cisse, Appellant.

Robert S. Dean, Center for Appellate Litigation, New York (Matthew Bova of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Jessica Olive of counsel), for respondent.

Judgment, Supreme Court, New York County (Herbert J. Adlerberg, J.H.O. at suppression hearing; Richard D. Carruthers, J. at suppression ruling; A. Kirke Bartley, Jr., J. at jury trial and sentencing), rendered June 9, 2014, convicting defendant of robbery in the first degree (two counts), robbery in the second degree, attempted robbery in the first degree (two counts), attempted robbery in the second degree, criminal possession of a weapon in the second degree (two counts), reckless endangerment in the first degree, and criminal possession of a weapon in the third degree, and sentencing him to an aggregate term of 12 years, unanimously affirmed.

Defendant's motion to suppress physical evidence was properly denied. Defendant's principal argument is that his initial encounter with the police, from which his arrest ultimately flowed, was at least a level two common-law inquiry unsupported by the necessary predicate. However, the record establishes that the police officer only conducted a level one request for information by telling defendant to "hold up for a second" or "hold on for a second," and to "turn around" to face the officer, while standing about 10 or 15 feet away from him (*see People v Reyes*, 83 NY2d 945 [1994], *cert denied* 513 US 991 [1994]; *People v Montero*, 284 AD2d 159, 160 [1st Dept 2001], *lv denied* 96 NY2d 904 [2001]). This request for information was "supported by an objective, credible reason, not necessarily indicative of criminality" (*People v McIntosh*, 96 NY2d 521, 525 [2001]), based on defendant's suspicious behavior when he appeared to notice the marked police car (*see Montero*, 284 AD2d at 160). Defendant's contention that the officer's command to "turn around" was a level three stop is unpreserved, and we decline to review it in the interest of justice. We reject defendant's argument that, pursuant to CPL 470.15 (1), we lack jurisdiction to review the level of the police encounter at issue here, as this case does not present a *LaFontaine* issue (*People v LaFontaine*, 92 NY2d 470 [1998]). Although the judicial hearing officer's decision may have been inartfully worded, the fair import of his finding that the officers had a "credible reason" to stop the defendant is that the encounter at issue was in fact a level one request for information (*see People v Nicholson*, 26 NY3d 813, 825 [2016] [noting that an appellate court is not prohibited "from considering the record and the proffer colloquy with counsel to understand the context of the trial court's ultimate determination"]; *People v Garrett*, 23 NY3d 878, 885 n 2 [2014]).

The court properly exercised its discretion when it asked the jury whether it had reached a partial verdict. The trial court is in the best position to decide whether to make such an inquiry, especially where, as here, jury notes give an indication that such a query might be appropriate, and we have repeatedly upheld the court's authority in this

regard (*see e.g. People v Adamson*, 127 AD3d 566, 566 [1st Dept 2015], *lv denied* 25 NY3d 1197 [2015]). The court specifically urged the jury not to rush, "and there is no indication that the jurors felt compelled to reach a verdict against their will" (*People v Hall*, 105 AD3d 658, 658 [1st Dept 2013], *lv denied* 21 NY3d 1016 [2013]). The fact that the jury reached a full verdict shortly after the court's query [*2]does not establish that the court's inquiry was coercive (*see e.g. People v Brown*, 1 AD3d 147 [1st Dept 2003], *lv denied* 1 NY3d 625 [2004]).

The admission of incriminating, nonprivileged phone calls that defendant chose to make while incarcerated, after receiving multiple forms of notice that his calls may be monitored and recorded, did not violate federal or state wiretapping laws (*see United States v Conley*, 531 F3d 56, 58 [1st Cir 2008]; *United States v Verdin-Garcia*, 516 F3d 884, 893-895 [10th Cir 2008], *cert denied* 555 US 868 [2008]; *United States v Horr*, 963 F2d 1124, 1125-1126 [8th Cir 1992], *cert denied* 506 US 848 [1992]; *United States v Amen*, 831 F2d 373 [2d Cir 1987], *cert denied* 485 US 1021 [1988]; *People v Jackson*, 125 AD3d 1002, 1003-1004 [2d Dept 2015], *lv denied* 25 NY3d 1202 [2015]), defendant's federal or state right to counsel (*see People v Johnson*, 27 NY3d 199 [2016]; *People v Velasquez*, 68 NY2d 533 [1986]), or his due process right to participate in the preparation of his own defense (*see Florence v Board of Chosen Freeholders of County of Burlington*, 566 US 318 [2012]; *Matter of Lucas v Scully*, 71 NY2d 399, 406 [1988]). Defendant was free to make privileged calls to his attorney on all aspects of his case, including pretrial investigation. Defendant was also free to limit his social calls to matters unrelated to his case. Instead, defendant chose to assume the risks involved in making unprotected case-related communications. Furthermore, since no public servant, or anyone else, did anything to obtain any statements from defendant, his phone conversations cannot be viewed as involuntary for purposes of CPL 60.45, and no such jury instruction was warranted.

Defendant's legal sufficiency claim regarding his reckless endangerment conviction is unpreserved and we decline to review it in the interest of justice. As an alternative holding, we reject it on the merits. We also find that the verdict was not against the weight of the evidence (*see People v Danielson*, 9 NY3d 342, 348 [2007]). We likewise decline to review defendant's unpreserved challenge to a voice identification procedure, and reject it in any event (*see People v McRae*, 195 AD2d 180 [1st Dept 1994], *lv denied* 83 NY2d 969 [1994]). We have considered and rejected defendant's ineffective assistance of counsel claims relating to the issues we have found to be unpreserved (*see People v Benevento*, 91 NY2d 708, 713-714 [1998]; *Strickland v Washington*, 466 US 668 [1984]). Accordingly, we do not find that any lack of preservation may be excused on the ground of ineffective assistance.

The court properly exercised its discretion in denying youthful offender treatment (*see People v Drayton*, 39 NY2d 580 [1976]), and we perceive no basis for reducing the sentence. Concur—Friedman, J.P., Sweeny, Richter, Manzanet-Daniels and Kapnick, JJ.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CRIMINAL TERM: PART 94
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THE PEOPLE OF THE STATE OF NEW YORK — Indictment No. 5462/12

-against- — Robbery 1

Jury Voir Dire

ALI CISSE,

Defendant.

