SUPREME COURT OF THE STATE OF NEW YORK
YORK COUNTY OF NEW YORK: PART 21

THE PEOPLE OF THE STATE OF NEW YORK	Notice of Motion
-against-	
	Indictment No. 4762/1989
STEVEN LOPEZ,	
Defendant.	

PLEASE TAKE NOTICE that upon the annexed affirmation from the New York County District Attorney's Office and Eric Shapiro Renfroe, Esq., attorney for defendant Steven Lopez, a joint motion will be made on July 25, 2022, at 2:15p.m., or as soon thereafter as counsel may be heard, at Part 21 of this Court, to be held at the courthouse located at 100 Centre Street, New York, New York, for an Order vacating the judgment against Mr. Lopez on grounds that it was obtained in violation of the rights of Mr. Lopez under the constitution of this State or the United States Constitution, and, should the Court grant the requested Order of vacatur, that the People will thereupon recommend that the indictment be dismissed pursuant to Criminal Procedure Law §§ 210.20, 210.40, and 440.10(4).

Dated: July 25, 2022
New York, New York

Alvin L. Bragg, Jr.
District Attorney
New York County

Eric Shapiro Renfroe
Attorney for Defendant

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 21

THE PEOPLE OF THE STATE OF NEW YORK -against- STEVEN LOPEZ, Defendant.	Affirmation in Support of the People and Defendant's Joint Motion to Vacate Judgment Pursuant to CPL § 440.10(1)(h), and the People's Recommendation to Dismiss Pursuant to CPL §§ 210.20, 210.40, and 440.10(4) Indictment No. 4762/1989

Terri S. Rosenblatt, an attorney admitted to practice before the Courts of this State, affirms under penalty of perjury that:

1. I am an Assistant District Attorney in New York County District Attorney's Office and the Chief of the Office's Post-Conviction Justice Unit. I am familiar with the facts and circumstances of the above-captioned matter.

2. This affirmation is based on, among other things, my review of the District Attorney's Office's files, videos, police department records, and conversations with Mr. Lopez and other individuals with knowledge of this case. It also is based upon, and incorporates by reference, the comprehensive report of ADA Nancy Ryan in *People v. Wise, et. al.,* Ind. No. 4762/1989 (Dec. 5, 2002), which is annexed hereto as Exhibit A. Additionally, it is based on a review of publicly-available materials related to the federal civil rights lawsuit *McCray v. City of New York,* 03 Civ. 9685 (DAB), 03 Civ. 9774 (DAB), 03 Civ. 10080 (DAB) (S.D.N.Y. 2003). It is submitted in support of the parties' joint motion to vacate the judgment of conviction pursuant to CPL § 440.10(1)(h), and the People's recommendation to dismiss pursuant to CPL §§ 210.20, 210.40, and 440.10(4).

INTRODUCTION

3. Steven Lopez, the defendant in this case, requested the New York County District Attorney's Office review his 1991 conviction, by plea of guilty, to robbery in the first degree. Mr. Lopez's request is unique in its factual, and historical, nature: he was the sixth person originally charged with the rape and attempted murder of the woman known as the

"Central Park jogger." The five trial defendants' convictions were completely vacated after they filed a CPL § 440.10 motion based on another individual's confession to the rape and DNA evidence. However, because Mr. Lopez pled guilty on the eve of trial to lesser charges, he was not a part of that motion, nor the People's ultimate conclusion to seek relief for the other five.

4. Upon this review, the People conclude that, as with the other five, the prosecution no longer has confidence in Mr. Lopez's conviction. However, because Mr. Lopez pleaded guilty, the path to vacatur is not as straightforward as those who were convicted at trial. Therefore, the People, jointly with the defense, explain in this affirmation the *sui generis* circumstances that render Mr. Lopez's guilty plea involuntary and deserving of remedial measures. Upon vacatur of the plea, the People request dismissal of the indictment based on the lack of evidence upon which to re-prosecute the case, as well as the interest of justice.

