

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**394**

**KA 17-01663**

PRESENT: SMITH, J.P., CENTRA, NEMOYER, CURRAN, AND TROUTMAN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, APPELLANT,

V

MEMORANDUM AND ORDER

HENRI PONTES, DEFENDANT-RESPONDENT.

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SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (DANIEL GROSS OF COUNSEL), FOR APPELLANT.

MICHAEL T. ANSALDI, ROCHESTER, FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Monroe County Court (Douglas A. Randall, J.), entered February 10, 2017. The order granted that part of defendant's omnibus motion seeking to dismiss the indictment.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law, that part of the omnibus motion seeking to dismiss the indictment is denied, the indictment is reinstated, and the matter is remitted to Monroe County Court for further proceedings on the indictment.

Memorandum: The People appeal from an order granting that part of defendant's omnibus motion seeking to dismiss an indictment charging her with identity theft in the first degree (Penal Law § 190.80 [3]) and second degree (§ 190.79 [2]). We now reverse the order, deny that part of the motion, and reinstate the indictment. We agree with the People that County Court erred in granting that part of the motion inasmuch as the evidence before the grand jury is legally sufficient to sustain the indictment (*see People v Roberts*, — NY3d —, —, 2018 NY Slip Op 03172 at \*4-7 [2018]; *People v Yuson*, 133 AD3d 1221, 1221-1222 [4th Dept 2015], *lv denied* 27 NY3d 1157 [2016]; *see generally People v Bello*, 92 NY2d 523, 525-526 [1998]).

Entered: June 8, 2018

Mark W. Bennett  
Clerk of the Court