SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM PART 17
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THE PEOPLE OF THE STATE OF NEW YORK

-against-

GEORGE NASOPOULOUS
STAMATINA NASOPOULOS

Defendants.

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Order and Decision

Indictment No.
2764/2008

Ozzi, J.

Charles J. Hynes, District Attorney, Kings County (Chin-Ho Cheng, Of Counsel) for the People of the State of New York
Aaron L. Altman, Esq., for Defendant Stamatina Nasopoulos
Jay K. Goldberg, Esq., for Defendant George Nasopoulos

By Notice of Motion dated September 21, 2010, the People request an Order permitting the People to introduce evidence of the defendants' prior bad acts and uncharged crimes on their direct case at trial in order to prove a common plan or scheme and Defendants' motive, intent, and absence of mistake or accident.

Based on the papers submitted to the court and oral argument before the court on February 1, 2011, the People seek to introduce evidence of the following bad acts and uncharged crimes of the defendant on their direct case at trial:

A 2001 application submitted by Stamatina Nasopoulos for Medicaid benefits for her children.

A renewal application dated April 21, 2003 for Medicaid benefits signed and submitted to

HRA by the defendants. Defendant George Nasopolous signed a separate application on their children's behalf on the same date. On both applications, Defendants state their joint income was $517 weekly and included an employment letter stating that George worked at "I Can't Believe It's Yogurt" for $525 per week.

Defendants' failure to report any changes in income or health insurance coverage after Stamatina was hired as a teacher at the Kaloidis Parochial School on August 3, 2003. Stamatina was to receive a salary of $30,000 per year and provided subsidized GHI health insurance to her and her family. The People claim that had Defendants reported Stamatina's new employment and salary, as they were required, HRA would have disquilified the Nasapouloses from the program.

Defendants' failure to report ownership of a various bank accounts while continuing to use Medicaid to cover medical expenses.

Renewal applications for Defendants and their children for 2004 and 2005 that failed to list Stamatina's teaching salary.

By Affirmation in Opposition dated January 29, 2011, Defendants have objected to the introduction of such evidence.

Evidence of uncharged crimes is inadmissible unless offered for some purpose other than to raise an inference that a defendant has a criminal propensity. See People v. Molineux, 168 N.Y. 264, 291-294 (1901); People v. Schwartzman, 24 N.Y.2d 241, 247-248 (1969). Such evidence is admissible if offered for a relevant purpose, and is competent to prove the crime charged by means of establishing motive, intent, absence of mistake or accident, a common scheme or plan, or identity. See People v. Vails, 43 N.Y.2d 364, 366(1977); People v. Molineux,

supra; Matter of Brandon, 55 N.Y.2d 206, 11 (1982). Such evidence is also admissible to complete the narrative of the crime charged. See People v. Gines, 36 N.Y.2d 932 (1975); People v. Brockington, 126 A.D.2d 655 (2nd Dep't 1987).

When, therefore, a defendant's criminal intent to commit the crime with which he is charged is placed in issue, proof of other crimes may be admissible under the intent exception to the Molineux rule. See, e.g., People v. Ingram, 71 N.Y.2d 474 (1988); People v. Bourne, 46 A.D.3d 1101 (3rd Dep't 2007). In the instant matter, all of the evidence sought to be introduced is highly and directly probative on the issue of Defendants' intent. See People v. Allweiss, 48 N.Y.2d 40 (1979).Consequently, evidence which would tend to establish that Defendants possessed the requisite intent is relevant and may be properly admitted under the intent or state of mind exception to the Molineux rule. Intent has been placed in issue in this case and, therefore, the introduction of the earlier documents will be permitted. Similarly, where one of the claims is to recover for fraud, prior similar acts can be introduced to establish scienter. Matter of Brandon, 55 N.Y.2d 206, 211 (1982); Prince, Richardson on Evidence §4-517 (11th Ed., Farrell). By utilizing the evidence that the People seek to admit, the fact finder will not be left to speculate concerning the defendant's knowledge and intent. The evidence sought to be introduced here is highly probative to negate the possibility of mistake and to prove that the defendants acted with the requisite larcenous intent. The evidence is similarly probative of Defendants' motive.

Additionally, the evidence which the People seek to admit is inextricably interwoven with other admissible evidence, specifically to the crimes charged, and are explanatory of actions that are otherwise admissible. See People v. Crandall, 67 N.Y.2d 111 (1986); People v. Manson, 257 A.D.2d 580 (2nd Dep't 1999). It also provides the necessary background to complete the

narrative, the history of the defendants' participation in the benefits program and will give the fact finder the opportunity to learn how the defendants began receiving health insurance benefits. See People v. Montanez, 41 N.Y.2d 53 (1976).

The next step of the inquiry requires the court to "weigh the evidence's probative worth against its potential for mischief to determine whether it should ultimately be placed before the fact finder." People v. Huddy, 73 N.Y.2d 40 (1988). By denying the admission of the above evidence, the circumstances may be persuasively argued to yield competing inferences with regard to the defendant's larcenous intent, motive, and knowledge. Furthermore, this matter is scheduled for a non-jury trial before another judge on February 7, 2011. Unlike a lay jury, a Judge "by reasons of... learning experience and judicial discipline is uniquely capable distinguishing the issues and making an objective determination" based upon the appropriate legal criteria. People v. Moreno, 70 N.Y.2d 403, 406 (1987), citing People v. Brown, 24 N.Y.2d 168, 172 (1969). Thus, it is the court's belief that the trial judge, as fact finder, will be able to effectively negate any prejudicial effect the evidence may have.

For the foregoing reasons, the People's application is granted.

It is so Ordered.

Dated: February 4, 2011
Brooklyn, New York

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HON. WAYNE M. OZZI, J.S.C.

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