5. This case involves two separate incidents that occurred in Central Park on the night of April 19, 1989: the attack on a 40-year-old schoolteacher, referred to herein as the "male jogger," and the rape and attempted murder of the woman who became known as the "Central Park jogger," called herein the "female jogger."

6. Mr. Lopez, then 15 years old, was indicted for both crimes. He was one of six total people charged with rape. The other five were Antron McCray, Kevin Richardson, Yusef Salaam, Raymond Santana, and Kharey Wise, known to the public as "the Central Park Five" or the "Exonerated Five."

7. Of the total of six teenagers charged with the rape of the female jogger, their indictments were severed into three separate trials, with Mr. Lopez slated to go last. The first trial ended with a conviction of three defendants on all counts on August 18, 1990. The second trial ended with a conviction of another two defendants on December 11, 1990. Mr. Lopez, on the eve of the final trial, was offered a last-minute plea bargain: if he admitted to the robbery of the male jogger alone, he would not have to proceed to trial on the rape charges. He agreed, and was sentenced to one and one-half to four and one-half years, and did not receive youthful offender treatment.

8. As we now set forth, this plea was procured under the egregious pressure that is unique to this case. *See infra* ¶68. Furthermore, the plea allocution failed to accurately advise Mr. Lopez regarding his appellate rights. Finally, since there is no reliable evidence

pointing to Mr. Lopez's guilt of the crimes charged in the indictment, we ask that it be dismissed in its entirety.

Factual Background

The April 19, 1989, Incidents in Central Park and Arrest of Steven Lopez

9. Mr. Lopez, then 15 years old, was arrested on April 19, 1989, in connection with a series of assaults committed in Central Park.

10. One of those assaults was of the male jogger. This man, then 40 years old, was jogging around the Central Park reservoir. He was wearing green army fatigues and listening to a Walkman.

11. While jogging, he saw another man being assaulted on the path near him. The male jogger slowed to see what was happening. At that point, a teenager whom the male jogger later identified as co-defendant J.R.,[1] 15 years old, approached him.

12. J.R. threw the male jogger to the ground. Other teenagers who were also present kicked and punched the male jogger. The male jogger lost consciousness. When he came to, his Walkman was gone.

13. The male jogger could not identify the other attackers, but described them to a police officer who responded to the scene as "4 or 5 Blacks."[2] At trial, he clarified that it may have been 3–4 people instead.

14. Based on the male jogger's report, as well as that of others in the park that night, a series of radio runs were broadcast to police in the area. These radio transmissions described assaults in the park committed by a group or groups of "male [B]lacks."[3]

15. A police officer stationed on anti-crime patrol in the park received these radio transmissions. While investigating, at approximately 10:15pm, he and his partner, both of whom were in plainclothes and in an unmarked van, saw a group of teenage boys near Central Park West and 102nd Street. The two exited the van and moved towards the group. Most of the teenagers started running. Two boys, however, did not take off: Mr. Lopez and another individual.

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[1] As explained further *infra*, this co-defendant received youthful offender treatment and his case is now sealed.

[2] Transcript of Suppression Hearing Testimony of Police Officer Mark Carlson in *People v. McCray, et. al.*, (H. Tr., pp. 233–36).

[3] H. Tr., pp. 328–29.

16. Mr. Lopez was arrested and brought to the Central Park Precinct on charges of unlawful assembly.

17. After Mr. Lopez's arrest, at approximately 1:30am, two men walking in the park found the female jogger. She was unconscious, having been brutally beaten and raped. Investigators later learned that she had been jogging in the park starting at approximately 8:55pm, before being ambushed and attacked. She had no recollection of what led up to the assault and could not identify any perpetrator.

The Interrogations

18. Mr. Lopez, along with other teenagers, was questioned in relation to the rape of the female jogger, as well as the robbery of the male jogger and other alleged crimes committed in the park that night. These interrogations formed the primary basis of the evidence against Mr. Lopez, as well as his co-defendants.