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April 30th & May 1st, 2014

100 Centre Street
New York, NY 10013

B e f o r e:

HONORABLE A. KIRKE BARTLEY, JR.,

Justice.

Appearances:

CYRUS R. VANCE, JR., ESQ.
District Attorney, New York County
BY: CAROLINA HOLDERNESS, ESQ.
ANDREW MERCER, ESQ.
Assistant District Attorneys

GLENN ABOLAFIA, ESQ.
Attorney for Defendant

Joanne Fleming
Senior Court Reporter

MS. HOLDERNESS: Just to briefly -- well, I will move on to the next issue. There are Rikers calls that this defendant makes from his own book and case number, some of which the People would seek to use, and I have them available and can play them for the Court either now or after we've gotten a panel, however the Court chooses to do the scheduling of this, but there are approximately four Rikers calls that the People --

THE COURT: Do you have transcripts of it?

MS. HOLDERNESS: I have transcripts for the portions of them that I would like to use. I understand we may need to iron out exactly which, you know, exactly whether my view of what we should use is what the Court and defense counsel agree to use. So, I have transcripts prepared for what I want to use but not yet for whatever the final version is going to be.

The reason I raise them at this point is also because on these calls the defendant speaks of someone named Ant. In this robbery, the defendant is the gunman but he is acting in concert with another person who has not yet been arrested. That person is -- the person's name is Anthony Robinson.

There is video, approximately ten minutes after the robbery, which I have available and can play it for the Court, of the defendant and another person entering the

subway system at Penn Station. On that video you see the face of the unapprehended person and that person appears to be Anthony Robinson.

This is -- I have an arrest photo of Anthony Robinson from about the same time as this incident, and our application is to be able to introduce at trial, either by stipulation or through a police officer, a photograph of Anthony Robinson who is the unapprehended co-perpetrator of this robbery.

On the Rikers calls, the defendant addresses this person as Ant and speaks to him about getting rid of the hammer. This goes both to the identity of this defendant as the perpetrator of the robbery because he's speaking about evidence that would connect him to the robbery and it goes to his acting in concert with this unapprehended other who is seen clearly on video with him a few minutes after the robbery the night of the robbery.

THE COURT: The video is from where and shows what?

MS. HOLDERNESS: I can play it for the Court right now, it's set up.

It's from Penn Station, the subway system where the defendant and Anthony Robinson are entering through the turnstiles. The video shows them approach the turnstiles, Anthony Robinson attempts to swipe, steps back and then

approaches the turnstiles again with the defendant. They swipe into the subway system. This is Penn Station at about four-twenty in the morning. The robbery here took place on Twenty-Eighth Street at sometime after four, maybe four-o-five or four-ten on the same morning. The defendant, when he is arrested a few days later, has on his possession the MetroCard that is used at this exact time on the video.

So, if the Court is ready, I can play that now.

THE COURT: The time is four-twenty, and what is the time of the alleged robbery?

MS. HOLDERNESS: Four -- I believe it's four-o-five, four-ten. The club closes at four and it's as they're leaving this robbery happens.

I've shown to defense counsel and I can hand up to the Court, if you'd like, what's been marked -- it has not yet been marked -- but the photos that I seek -- that I would seek to introduce showing Anthony Robinson.

MR. ABOLAFIA: Judge, you want to view the video before I respond?

THE COURT: I might as well.

THE SERGEANT: You want to see this, Judge?

THE COURT: Yes.

THE SERGEANT: (Handing.)

(Whereupon, the videotape was played in open court.)

MS. HOLDERNESS: The People's theory is that the defendant is the person in the white jacket. He is apprehended wearing that jacket a few days later with a MetroCard on him that was used at that exact time and that turnstile.

The photos that I just handed up is someone named Anthony Robinson who the defendant addresses as Ant when discussing the robbery on the Rikers calls.

THE COURT: Is that everything?

MS. HOLDERNESS: Yes.

MR. MERCER: Yes.

THE COURT: The record will reflect that I've viewed the -- this was Penn Station, you said?

MS. HOLDERNESS: It's Penn Station, Thirty-Fourth Street and Seventh Avenue. The robbery occurs on Twenty-Eighth Street between Eighth and Seventh Avenues.

And just so the Court is aware, there is video of the robbery itself. The video is not clear enough to see faces. It's a camera angle from behind, but it does show the defendant acting with someone wearing a dark hoody.

THE COURT: And the photograph that you are seeking to admit is from when?

MS. HOLDERNESS: That photograph is from an arrest of Anthony Robinson in 2012. I don't have the date on me. I believe it's June or August of 2012. I can double-check.

This incident, the robbery occurred December 1st, 2012.

THE COURT: So it would be some five or six months later?

MS. HOLDERNESS: Correct.

Let me just double-check the date for you, your Honor, I'm sorry.

I believe that arrest photo is from August 14th, 2012. And, of course, that date could also be elicited, although my position there is it goes to weight not to admissibility.

THE COURT: Alright.

You wish to be heard?

MR. ABOLAFIA: Yes, Judge.

I object to the use of the photograph. I think it's speculative. There's no connection between the actual occurrence and the photo. It is simply a theory. There's no -- it's just a speculative theory. It's based on an interpretation of phone calls and then an extrapolation by some unit of the police unit. It involves hearsay, interpretation and speculation, all the reasons why this should not be mentioned or introduced at trial. If it was so obvious, Mr. Robinson would have been arrested by now.

Judge, I think it introduces an element to the case that would be prejudicial to Mr. Cisse, and there's no

nexus between that video and the events on the street other than someone saying that maybe they look similar in clothing, but that's about it, and that's prejudicial because it's groping -- it's reaching for straws by saying that that video is the same -- the person on that video is the person in that photograph. Judge, there wouldn't even be enough to arrest him. It was the only state of the evidence. So, it's speculative at the very least.

