

Supreme Court of the United States

Petitioner for Certiorari

Erick Cruz v. The People of The State of New York

Ind. No. 2301-2017 (N.Y. County)

App. Case No. 2019-03806

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J	TRIAL	12	Some photos and charts used during the district attorney's opening statement's Power Point Presentation
K	TRIAL	135	Slides of transcripts of intercepted Phone Calls Used During Powerpoint Presentation (depicting this writer as a participant in the phone calls. A fact never authenticated at trial)

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APPENDIX

A

Appendix	Date	Pages	Description
A	10/31/23	01	Court of Appeals Order denying Reconsideration of CLA Application

State of New York Court of Appeals

BEFORE: HON. JENNY RIVERA, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

**ORDER
DENYING
RECONSIDERATION**

ERICK CRUZ,

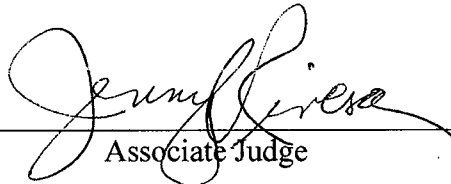
Appellant.

Appellant having moved for reconsideration in the above-captioned case of an application for leave to appeal denied by order dated June 16, 2023;

UPON the papers filed and due deliberation, it is

ORDERED that the motion for reconsideration is denied.

Dated: October 31, 2023


Associate Judge

Supreme Court of the United States

Erick Cruz v. The People of The State of New York

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APPENDIX

B

Appendix	Date	Pages	Description
B	06/16/23	01	Court of Appeals Order denying leave to appeal

State of New York Court of Appeals

BEFORE: HON. JENNY RIVERA, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

Respondent,

**ORDER
DENYING
LEAVE**

ERICK CRUZ,

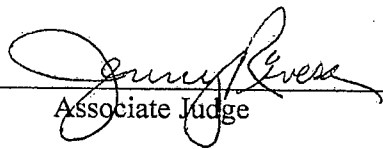
Appellant.

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law § 460.20 from an order in the above-captioned case;*

UPON the papers filed and due deliberation, it is

ORDERED that the application is denied.

Dated: June 16, 2023


Associate Judge

*Description of Order: Order of the Appellate Division, First Department, entered February 9, 2023, affirming a judgment of the Supreme Court, New York County, rendered May 28, 2019, as amended September 27, 2019.

Supreme Court of the United States

Erick Cruz v. The People of The State of New York

Ind. No. 2301-2017 (N.Y. County)

App. Case No. 2019-03806

Petition for Certiorari

APPENDIX

C

Appendix	Date	Pages	Description
C	02/09/23	02	Appellate Division decision denying Petitioner's direct appeal

213 A.D.3d 465

Supreme Court, Appellate Division,
First Department, New York.

The PEOPLE of the State of New York, Respondent,

v.

Erick CRUZ, Defendant–Appellant.

17289

Ind. No. 2301/17

Case No. 2019–03806

Entered February 9, 2023

Synopsis

Background: Defendant was convicted in the Supreme Court, New York County, Neil E. Ross, J., of conspiracy in the second degree, conspiracy in the fourth degree, conspiracy in the sixth degree, criminal possession of a controlled substance in the first and third degrees, and criminal sale of a firearm in the third degree. Defendant appealed.

[Holding:] The Supreme Court, Appellate Division, held that trial court providently exercised its discretion by giving jury abbreviated *Allen* instruction in response to jury's note indicating it was at a “standstill” on some charges.

Affirmed.

Appellate Review

West Headnotes (2)

[1] Criminal Law

☞ “Allen,” “dynamite,” or “hammer,” etc., charge

Trial court providently exercised its discretion in prosecution on multiple counts of conspiracy, possession of a controlled substance, and sale of a firearm, by giving jury an abbreviated *Allen* instruction and asking it to continue deliberating in response to jury's note indicating that it had come to a “standstill” on some charges; deliberations had not been lengthy, note did not state jury was deadlocked, note asked for “help

with how to proceed,” it otherwise appeared deliberations had been fruitful, and instruction was not coercive.

[2] Criminal Law

☞ Authority or discretion of court

Responses to jury notes must be tailored to the circumstances at hand.

Attorneys and Law Firms

Caprice R. Jenerson, Office of the Appellate Defender, New York (Joseph Nursey of counsel), and Davis Polk & Wardwell LLP, New York (Garrett L. Cardillo of counsel), for appellant.

Alvin L. Bragg, Jr., District Attorney, New York (Patricia Curran of counsel), for respondent.

Webber, J.P., Oing, González, Scarpulla, Rodriguez, JJ.

Opinion

*465 Judgment, Supreme Court, New York County (Neil E. Ross, J.). rendered May 28, 2019, as amended September 27, 2019, convicting defendant, after a jury trial, of conspiracy in the second degree, conspiracy in the fourth degree (three counts), conspiracy in the sixth degree, criminal possession of a controlled substance in the **89 first and third degrees and criminal sale of a firearm in the third degree, and sentencing him to an aggregate term of 10 years, unanimously affirmed.

[1] [2] When presented with a note from the jury that it had come to a “standstill” on some charges, the trial court providently exercised its discretion in declining to read the entire *Allen* charge (*Allen v. United States*, 164 U.S. 492, 17 S.Ct. 154, 41 L.Ed. 528 [1896]) set forth in the Criminal Jury Instructions, while instead providing the *466 jury with an abbreviated version. “[R]esponses to jury notes must be tailored to the circumstances at hand” (*People v. Aleman*, 12 N.Y.3d 806, 807, 880 N.Y.S.2d 894, 908 N.E.2d 884 [2009]). Contrary to defendant's characterization, the jury did not represent that it was deadlocked, but only that it was at a “standstill” on “a couple of charges” (where numerous counts had been submitted) and asked for “help with how to proceed.” This was the first note from the jurors that indicated they might be having difficulty harmonizing their respective opinions. The deliberations had not been particularly lengthy,

given the duration of the trial and complexity of the charges. The court's request to the jury asking it to continue deliberations in an effort to reach a unanimous verdict was reasonable at that stage of the proceedings, when it otherwise appeared that the deliberations had been fruitful (*People v. Joyner*, 176 A.D.3d 607, 608, 111 N.Y.S.3d 12 [1st Dept. 2019], *lv denied* 34 N.Y.3d 1129, 118 N.Y.S.3d 550, 141 N.E.3d 506 [2020]). The abbreviated instruction was sufficiently balanced and carried no risk of coercion.

Defendant's remaining arguments are similar to those arguments this Court previously rejected on a codefendant's appeal (*People v. Santana*, 209 A.D.3d 566, 176 N.Y.S.3d 55 [1st Dept. 2022], *lv denied* 39 N.Y.3d 988, 181 N.Y.S.3d 200, 201 N.E.3d 817 [2022]), and we find no difference in circumstances or other reason to reach a contrary result.

All Citations

213 A.D.3d 465, 183 N.Y.S.3d 88, 2023 N.Y. Slip Op. 00739

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