19. Mr. Lopez arrived at the Central Park Precinct around 11:00pm that evening. He was placed in a holding cell with several other teenagers. The teens were detained well into the night. They were not given a place to sleep, and were isolated from their parents for many hours.

20. At approximately 6:15pm on April 20, 1989—20 hours after his arrest—Mr. Lopez was taken into an interrogation room for questioning. Mr. Lopez's parents were present. His parents were native Spanish speakers. His father spoke some English, but his mother spoke none. There was no interpreter present. The questioning lasted nearly two and a half hours. It was not recorded. At the end of the questioning, the detective prepared a written statement, which Mr. Lopez and his father signed.

21. After the written statement was complete, Mr. Lopez's father asked that his son not be subjected to any further questions. This request was communicated to the prosecutor assigned to the case. The prosecutor questioned Mr. Lopez anyway. (At the later suppression hearing, the court found this interrogation was sufficiently attenuated and, therefore, voluntary.)

22. In both the written statement and the video, Mr. Lopez, in substance, placed himself at the scene of the attack on the male jogger. He stated that he saw J.R. initiate the attack, and several other teenagers hit the male jogger with a stick or a pipe.

23. Despite persistent questioning, Mr. Lopez did not implicate himself, or anyone else, in the rape of the female jogger.

24. In addition to Mr. Lopez, more than a dozen other teenagers were questioned about the events of that night.

25. One uncharged witness, 15 years old, claimed in a written statement that he saw Mr. Lopez punch the male jogger.

26. K.R., then 14 years old, gave a videotaped statement in which he agreed, in response to questioning, that Mr. Lopez punched the male jogger. In a written statement, Mr. Richardson also accused Mr. Lopez of participating in the rape of the female jogger.

27. R.S., then 14 years old, claimed that J.R. started the attack on the male jogger, but then 30 people, including Mr. Lopez, all joined in. R.S. also claimed that he was involved in the rape of the female jogger along with Mr. Lopez. In his written and video statements, R.S. said that Mr. Lopez held the female jogger down and "smashed" her in the face with a brick.

28. Other teenagers questioned did not accuse Mr. Lopez of participating in the attack on the male jogger, but did accuse him of raping the female jogger. An uncharged 13-year-old said that he saw Mr. Lopez "in between the ladies' legs." A 14 year old, C.T., who initially was charged but ultimately not indicted, said that he heard Mr. Lopez discussing his involvement in the rape with others.

29. Still, other teenagers did not accuse Mr. Lopez of being involved in the violent attacks on either the male jogger or the female jogger. These included J.R., the person identified by the male jogger as the perpetrator.

Forensic Evidence

30. There was no video surveillance or physical evidence related to the attack on the male jogger. The male jogger never identified Mr. Lopez as one of the assailants. As to the rape of the female jogger, however, forensic investigators claimed that a hair found on Mr. Lopez's clothing was "consistent with" her hair.

The Indictment and Pre-Trial Proceedings

31. The People secured an indictment against Mr. Lopez, along with several others. The primary evidence presented to the grand jury were the statements of the defendants themselves.

32. The teenagers who would come to be known as the Central Park Five were charged, along with Mr. Lopez, with the rape of the female jogger, the robbery of the male

jogger, and an additional charge of assault in the second degree related to a third, unrelated male. They also were charged with riot.

33. In the same indictment, another teenager, M.B., then 17 years old, was charged only with riot and with the assault of the unrelated male. M.B. resolved his case pre-trial by pleading guilty to assault. He received a one-year sentence, which ran concurrently with an unrelated assault charge.