THE COURT: Okay.

What is the nexus between the Rikers phone call and -- what's the name of the individual?

MS. HOLDERNESS: Anthony Robinson.

THE COURT: -- Anthony Robinson?

MS. HOLDERNESS: On the Rikers -- there are two Rikers phone calls where the defendant addresses someone named Ant. He calls this person Ant.

On these phone calls the defendant says -- the first one he says: A-yo, what's the word though? Yo, where's shalom?

And the person who he addresses as Ant replies: That shit gone, nigger.

Defendant says: Yo, they looking for it, they looking for that, they raided my crib for that.

On a later call, also with the same person, the person says: You said them niggers is looking for somebody

else?

The defendant: They like, they not looking for -- really looking for nobody, like, they looking for the hammer.

The receiver says: Yeah.

Defendant: That's what they're looking for, they're looking for shalom. That's why I keep telling these niggers to tell you to get rid of shalom because they ain't even have no case.

Receiver: Yes.

Defendant: I got caught with the three-eighty and that -- they said it was a four five involving that other one.

Those are excerpts from two different calls. That's where they are speaking about the gun.

In addition, on one of the calls to the same receiver, he, the receiver, says: Now you said they had niggers, so you talking about they ain't got nobody's face on camera?

The Defendant: Nah. If they would have, they would have been had that shit on court. They just got me walking through a safe, on the back, like you feel me, from the back.

The Receiver, who he addresses as Ant, said: They took the coat and all that?

Defendant: Yeah.

Anthony: They took the coat?

Defendant: Yeah.

Anthony: You didn't get it back?

Defendant: No, they vouchered it.

Now, in that phone call, the person who says -- who the defendant addresses as Ant also says: What about me? Yo, they looking for me?

And the defendant says: They said it was two of us.

I can play the calls for the Court.

THE COURT: Alright, what I would like to know is, is there any connection between the phone number that was called and this Anthony Robinson?

MS. HOLDERNESS: So, on the first call, the defendant calls a different number and then the original recipient says: Oh yo, there's Anthony Robinson there? That phone call is not made to Anthony Robinson's number.

With respect to the second call, I have subpoenaed that information. I don't yet have the answer. I can try to get it for you shortly.

THE COURT: I would think that that would be germane to the decision.

MS. HOLDERNESS: As soon as I receive the subpoena results, obviously they would come to the Court anyway, I

will let you know.

But the People's position is that this is entirely relevant, both on the element of identification and on the acting in concert. Any issue, of course, the People would not ask a witness, police or otherwise, to say that the person on the video is Anthony Robinson. What we are seeking to do is admit a photograph of Anthony Robinson and his name and then the jury can draw the conclusions or not. That's an issue for argument.

The other thing I would say is that the version I had given this Court that the People are seeking to introduce is, in fact, sanitized. The defendant and Ant, Anthony Robinson, are both known members of a particular street gang. On the Rikers calls, they identify that street gang.

They use slang that is used by members of this street gang. You will hear them on the phone calls tell each other: Like, you gunning? Yeah, I'm gunning. That's street slang used by a gang known as the YGs. They have ATG up. That is another street gang.

The defendant is told at one point to belly up. That is a reference to his membership in the Bloods.

The People are not seeking to introduce any of that at this point, because it is prejudicial. But the Court should be aware that, and should this really become an

issue, that it is highly relevant to the defendant's identity, his relationship with Anthony Robinson who is a known member of these two gangs, that the defendant uses slang from.

But, at this point, to keep things sanitized, what the People are seeking to introduce is simply a photograph of this person, the fact that his name is Anthony Robinson and then make our arguments.

MR. ABOLAFIA: Judge, I'm going to object to the use of the Rikers calls for the following reasons: It requires the use of a police officer to come into court and interpret what's being said on the tape.

First of all, there has to be a voice identification to connect Mr. Cisse to the phone calls because it's very often the case, and that could be elicited from any Corrections person that comes into court, that inmates use each other's accounts to make phone calls out and then that there are all kind of third-party calls often made. So when you call out, you call a second number who than patches in a third number.

There are notification requirements about whether or not inmates are on notice to make the phone calls and whether there is adequate notice about the phone calls being made and that they would be recorded.

Judge, the problem with these -- this type of

evidence is because -- the main problem, as I see it, is that it requires an officer to interpret the language that's being stated on the call.

And we're talking about now extracting out pieces of an entire phone call because of quote unquote gang-related information, which requires another level of interpretation that I think is objectionable under the context -- within the context of this case.

I have not been provided with adequate notice about the phone calls. There's been no transcript. There's partial transcripts of an entire phone call which are supposedly prejudicial.

The problem here is the context of the calls. I don't know if the prejudicial language changes the call. It's gang activity. That inherently is prejudicial within the context of gang activity. I don't know if it's being -- what the conversation is -- that's being elicited is gang related or whether they're talking about this crime or another crime. There's nothing specific on at least the part that I heard.

Judge, I find the whole -- the whole exercise or this elicitation of this particular evidence is objectionable for a variety of reasons that I just mentioned. And I'd like to maybe submit additional cases on that -- on that issue.

THE COURT: Alright, due to that fact, I will permit you to provide the Court any case law in support of your argument.

MS. HOLDERNESS: I would like to respond briefly to Mr. Abolafia's point about notice. These calls were turned over. I can check the exact date. But I told him they were available to him in my office at least two weeks ago. They were turned over at least last week. I directed him to the specific calls that the People seek to use. There are only four of them. I told him exactly what we wanted to use.

With respect to the identity of the defendant as the caller, that goes to weight, not admissibility. These are calls made from his book and case number in which he identifies himself and is greeted by his first name. But that goes to weight, not admissibility, as does the issue of whether he had noticed these calls were recorded.

With respect to the language interpretation, again, the People are willing to sanitize these calls to avoid direct references to the defendant's gang affiliation. I don't think that we are legally required to do so. I think his gang affiliation is relevant to this case and relevant to his relationship with the unapprehended co-defendant. But we are willing to sanitize them.