34. J.R. entered into a cooperation agreement where, in exchange for his testimony, he was promised a one-year sentence and youthful offender treatment. (J.R. was not called as a witness at any trial). J.R. also was not charged with the rape of the female jogger, but was charged with the robbery of the male jogger, the assault of the unrelated male and riot. [4]

35. Mr. Lopez moved to suppress his statements, and the clothes that allegedly contained the female jogger's hair, on several grounds, including that his arrest was not supported by probable cause; that his father's request to cease questioning made his video statement involuntary; and that the length and manner of detention were improper. These claims were denied following a hearing, which was jointly conducted with his co-defendants.

Pre-Trial Publicity

36. Every news outlet in New York City, and beyond, covered the rape of the Central Park jogger and the arrest of Mr. Lopez and his co-defendants. The defendants were called a "wolf pack," and compared to wild animals and "beasts" by one prominent newspaper. Another City paper went further, running a column stating that the term "wolf pack" was an "insult to … wolves." A newspaper cover blared that the teenagers made "None of Us [] Safe." That paper also published an editorial calling for the public to "[c]hannel your outrage" and "[d]emand the [d]eath [p]enalty" for them. The call for the death penalty was echoed in full-page advertisements to "Bring Back the Death Penalty" to

[4] Other teenagers arrested that night also were charged in separate indictments. A.M. was charged with robbery, assault and riot, but not sexual assault. He pleaded guilty to robbery in the second degree and received a one-year sentence. The indictment against O.E. charged robbery, assault and riot, all related to the male jogger. He entered into a cooperation agreement with this office in exchange for a sentence of six months' jail followed by four and one-half years' probation. He was adjudicated as a youthful offender. C.T., then 14 years old, was charged with the rape and attempted murder of the female jogger and the robbery of the male jogger in a criminal court complaint. He was not indicted, however, and ultimately the charges against him were dismissed.

execute the boys. A City magazine prominently repeated quotes from lawmakers calling them "savages" and seeking a White House "declaration of war" against them.[5]

37. Mr. Wise moved for a change of venue based on this press coverage, but the motion was denied.

The Two Trials of the Central Park Five

38. After J.R. and M.B. resolved their indictments, the remaining six defendants were scheduled to proceed to trial. These trials were split into three separate proceedings, with Mr. Lopez's trial scheduled last.

39. The first trial involved Messrs. McCray, Salaam and Santana, and began on June 25, 1990. Each of their statements were entered into evidence at trial. On August 18, 1990, they were convicted of all counts.

40. The second trial, of Messrs. Richardson and Wise, began on October 22, 1990. Their statements also were introduced into evidence, and they were convicted on all counts on December 11, 1990.

41. The People's case at both trials rested almost entirely on statement evidence.

Mr. Lopez's Guilty Plea

42. On January 30, 1991, Mr. Lopez was scheduled to begin trial. A jury panel was waiting in the wings. But as a last-minute alternative to trial on the rape, robbery, assault and riot charges, the People offered Mr. Lopez a one-time plea bargain where he was offered to plead guilty to robbery in the first degree (P.L. §165.01(3)), in full satisfaction of the indictment.

43. During his plea, the court led him through his allocution. Mr. Lopez did not provide his own narrative of the events. In response to court questioning, Mr. Lopez agreed to the following: (1) that he was in Central Park on April 19, 1989; (2) that he was there with a "number of other individuals"; and (3) that, "acting together" with others, he "forcibly [took] property from a male by the name of [the male jogger]." The court also asked Mr. Lopez whether "you or one of the others working with you at the time use[d] or threaten[ed] the use of a dangerous instrument," to which Mr. Lopez replied, "[o]ne of the others." The

[5] The press reports are collected and available as part of the Central Park jogger repository at http://www.nyc-cpj.org/Home/folder?container=original-investigation-and-prosecution&name=https://nyccpjstorage.blob.core.windows.net/original-investigation-and-prosecution/Motions%20*%20Declarations%20*%20Affidavits/.

court concluded by asking Mr. Lopez if those others "were working towards the same thing that you were doing," to which Mr. Lopez replied "[y]es."[6]