The only words that need interpretation, from our

perspective at this point, are the words hammer and shalom. The People would elicit testimony there is a practice of naming particular weapons.

Now, I have a witness available, should the Court elect to admit the entire call, who can define these terms or not. I mean, I don't know if getting yo, you gunning is going to be familiar to an ordinary citizen in Manhattan as a gang greeting.

But, I think Mr. Abolafia's client's problem at the end of the day is that these are prejudicial but they are prejudicial because they are evidence and they are evidence that ties him to the charged crimes here.

So, if the Court can direct me as to what in particular you would like on these Rikers calls, I'm happy to pull them, if there was one particular issue either relating to the gang affiliation or any of it.

THE COURT: No, it would seem to me that we hold that in abeyance until we see Mr. Abolafia's case law as to his arguments to the effect that it is not admissible and then you can respond accordingly.

So -- and I will hold in abeyance the decision until such time as I'm in receipt of those cases and whatever brief you intend to submit to support your position and on notice to the People whether the People intend to submit.

MR. ABOLAFIA: Thank you.

THE COURT: Alright.

Are there any other issues?

Somebody just -- the issue of the photograph that the People wish to introduce of Anthony Robinson and the Rikers call, that's all one application in aid of the argument that the People are trying to show? Am I correct in that? Or are these separate?

MS. HOLDERNESS: They're separate arguments.

The People would like to introduce the Rikers calls regardless of whether the photograph is admissible. The Rikers call contain clear admissions of this defendant of his criminal culpability and his identity as the perpetrator.

The second is relevant largely because of the Rikers calls but is an independent application. It would be relevant either way because of the video evidence taken shortly after the robbery.

THE COURT: The video evidence would be relevant, if I understand your argument, because of the temporal and geographic proximity, is that correct?

MS. HOLDERNESS: That's correct, your Honor, and -- just one second.

(Counsel conferring with counsel.)

MS. HOLDERNESS: The other thing is, you see on

the video Anthony Robinson is holding a silver item that's dangling from his hand. It's the People's theory that's the proceed of the robbery.

The testimony, I expect, will be that while the defendant is firing his weapon, Anthony Robinson tries to yank a chain over one of the witness' neck. That chain breaks in the process, and as you see him entering the system here -- may I turn it?

THE SERGEANT: I'll do it.

MS. HOLDERNESS: Thank you.

-- you will see in Anthony Robinson's left hand there is a silver item dangling.

(Whereupon, the videotape was played in open court.)

MS. HOLDERNESS: And what they stole in fact makes out the completed robbery in this case is a silver chain that was broken in the process of the robbery.

THE COURT: Alright, I've seen it.

Are there any other issues?

MS. HOLDERNESS: No other applications from the People, your Honor.

MR. ABOLAFIA: Nothing at this time, Judge.

MS. HOLDERNESS: I will provide to Mr. Abolafia the contact information for the bouncer today at lunch time or when we take a break.

THE PEOPLE OF THE STATE OF NEW YORK,

-against- Indict. No. 5462/12

ALI CISSE,

Defendant.

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May 5th, 2014
New York, New York

B e f o r e:

HONORABLE A. KIRKE BARTLEY, JR.,

Justice, and a Jury.

(Appearances same as previously noted.)

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(Whereupon, the following proceeding took place on the record and outside the presence of the jury:)

THE CLERK: This is case on trial. All parties are present.

THE COURT: Alright, is there anything preliminary before we bring out the jury?

MR. ABOLAFIA: Yes, Judge. I have actually two applications.

Judge, the first is the admission of the videotape, I believe People's 18, into evidence. Judge, I'm moving for a mistrial at this point based on I believe the introduction of this item of evidence without proper

authentication.

Firstly, there is an issue about whether it was tampered with because -- also where it came from -- and whether it was tampered with, because on the video was a time stamp, as well as a date stamp. The time stamp -- based on the witness' testimony after I objected to its introduction, the time stamp was arguably incorrect, and the witness, without any basis of knowledge, corrected that and there was no explanation to the jury why the time stamp was incorrect to begin with. And that goes to its authentication.

Judge, I will just cite two cases. I think chain of custody is one issue and as well as whether or not the video's tampered with, because of the -- of an hour difference in time of the time stamp. The first case, this goes to chain of custody, is Grucci v. Grucci, and the citation there is 20 NY 3d 893 2012.

And for whether or not it was properly authenticated, I will cite two sections. First of all, Richardson's on Evidence, Section 4-214, that's at page 150 of the Eleventh Edition.

THE COURT: I'm sorry, you said two-eighteen, 4-218?

MR. ABOLAFIA: I'm sorry, the citation?

THE COURT: For Richardson.

MR. ABOLAFIA: Richardson's, the Eleventh Edition, Section 4-214. If I said something completely different, I apologize.

THE COURT: I don't know.

MR. ABOLAFIA: 4-214. That's at page 150.

And, you know, it's black letter law that before a videotape or any kind of motion picture can be admissible, a proper foundation has to be laid.

Then, as far as the authenticity requirement, that's People v. McGee, which is also the seminal case from the New York Court of Appeals. McGee is -- I think it's 49 NY 2d 48 1979. So that is a seminal case.

So, I believe for those reasons, I think that the -- you basically -- the ruling basically absolved the People from meeting their burden, properly present this piece, an important piece, of evidence in my view.

And then I have the second application after this particular issue.

THE COURT: Alright.

MS. HOLDERNESS: Judge, the witness testified the video fairly and accurately depicted the events that occurred on that street at a little after four in the morning because she recognized herself on the video. In that way, we met our obligation for authenticating the video. It's proper to admit and there's certainly no reason

for a mistrial.

The chain of custody and tampering, there's no indication that it was tampered with. The witness testified it was a different time than the time on the video. That's not anything to do with tampering. I guess defense counsel can argue it to the jury. But, she said the events were exactly what happened to her as she was walking down the street that night. So, the video was properly admitted.

THE COURT: Defense motion for a mistrial is denied. You have an exception.