44. After the court accepted the allocution, both the assigned ADA and Mr. Lopez's attorney made additional statements. The People represented that the plea was "acceptable" to both the male jogger and the female jogger.[7] The People stated that the individuals who had agreed to cooperate against Mr. Lopez at trial were in "fear for their own physical safety."[8]

45. Mr. Lopez's attorney responded with his own explanation of the reason for the plea. The attorney said that Mr. Lopez was taking the plea because it avoided any trial as to the female jogger, and because there were cooperators whom Mr. Lopez believed would testify that he participated in the robbery of the male jogger.[9]

46. Addressing whether Mr. Lopez, who had no prior record, would receive youthful offender treatment, the court stated that Mr. Lopez had previously been "told [he was] not going to receive youthful offender treatment," but did not appear to independently assess his eligibility or entitlement to it.

47. The court also informed Mr. Lopez: "[A]s a condition of this disposition [] your attorney, on your behalf, is going to waive any right to appeal on the motion to suppress, the first proceedings that we had where all defendants were together, and also on a motion, the 30.30 motion, to dismiss for failure to prosecut[e]." The court did not, however, inform Mr. Lopez that other appellate rights would survive his guilty plea, including his right to challenge its constitutionality. Mr. Lopez's attorney did not object to this allocution.

48. Mr. Lopez was sentenced, as a juvenile offender, to one and one-half to four and one-half years in State prison. He did not appeal his conviction.

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[6] Plea Transcript, pp. 8–9 (Ex. B).
[7] *Id.*, p. 17.
[8] *Id.*, p. 18.
[9] *Id.*, pp. 18–19.

The Reinvestigation of the Five Trial Defendants

49. In early February of 2002, more than 10 years after Mr. Lopez's conviction, DNA evidence proved that another individual, Matias Reyes, raped the female jogger. Mr. Reyes admitted to the rape, and confessed that he acted alone.

50. The People undertook an extensive investigation of that confession and the DNA evidence as it related to the convictions of the five defendants who went to trial. The People determined that Mr. Reyes did in fact act alone, and moved to vacate the convictions and dismiss the underlying charges.

51. Forensic evidence, including the hair samples, that had previously been connected to the five trial defendants were DNA tested. That testing included mitochondrial DNA testing on some of the hairs that had been previously associated with the female jogger. The testing excluded the female jogger as the source of the DNA. The specific hair found on Mr. Lopez could not be located during the 2002 reinvestigation. However, the overall conclusion was that all of the microscopic hair comparisons done at the time of the original trial were not reliable. Additionally, the investigation showed that the female jogger was hit with a rock, not a brick, contrary to R.S.'s 1989 statement. The People also moved to vacate and dismiss the charges related to the male jogger. The People explained that those charges were being dismissed for two main reasons: spill-over prejudice at trial, and spill-over unreliability of the individual defendants' statements to law enforcement.

52. The People concluded: "[j]ust as the other incidents in the park cannot be considered separately from the rape of the jogger, *neither can the defendants' statements about those events.*" *See* Ex. A, ¶ 115 (emphasis supplied). The newly-discovered evidence pointing to Matias Reyes as the sole perpetrator of the rape "would probably raise questions about the reliability of those admissions similar to the questions raised about the defendants' confessions to rape." *See id.*, ¶ 116. Indeed, "there was no significant evidence at trial establishing the defendants' involvement in the other crimes of which they stand convicted that would not have been substantially and fatally weakened by the newly discovered evidence in this matter." *See id.*, ¶ 117.

Federal Civil Rights Litigation

53. Following the dismissal of their case, the five defendants whose trial convictions were vacated filed a federal civil rights lawsuit against the City of New York.

During the ligation of that case, many of the teenagers—now adults—who gave statements in connection with the original investigation were deposed.