MR. ABOLAFIA: Judge, the second request that I have is when the evidence of the Rikers calls comes into issue at the trial, which it is expected to become an issue, I'm requesting a hearing prior -- preliminary hearing prior to its admission for the following reasons:

First, I think there is a legal issue about whether or not an inmate at Rikers has sufficient notice that the prosecution is going to record or have access to recordings by Corrections as to Corrections recordings of conversations.

And the second issue is -- and they're related -- but the second issue goes to the voluntariness of those statements or those conversations that are recorded, and there should be a hearing as far as that goes, because under CPL 60.45, the requirement of 60.45 is the voluntariness,

whether or not a defendant provides statements that are -- that violates constitutional rights.

And I would submit that there are a couple of issues here that the phone calls that are intercepted by Corrections on notice to a defendant that Corrections is going to record it is not on notice that it's going to be used for prosecutorial purposes, and I don't believe a warning even says that you're subject to making -- you're subject to your recordings being used by prosecution, by the District Attorney's Offices in their prosecution of you.

So that that, in my view, involves a constitutional rights that have been -- that implicates a constitutional rights under 60.45 and that -- arguably, that if a defendant who's placed in such a situation makes these statements, they're not voluntary. They're involuntarily made as the statute defines it. It's almost a coercion contract.

As I stated last week, the inmates who are incarcerated, unable to make bail, their only outside contact with the world is through calls out, and it's one thing for Corrections to make recordings for security reasons because they have to monitor the jails, that's fair, but for a prosecution to then have access, it involves, I think, another dimension that was never intended and certainly not -- not noticed to a defendant.

And I believe that even that the wiretaps statutes, both federal and state, provide for protection that all calls just can't be intercepted at will by the state and that Corrections' point in recording conversations is completely for different purposes than a prosecution's access to those same phone -- those same recordings.

So, I'm asking for a hearing because it involves my client's due process rights and it involves whether or not he had notice that his state -- his recorded conversations were going to be used by a prosecution against him and be used against him as incriminating conversations that could be used against him, and the notice issue, I think, is important and the voluntariness of those statements that they're going to be used by the prosecution at a trial against him. For those reasons, I request a hearing.

MS. HOLDERNESS: May I, Judge?

THE COURT: Yes, please.

MS. HOLDERNESS: With respect to the issue of having a hearing, the witness will be available tomorrow afternoon if the Court is inclined -- or could be available tomorrow morning -- if the Court is inclined to hold a hearing with respect to this notice issue.

As I've said in the initial application regarding these calls, I expect People's Exhibit 17 to be entered into

evidence, which is the notice that's posted near the telephones. Also, the inmate handbook which provides the calls will be recorded and monitored, and on the calls themselves, not all of them, but most of them, you hear the prerecorded voice stating these calls will be recorded for monitoring. So, a witness is available, but I think the evidence of notice to the defendant is abundant.

Also, in one of the calls I don't intend to use but I have provided to the defense, the defendant states: I don't want to talk on the phone, which shows that he in fact did have actual notice, and he asked for addresses so that he can convey what he wants to convey in a letter.

With respect to the issue of voluntariness, there's nothing about the Rikers recordings that violates in any way the provisions of CPL 60.45 or the Constitution. There's no indication that these statements were elicited by the use or threatened use of force, or improper or undue pressure, impairing the defendant's ability to make a choice in terms of whether to have these conversations. And they're not made at the behest of or to a public servant.

So, there's no voluntariness issue here. The statements are calls he made of his own free will to other people, including his criminal accomplices, and if he was reckless enough to engage in conversation with them that constituted admissions of his guilt in this offense, there's

no reason for that not to be admissible in court as it is done in courtrooms all over this building.

THE COURT: I simply don't think the voluntariness is at issue given the context of the phone calls, as I understand them. And, of course, I had occasion to listen to them. I was given a copy of them.

Likewise, the -- I'm not compelled by the argument that there's lack of notice. As the People suggest, these phone calls come in, introduced by this Court and any number of other courts, on a relatively regular basis and there is simply an abundance of evidence that adequate notice was given that the phone calls were -- are recorded.

You have an exception.

MR. ABOLAFIA: Thank you.

THE COURT: Alright, so we can bring out the jury and I'll instruct them as to they're not to speculate on the fact that we are taking a witness out of turn.

A COURT OFFICER: Jurors entering.

(Whereupon, the jury entered the courtroom.)

THE CLERK: All parties and all sworn jurors are present.

THE COURT: Good morning, Ladies and Gentlemen.

I trust everyone had a good weekend.

We will be taking a witness out of turn. So I wish to instruct you that you are not to draw any inference

APL-2017-00174

To be argued by
SUSAN AXELROD
(20 Minutes Requested)

Court of Appeals

STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

- against -

ALI CISSE,

Defendant-Appellant.

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JUNE 22, 2018

The court found that "voluntariness [was not] at issue given the context of the phone calls." It agreed with the prosecutor that there was "an abundance of evidence that adequate notice was given." Thus, the court declined to convene a hearing mid-trial (A384).

At the close of evidence, defense counsel asked the court to instruct the jury on voluntariness in connection with defendant's telephone calls. Counsel complained that an incarcerated defendant had no "other way of communicating with the outside world," and so was essentially coerced into accepting the recording of his calls. Counsel argued further that this "coercion contract" "involved due process issues because when he calls to the world, he has no indication or any knowledge that his calls are going to be used against him." The court denied that request (A686-88).

B.

We start with defendant's assertion that the recording of his telephone conversations violated New York's wiretap statute because DOC failed to obtain the requisite consent from him. Defendant does not contest that he received various notices that his nonprivileged prison telephone calls would be monitored and recorded. He nonetheless insists that the fact that he then used the prison telephones in light of those notices did not constitute consent for purposes of the wiretap statute's consent exception. Defendant adds that, even if he consented to monitoring of his calls, he certainly never consented to the dissemination of those calls to the District Attorney's Office. Defendant's arguments simply miss the mark.

Pursuant to Criminal Procedure Law Article 700 and Penal Law Section 250.05, it is unlawful for a non-party to eavesdrop on a telephone conversation by means of "wiretapping" or "mechanical overhearing" without first obtaining a warrant. "Mechanical overhearing of a conversation" is defined as "the intentional overhearing or recording of a conversation or discussion without the consent of at least one party thereto, by a person not present thereat" through the use of any equipment. PL § 250.00(2). CPL 700.05(3) defines an "intercepted communication" as a telephonic communication that "was intentionally overheard or recorded by a person other than the sender or receiver thereof, without the consent of the sender or receiver." In other words, as a matter of statutory law, no warrant is required when one of the parties consents to this interception.

CPL Article 700 was intended to conform "[s]tate standards for court authorized eavesdropping warrants with federal standards." *People v. McGrath*, 46 N.Y.2d 12, 26 (1978). Thus, this Court has looked to the federal courts' interpretation of the federal statute for guidance. *People v. Darling*, 95 N.Y.2d 530, 536 n. 5 (2000). Pursuant to 18 U.S.C. § 2511(2)(c), it is not unlawful for a "person acting under color of law to intercept a wire, oral or electronic communication where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception." The Senate report specifically states that "[c]onsent may be express or implied. Surveillance devices in banks or apartment houses for institutional or personal protection would be impliedly consented to."

S.Rep. No. 1097, 90th Cong., 2d Sess., *quoted in United States v. Amen*, 831 F.2d 373, 378 (2d Cir. 1987). In other words, the federal statute contemplated that there would be circumstances where the fact that the subject of surveillance knew about the surveillance and continued with the surveilled activity meant that he was consenting to that surveillance. *Amen*, 831 F.2d at 376.

The federal appeals courts that have reviewed the issue have almost uniformly found that, so long as a prisoner is given notice that his telephone calls will be tape-recorded, his use of the phone constitutes consent to that recording. *See e.g., United States v. Jones,* 716 F.3d 851 (4th Cir. 2013); *Bansal v. Pavlock*, 352 Fed. Appx. 611 (3d Cir. 2009); *United States v. Conley*, 531 F.3d 56 (1st Cir. 2008); *United States v. Verdin-Garcia*, 516 F.3d 884 (10th Cir. 2008); *United States v. Moore*, 452 F.3d 382 (5th Cir. 2006); *United States v. Morin*, 437 F.3d 777 (8th Cir. 2006); *United States v. Workman*, 80 F.3d 688 (2d Cir. 1996); *United States v. Van Poyck*, 77 F.3d 285 (9th Cir. 1996). In particular, the Second Circuit has concluded that where a prisoner has been provided with an orientation lecture and a handbook informing him that inmate telephone calls would be recorded, and where signs have been posted near the telephones reminding the prisoners of this monitoring and recording, a prisoner who then proceeds to use the telephone has consented to this monitoring. *Workman*, 80 F.3d at 693; *Amen*, 831 F.2d at 379. Here, defendant was given a handbook informing him of the monitoring program, was able to view signs that were posted by the telephones alerting him that his calls could be monitored and recorded and, unlike in *Workman* and *Amen*, also

heard a notification about this monitoring and recording before each and every call that he made. Given all of these notices, the lower courts' conclusions that, by defendant's use of the phones, he consented to the recording of his conversations were unassailable.

Undaunted, defendant asserts that these courts have ignored that this view of the consent doctrine would render the wiretap statute useless for non-incarcerated citizens. According to defendant, the government could evade the wiretap statute altogether by, for example, simply sending out alerts to citizens at liberty in the form of text messages announcing that the government intended to monitor and record all communications made from their home or cell phones. Similarly, defendant argues, a jilted lover could "legally spy" on his or her ex-partner by informing him or her that he/she was going to monitor all communications.[13] Toward that end, defendant points to the Seventh Circuit's opinion in *United States v. Feekes*, 879 F.2d 1562 (7th Cir 1989), and argues that, as the Seventh Circuit was the only court to consider this loophole, its reasoning should be followed by this Court (DB49-51).

To be sure, in *Feekes,* the Seventh Circuit did not rely on the consent exception as the basis for the introduction of the defendant's recorded prisoner telephone calls

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[13] Pursuant to 18 U.S.C. § 2511(2)(d) the consent exception does not apply where the "communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State." A jilted lover's reasons for intercepting communications might well be for the purpose of committing criminal or tortious acts.

at trial. The court expressed the concern that "the implication" behind the use of the consent exception was that "since wiretapping is known to be a widely employed investigative tool anyone suspected of criminal (particularly drug) activity who uses phones consents to have his phone tapped." 879 F.2d at 1565.[14] Initially, as defendant fails to mention, the court did find the recorded calls admissible under 18 U.S.C. § 2510(5), which exempts from the wiretap requirement interceptions "by any investigative or law enforcement officer in the ordinary course of his duties." 879 F.2d at 1565-66; *see also United States v. Daniels*, 902 F.2d 1238, 1245 (7th Cir. 1990). The Seventh Circuit apparently failed to notice that, taken to its logical extreme, that exception also provides a loophole that could swallow the warrant requirement whole. After all, law enforcement officers could simply make it part of their ordinary duties to intercept all communications. Then, they could avoid obtaining a warrant and would be free to conduct electronic surveillance without even alerting the subjects of that surveillance that their communications were being monitored.

In any event, the Seventh Circuit and defendant are wrong to believe that reliance on the consent exception for prisoner phone calls will eviscerate the wiretap statute. As a practical matter, the government, when engaging in most investigations

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[14] Defendant also cites to *United States v. Daniels*, *supra*. There, though, the government did not move under the consent exception for admission of the calls, but instead relied on the ordinary-course exception discussed in text. The Court nonetheless criticized the argument that consent could be inferred from the prisoners' awareness that their conversations were being recorded. 902 F.2d at 1244-45.

that involve the use of eavesdropping, wishes to do so surreptitiously. Thus, it is incentivized *not* to use these public notices that defendant conjures up. But, more to the point, the warnings that inmates are given are far more specific than the general awareness of surveillance which caused concern for the Seventh Circuit, and more extensive than the warnings about which defendant cautions. This defendant did not receive merely a one-time text or email informing him of DOC's monitoring program. Instead, he was told when he entered the prison system that his telephone calls would be monitored. He was then reminded of that fact each and every time he used the phone, by a sign posted by the telephone and by a recording that he heard before each call.