54. J.R., who was slated to cooperate against Mr. Lopez as to the attack on the male jogger, gave testimony in his 2013 deposition about the incident that did not implicate Mr. Lopez.[10]

55. During that testimony, J.R. provided a detailed description of this attack, in which he accepted responsibility, consistent with the male jogger's identification, of being the main aggressor. J.R. admitted to slamming the male jogger to the ground and then beating and kicking him. He stated that two other people participated in the attack, neither of whom were Mr. Lopez. J.R. did not remember Mr. Lopez being present at the scene of the attack. He also stated that no weapons were used.

56. J.R. said that he accused others of the attack, and agreed to cooperate against them, because he was pressured and coerced by law enforcement.

57. Other individuals who, in 1989, accused Mr. Lopez of the attack on the male jogger and the rape of the female jogger, recanted their allegations in their civil depositions. Many of these individuals explained that the circumstances of their interrogations led them to falsely accuse Mr. Lopez.

58. The uncharged 15-year-old, who said in 1989 that Mr. Lopez punched the male jogger, explained in his 2013 deposition that he only gave that statement after repeated questioning and a 5-hour detention. In that deposition, he further testified: "I don't recall Steven punching anyone … I'm not saying this person didn't get hit. … I think the statement [about Mr. Lopez] is incorrect. I didn't write this. I signed it, of course. I was 15 years old and I wanted to get out of there so I signed it. Why not? I don't even think I read this properly. I had a short attention span. I didn't even want to go to school so you are going to give me a statement to read and sign?"[11]

59. A.M., 39 years old at the time of his deposition, said that he only provided Mr. Lopez's name because the detectives gave it to him. When asked about his statement in 1989 that he saw the male jogger get hit in the head with a piece of wood that then broke and cut Mr. Lopez's leg, A.M. responded that the statement was not true. He explained, "I

[10] The deposition testimony referenced and quoted in this section is available at http://www.nyc-cpj.org/home/subcategory?ContainerName=federal-civil-litigation.
[11] 11/30/2010 D.C. Tr. at 101:17–102:8.

didn't know Steve by name, and I didn't see anyone get hit in the head, sir, with a piece of wood."[12]

60. K.R., also 39 years old in 2013, testified that at the time of his arrest he was hit in the face by a police officer. When he arrived at the precinct, he was dizzy, tired, and scared. Although at age 14 he told the police that Mr. Lopez "joined in" the attack on the male jogger, he explained during his deposition that, in fact, he did not recall seeing Mr. Lopez participate in the assault.

61. K.R. further explained that the detectives in the precinct in 1989 "gave [him]" Mr. Lopez's name, along with A.M.'s and R.S.'s, and that he did not know these people "before [he] was first fed those names."[13]

62. R.S., who told the police at age 14 that Mr. Lopez "joined in" the attack on the male jogger and raped the female jogger, also testified at his deposition that a detective "gave [him]" Mr. Lopez's name as one of people who attacked the female jogger. He also said that he did not see anyone other than J.R. hit the male jogger. He said his accusation against Mr. Lopez "was a lie."[14]

63. C.T., who, during his 1989 interrogation at age 14, told police that he heard Mr. Lopez discussing the rape of the female jogger, also retracted his statement. He testified at his deposition in 2010 that he was "lying" about Steve "just to give [the police] something to leave me alone." He also testified that, because he was better friends with other people who were arrested "I blame[d] Steven for everything." He said he "chose Steven as the sacrificial lamb."[15]

<u>Mr. Lopez's Request for Review of his Conviction</u>

64. Mr. Lopez, through undersigned defense counsel, wrote to the People on February 9, 2021, asking for review of his conviction. On March 2, 2021, the People responded that it would begin a review.

65. The People reviewed voluminous case materials related to the events of April 19, 1989, the subsequent trial, reinvestigation and civil rights litigation. The office also interviewed Mr. Lopez twice, and his trial counsel once.

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[12] 4/3/2013 A.M. Tr. at 608:16–609:3.
[13] 2/1/2013 K.R. Tr. at 306:22–307:12.
[14] 4/26/2013 R.S. Tr. at 339:24–340:10.
[15] 11/30/2010 C.T. Tr. at 62:1–18, 63:16–64:12, 120:10–20, 143:18–144:8.

66. As a result of those investigative steps, the People no longer have confidence in his conviction, and request this Court grant relief. The People, along with Mr. Lopez, now set forth the legal basis for this request, namely that his plea was not voluntary, and that the evidence against Mr. Lopez is not reliable.

REQUEST FOR RELIEF

Both Parties Seek to Vacate Mr. Lopez's Conviction Pursuant to CPL § 440.10(1)(h)

67. Having determined that Mr. Lopez's conviction is unjust based on the extraordinary circumstances of this case, the parties move this Court to vacate his conviction pursuant to CPL 440.10(1)(h). Mr. Lopez's plea was not "knowing, voluntary, or intelligently" made, but was borne out of egregious pressure brought on by the false statements of numerous witnesses, the prior trial convictions of his co-defendants, and the overwhelming public scrutiny of this case. Additionally, there were defects in the plea allocution. As such, the plea was unconstitutionally obtained, and therefore warrants vacatur.

The Applicable Law

68. A court may vacate a plea of guilty if it finds that such plea was involuntarily, and therefore unconstitutionally obtained. CPL 440.10(1)(h); *People v. Moore*, 71 N.Y.2d 1002, 1005 (1988) ("A guilty plea may be involuntary, and therefore unconstitutionally obtained, either because the defendant did not voluntarily and intelligently waive the protections afforded by the Constitution or because the defendant did not know the nature of the charges against him."). "A plea is voluntary if it represents a choice freely made by the defendant among legitimate alternatives." *People v. Grant*, 61 A.D.3d 177, 182 (2d Dept. 2009).

69. In determining whether a plea is voluntary, a court may consider whether unfair, external pressures overbore the defendant's will. See *People v. Fisher*, 70 A.D.3d 114 (1st Dept. 2009) (plea vacated where, under the totality of the circumstances, it was involuntary based on, among other things, the court's insistence that a trial conviction and sentence to the maximum allowed would likely not be reversed by an appellate court); *Grant*, 61 A.D.3d at 183 (vacating plea where defendant was threatened with remand because "it is hardly befitting a legitimate system of plea bargaining to require a defendant, in effect, to choose between, on the one hand, admitting guilt and remaining free, and, on the other, maintaining innocence and going to jail.")

70. In addition, a court can and should analyze whether the court's allocution was legally accurate, including accurately stating what rights the defendant is and is not giving up pursuant to their plea. *See generally Boykin v. Alabama*, 395 U.S. 238, 243–44 (1969); *People v. Rudolph*, 21 N.Y.3d 497, 501 (2013) (court must consider youthful offender treatment, even where there is a negotiated plea). *Cf. People v. Bisono*, 36 N.Y.3d 1013, 1017–18 (2020) (appeal waiver invalid because court inaccurately allocuted defendant that he was forfeiting all appellate rights).

71. Alternatively, although a guilty plea "presumptively foreclose[s]" a claim of "actual innocence," a court nevertheless may vacate an innocent person's plea based other grounds that undermine the integrity of the conviction. *People v. Tiger,* 32 N.Y.3d 91, 101 n.6, 102 (2018), *citing People v. Seeber,* 94 A.D.3d 1335, 1338 (3d Dept. 2012) (guilty plea vacated pursuant to CPL § 440.10(1)(b) based on misrepresentations in police forensic laboratory report).

72. Moreover, as a matter of constitutional fairness and equity, where the People have lost confidence in the conviction obtained by a guilty plea, the presumptions that usually attach to a guilty plea should not apply.

The Plea Should Be Set Aside

73. In view of all the circumstances of this case, described above, and for the reasons set forth below, the People lack confidence in the plea, and ask this Court to set it aside.

74. First, Mr. Lopez's option to go to trial was not, in fact, a legitimate alternative to pleading guilty. The trial Mr. Lopez faced was one that would be built on false statements and unreliable forensic evidence. The flaws in the trial he was facing are not abstract; those same flaws led to the vacatur of the trial defendants' convictions.