Defendant's doomsday prediction faces a second hurdle. Incarcerated prisoners are treated differently under the federal Constitution from citizens at liberty. While an individual's right to privacy in his/her telephone calls is governed in the first instance by the Fourth Amendment, *Katz v. United States*, 389 U.S. 347 (1967); *Berger v. New York*, 388 U.S. 41 (1967), prisoners do not retain the same degree of constitutional protection. That is because the maintenance of prison security and the preservation of institutional order and discipline are essential goals that permit the limitation or, in some cases, even the suspension of constitutional rights of both convicted prisoners and pretrial detainees. *Florence v. Board of Chosen Freeholders*, 566

U.S. 318 (2012); *Bell v. Wolfish*, 441 U.S. 520 (1979).[15] It is important for prison security and safety that prisons have the tools to ensure that inmates are not arranging for their visitors to sneak in drugs, weapons, or other dangerous contraband -- considerations that allow for the curtailment of prisoners' telephonic privacy rights so that the prisons can monitor those calls to forestall any such attempts. *United States v. Willoughby*, 860 F.2d 15, 21 (2d Cir. 1988). Those security concerns do not apply to the general public using telephones in non-prison settings. Thus, the methods of obtaining consent from prisoners would not necessarily suffice for citizens at liberty.

The special risks and security concerns involving prisoners also defeats defendant's next argument. Defendant opines that this "notice-equals-consent" theory could provide police officers with the cover to conduct baseless frisks in subways: they would simply put up signs that "subway entry constitutes consent to frisk" and then do so with impunity and with no quantum of suspicion (DB51). Both this Court and the federal courts have made clear, however, that the consent exception is constrained by the Fourth Amendment's reasonableness requirements. Thus, while these courts have upheld the use of implied consent to justify broad security searches not based on probable cause, such as the use of magnetometers before entering courthouses or at airports, *Chandler v. Miller,* 520 U.S. 305 (1997); *see*

[15] The United States Supreme Court has stated that "it is obvious that a jail shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room. In prison, official surveillance has traditionally been the order of the day." *Lanza v. New York*, 370 U.S. 139, 143 (1962).

also United States v. Edwards, 498 F.2d 496 (2d Cir. 1974); *People v. Kuhn*, 33 N.Y.2d 203 (1973), they have also emphasized that "blanket suspicionless searches" cannot be conducted unless the government can show that the risk to public safety is "substantial and real" and that the searches are "calibrated to the risk." *Chandler*, 520 U.S. at 322; *Kuhn*, 33 N.Y.2d at 209-10 (reviewing the constitutionality of magnetometers by applying the federal balancing test); *see also Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990) (holding that the implementation of highway sobriety checkpoints did not violate the Fourth Amendment given the magnitude of the state's interest in combatting drunk driving). Thus, as these cases make clear, before the government can rely on a broad implied consent exception for blanket wiretapping or for these other searches defendant so ominously portends, it must demonstrate a substantial and real need and that these wholesale interceptions/searches are reasonably calibrated to the risk (*see* DB54).[16] While the government can readily meet that burden in the prisons, it will only be able to do so in limited circumstances outside of that setting.

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[16] Defendant's prediction that the police will conduct wholesale frisks of passengers entering the subway station (DB51) is too clever by half. Defendant must certainly be aware that, since 9/11 the police have periodically engaged in warrantless searches of riders' bags and packages before the riders enter the subway system. As part of that program, the riders may simply leave the subway station if they do not wish to submit to those searches. In *MacWade v. Kelly*, 460 F.3d 260 (2d Cir. 2006), the Second Circuit reviewed and upheld the program. The court recognized that subway riders enjoy expectations of privacy in their personal belongings. It then applied the Supreme Court's balancing test and found that the New York Police Department had proved a compelling, immediate and substantial interest for those searches, which was to thwart terrorist attacks in the subway. *Id.* at 271-75.

Defendant next asserts that, even if this Court were to find that notice can establish consent in some circumstances, this Court should recognize that such notice can never satisfy the consent requirement in the prison setting (DB55). Defendant insists that it is so difficult for family members to visit inmates housed at Rikers Island that inmates face the choice of consenting to the interception of their calls or being cut off from their families altogether, and that such a choice is no choice at all (DB56). It is worth emphasizing that here defendant was not speaking with his family but rather was directing his accomplice to destroy evidence. In any event, defendant never informed the trial court that his family was not able to visit him. Even now, he makes only a general claim, without ever referring specifically to his own situation.

More fundamentally, as federal courts have reasoned, the fact that a prisoner faces difficult choices does not render those choices involuntary. *See Verdin-Garcia*, 516 F.3d at 894 ("[a] prisoner's voluntarily made choice -- even a Hobson's choice -- to use a telephone he knows may be monitored implies his consent to be monitored"); *United States v. Horr*, 963 F.2d 1124 (8th Cir. 1992) (same). In this same vein, this Court has rejected a coercion claim when raised by a defendant who signed an agreement to conditions of probation so that he could be released from prison. This Court found instead that the defendant voluntarily entered into this agreement in order to avoid a jail sentence. *People v. Hale*, 93 N.Y.2d 454 (1999). Just as a defendant facing a purported "Hobson's choice" of prison or certain restrictions once released from jail still voluntarily accepts those conditions, here, too, defendant

voluntarily consented to the monitoring and recording of his phone calls in return for permission to use the prison's phone.

One last point must be made. Defendant argues that constitutional privacy standards are irrelevant to the issue of the statutory violation of the wiretap statute, and then attempts to dismiss the People's argument that the Fourth Amendment serves as a backstop against the statutory loophole he predicts (DB54). But, while New York's wiretap statute does provide somewhat greater privacy protections than the Fourth Amendment, the statute was amended to its current form in light of *Katz v. United States,* 389 U.S. at 347, and *Berger v. New York*, 388 U.S. at 41, which extended Fourth Amendment protections to private telephone conversations. *People v. Gnozzi*, 31 N.Y.2d 134 (1972). Thus, Fourth Amendment principles are undoubtedly relevant in assessing the merit of defendant's claims concerning the concept of consent, which is material both regarding the statute and the constitutional provision. Defendant is in no position to claim otherwise as he relies on the Fourth Amendment in predicting and complaining about wholesale stops of subway riders. After all, as the wiretap statute has no relevance to those stops, their legitimacy is governed by the Fourth Amendment.

C.

Defendant next argues that, even assuming he impliedly consented to the recording of his telephone calls, that consent was limited to the use of the calls for prison security. He notes that the warnings he received did not include an express

RECEIVER- PERSON BEING CALLED

ALI- ALI [redacted]

[redacted]

RECEIVER: Hello?

ALI: Hello?

RECEIVER: Hi, Ali.

ALI: Yeah.

(BREAK)

ALI: I done tried. They just put on me. That shit is real complicated like and I don't that shit is real complicated and I don't, like, I don't know what's going on with that case. Like that shit is real complicated.

RECEIVER: That shit crazy.

ALI: I think I'ma sit up on that charge.

RECEIVER: No.

ALI: Huh?

RECEIVER: I think -- I think everything is cause of that coat.

ALI: Yeah.

RECEIVER: Nigga who you got the coat on?

ALI: Huh?

RECEIVER: Who you got that coat from?

ALI: I bought that coat.

Court Exhibit II 9/5/17

RECEIVER: Through who?

ALI: Huh?

RECEIVER: From who?

ALI: I bought that coat from Macy's.

RECEIVER: Oh, God.

ALI: I bought that coat from Macy's.

(BREAK)

ALI: I don't know, like, it's complicated that case like I'm thinking about it, I don't know how imma beat that type of shit like and they had a lineup and I got picked out the lineup. I ain't even have no coat on and I got picked out that lineup.

[redacted]

ALI: Yo, what happened to Ant?

RECEIVER: Say he gonna save some money, man, that nigga Ant running around, he trying to get some money, running around on his dumb shit

ALI: Tell him to fall back

(break)

RECEIVER: Ant right there, Ant right there!

ALI: Get him, get him, get him!

RECEIVER: Yo, Ant, ha! Yo, hold up. That nigga right here …

ALI: Alright.

(break)

RECEIVER: Hold on

New RECEVIER: Yo, man, yo?

ALI: Yo, what's gunning

RECEIVER: Aw man, what's good little bro?

ALI: I'm chilling

(break)

ALI: A-yo, what's the word though? Yo, Where's Shalom?

RECEIVER: That shit gone, my nigga.

ALI: Yo, they looking for it. They looking for that. They raided my crib for that.

RECEIVER: Yo, what about me though bro? They said something about me?

ALI: Nah. The people that snitched said it was two of us, but they don't know they don't know no names like.

(break)

ALI: That's what they saying, but they like they tracked me down because lieutenants came and picked me up when I was going to the bookings, you heard?

RECEIVER: But how did they get you though? What the fuck, how did they know it was you?

ALI: The coat, the coat.

(break)

RECEIVER: So listen, listen my bro, now you said they had niggas so you talking about they ain't got nobody's face on camera?

ALI: Nah. If they would have, they would have been had that shit on court. They just got me walking

through a safe, on the back like you feel me, from the back.

RECEIVER: They took the coat and all that?

ALI: Huh?

RECEIVER: They took the coat?

ALI: Yeah.

RECEIVER: You didn't get it back?

ALI: No, they vouchered it.

12/15/12 2:50 p.m. (ending 3:02 [redacted]

[background: this call may be recorded for monitoring; please hold; please hold]

RECEIVER: Hello?

[background: go ahead]

RECEIVER: Yup?

ALI: Yo, Ant, what's up?

RECEIVER: Yo, what up, bro?

(break)

ALI: I don't want you getting knocked because I need you out there holding me down

RECEIVER: You said them niggas is looking for somebody else?

ALI: They like, they not looking for -- really looking for nobody, like, they looking for the hammer.

RECEIVER: Yeah.

ALI: That's what they looking for. They looking for Shalom. That's why I kept telling these niggas to tell you to get rid of Shalom because they ain't even have no case.

RECEIVER: Yeah.

ALI: I got caught with the 380 and that - they said

it was a 4-5 involving that other one.

RECEIVER: Yeah.

(break)

RECEIVER: So them niggas, they trying to say, they said they had you on camera walking away from the scene, like, what the fuck that mean, like, they ain't got you on camera doing nothing…

ALI: Yeah, that's right

RECIEVER: …or participating in that shit, so fuck what they talking about?

ALI: Yeah, cause I'm walking away. They don't even got my face on that, they just got my back, like the back of the jacket, they just got the USA shit, like, on the back of the jacket, that's all they got.

RECEIVER: They said you met up with somebody

ALI: Yeah, they said I met up with somebody and walked to the train station, they said they got cameras following me all the way to the train station, like.

RECEIVER: Hmm.

ALI: So then I don't really know

RECEIVER: They didn't show you the cmaeras though

ALI: Nah, They only showed me one picture of me

walking, like

RECEIVER: You was solo?

ALI: Yeah, by myself. That's it, that's all there is.

(break)

ALI: And they had the feds raiding my crib looking for Shalom too.

RECEIVER: The feds?

ALI: Yeah.

RECEIVER: Not the feds, man, the other niggas.

ALI: No, not no DA, no. The feds, my mother told me.

RECEIVER: She said the FBI came in your house?

ALI: Yes. My little brother was there and all that. They raided my crib for that.

RECEIVER: Hmm

ALI: That's what I'm saying. That's why me and my mother aren't even talking right now, cause of that shit, cause they had them at gunpoint

RECEIVER: Word

ALI: Yeah, they have my mother and my little brother, cause she was taking my little brother to school, Friday morning they raided my crib, they were like

"where the gun at?"

ALI: But they didn't find nothing because I ain't have nothing in my crib.

RECEIVER: Exactly.

ALI: I don't even stay at my mother crib. That's what they meant.