75. As the People acknowledged in the 2002 memorandum supporting vacatur of the trial defendants' convictions, their statements to police following their arrest cannot be parsed into reliable and unreliable portions. Instead, the reliability of all of the statements is undermined by the third-party evidence that none of the originally-indicted defendants were guilty of rape. Likewise, allegations that Mr. Lopez participated in the robbery of the male jogger cannot be credited any more than the statements accusing him of the rape of the female jogger.

76. Second, the parties jointly submit that Mr. Lopez's 17-year-old will was overborne by the overwhelming combination of the pre-trial publicity, the two prior trials of the co-defendants, the certainty that false evidence would be presented against him at trial, and the urgency of the eve-of-trial last minute plea offer. While any of these factors, or some combination of these factors, may exist in other cases, the "Central Park jogger" case stands apart as unique. Very few, if any, defendants who plead guilty face the same vicious pre-trial publicity, and not one, but two, previews of the trial verdict that awaits them if they proceed. Even fewer bear this pressure at age 17.

77. Finally, the plea court did not assess Mr. Lopez's eligibility for youthful offender treatment, nor did it inform him of the right to consideration of such treatment that he was giving up as a result of his plea. Additionally, the court's plea allocution was insufficient because, while the court informed Mr. Lopez that he was required to waive his right to appeal, it failed to inform him of the appellate rights that survived that plea, including that he could challenge the constitutional voluntariness of it notwithstanding the waiver. These defects further undermined the integrity of the plea, and support vacatur.

78. In the alternative, this Court can vacate Mr. Lopez's guilty plea through one of the alternative routes suggested by *Tiger*, notwithstanding the foreclosure of a stand-alone "actual innocence" claim. 32 N.Y.3d at 101 n.6. For example, it can deem the false testimony by cooperators and unreliable forensic science to be an unconstitutional basis for the plea, under the rationale in *Seeber,* 94 A.D.3d at 1338. Additionally, this Court can distinguish *Tiger* because its reliance on the "presumptive foreclosure" of an actual innocence claim and emphasis on finality was based, in part, on the prosecution's opposition to vacatur. *Tiger*, 32 N.Y.3d at 97 ([t]he People asserted that [an actual innocence claim] was not available where the defendant entered a voluntary guilty plea"). Here, the same presumption should not apply where the People also seek vacatur.

Both Parties Also Seek to Vacate Mr. Lopez's Indictment

79. If this court grants vacatur of the plea, the People also seek to dismiss the indictment because it cannot prove its case beyond a reasonable doubt. Indeed, all of the statement evidence that likely would have been introduced at Mr. Lopez's trial, including the statements of cooperating witnesses, have since been recanted in sworn civil deposition testimony. There never was, and still remains, no physical evidence connecting Mr. Lopez to

the attack on the male jogger. Nor was Mr. Lopez ever identified by the male jogger, or by any other bystander.

80. In addition to dismissal based on legally insufficient evidence, the People also request dismissal in the interest of justice.

WHEREFORE, for the foregoing reasons, Mr. Lopez respectfully requests this Court vacate his conviction in the instant indictment, upon vacatur, dismiss the indictment against him, and also grant any other relief as this Court deems just and proper.

Dated: New York, New York
July 25, 2022

Alvin L. Bragg, Jr.
District Attorney, New York County
By:

Terri Rosenblatt
Assistant District Attorney
NewYork County District Attorney's Office
One Hogan Place
New York, New York 10013
212-335-3446
RosenblattT@dany.nyc.gov

Counsel for Defendant Steven Lopez

Eric Shapiro Renfroe, Esq.
Law Office of Eric Shapiro Renfroe
11-835 Queens Blvd, Ste 940
Forest Hills, New Yorkl 11375
646-479-3511
erenfroeesq@gmail.com