

People v Ibrahim

2016 NY Slip Op 33020(U)

July 15, 2016

County Court, Orange County

Docket Number: 0757/2016

Judge: Robert H. Freehill

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ORIGINAL

COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X

THE PEOPLE OF THE STATE OF NEW YORK

-against-

LINDA IBRAHIM,

Defendant.

-----X

FREEHILL, ROBERT H., J.C.C.

Indictment No. 2016-077

Index No. 0757/2016

DECISION AND ORDER

Defendant is charged in this indictment with the crimes of Manslaughter in the Second Degree, Vehicular Manslaughter in the Second Degree (2 counts), Assault in the Second Degree, Tampering with Physical Evidence, Leaving Scene of an Incident Without Reporting, Operating a Motor Vehicle While Under the Influence of Alcohol, Conspiracy in the Fourth Degree, Criminal Possession of a Controlled Substance in the Fifth Degree and Criminal Sale of a Controlled Substance in the Fifth Degree.

By this omnibus motion the defendant has moved for certain pretrial relief which the Court decides, having considered: 1.) the defendant's notice of motion and affirmation; 2.) the People's affirmation in response; 3.) the defendant's affirmation in reply and 4.) the transcript of Grand Jury proceedings.

Motion to Dismiss
Motion to Sever Counts 8, 9 and 10

Motion to Dismiss:

Defendant moves to dismiss the indictment in its entirety and, in the alternative, to sever counts 8,9 and 10 from counts 1 through 7 in this indictment. Counts 1 through 7 alleged crimes

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related to defendant's operation of a motor vehicle and her conduct in leaving the scene of a fatal accident. Count 8 alleges Conspiracy in the Fourth Degree. This count alleges that on eight occasions in July 2013 and on one occasion in January 2014, defendant agreed with one or more persons to engage in the possession and sale a controlled substance, methylenedioxy-methamphetamine (MDMA). The act alleged in the indictment that links these two seemingly disparate groups of counts is the fact that on January 9, 2014, the date of the fatality, defendant gave MDMA to Melissa Celic a/k/a Melissa Selik (hereafter referred to as Melissa Celic)¹ prior to allegedly taking MDMA herself.

With respect to the conspiracy, possession and sale counts in the indictment, defendant is accused of engaging in nine overt acts to support the conspiracy alleged in count 8. All of these overt acts occurred in July 2013 with the one exception of the transaction in January 2014 where it is alleged that defendant gave a capsule containing MDMA to Melissa Celic. There is no physical evidence to support the allegations that defendant committed these overt acts and the only proof of these acts is the testimony of uncharged accomplices Melissa Celic² and Kurt Mylonas.

The testimony before the Grand Jury supporting all of the counts alleging the possession, sale and conspiracy to possess and sell narcotics consists of the uncorroborated statements of

¹In the minutes, the witness refers to herself as Melissa Selik. In the indictment as well as the People's Affirmation in Response, the witness is referred to as Melissa Celic.

²In the Grand Jury, Melissa Celic testified that she saw defendant packaging MDMA. In a Brady disclosure and in a document entitled Response to Demands for Discovery to Dismiss dated February 29, 2016, the People indicate that Melissa Celic did not deliver the MDMA and it was instead delivered by her boyfriend and accomplice in the drug trade who did not testify before the Grand Jury.

accomplices. A defendant cannot be convicted of an offense upon the uncorroborated testimony of an accomplice. “A defendant may not be convicted of any offense upon the testimony of an accomplice unsupported by corroborative evidence tending to connect the defendant with the commission of such offense” (CPL 60.22[1]; see *People v. Medeiros*, 116 AD3d 1096 [2014]). It follows that an indictment cannot be supported where the only evidence of the commission of the offense is the uncorroborated testimony of an accomplice (CPL 60.22[1], 190.65[1][b]). The fact that an accomplice may be granted immunity or possesses any other defense or exemption does not eliminate the requirement of corroboration (CPL 60.22[3]).

The witnesses who testified about the facts supporting the conspiracy charge participated as accomplices in the overt acts that constitute the conspiracy charge. Both Melissa Celic and Kurt Mylonas participated in overt acts one through eight and Melissa Celic participated in overt act nine. The testimony was not sufficiently corroborated by the evidence presented to the Grand Jury. “Although the corroborative evidence need not establish each element of the offense, it must tend to connect the defendant to the crime charged” (*People v. Montefusco*, 44 AD3d 879 [2nd Dept 2007]). The defendant and her boyfriend ended their relationship in October or November 2013 and no evidence that further transactions, discussions or agreements occurred between them after that time. The evidence in the form of text messages between defendant and Melissa Celic indicate only that defendant was intending to travel to the apartment of Melissa Celic in the early morning hours of January 9, 2014. The corroborative evidence must establish some material fact related to the indictment (*People v. Nieto*, 97 AD2d 774 [2nd Dept 1983]). At best, Melissa Celic’s testimony is corroborated by defendant’s text messages only to the extent defendant intended to stop by Celic’s apartment after defendant left work. This purported

corroborative testimony does not tend to support a relevant fact, it merely tends to support the credibility of the accomplice's testimony. Evidence that merely supports the credibility of an accomplice is insufficient as a means of corroboration (*People v. Nieto*).

The prosecutor introduced evidence through the accomplice testimony of Melissa Celic that defendant ingested MDMA in her presence prior to the fatal accident which occurred later that same morning. Because there is no chemical tests of the defendant's blood or of any of the substances she is alleged to have ingested, the People must rely entirely upon the testimony of Melissa Celic to establish that defendant ingested MDMA and that the MDMA was a drug capable of affecting defendant's ability to operate a motor vehicle at the time she is alleged to have been involved in the accident.

The use of the testimony of the toxicologist as corroboration of the accomplice testimony is also insufficient. The People effectively instructed the Grand Jury to indict defendant for the driving offenses because if they found that defendant did not appear intoxicated, then defendant must have been under the effect of MDMA which minimized the effects of the alcohol thereby corroborating the testimony of Melissa Celic. This bit of circular reasoning does not constitute corroboration and does not independently corroborate a relevant fact (see *People v. Potter*, 262 AD2d 1074 [4th Dept 1999]).

In addition to the failure to corroborate the testimony regarding counts 8, 9 and 10, the Grand Jury was not instructed that the testimony of Kurt Mylonas was, like the testimony of Melissa Celic, testimony of an accomplice that required corroboration. The Grand Jurors following the instructions given could have considered the testimony of Kurt Mylonas as corroboration of the testimony of Melissa Celic or they may have considered the testimony of

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Melissa Celic to corroborate the testimony of Kurt Mylonas. The testimony of one accomplice may not be used to corroborate of another (*People v. Pynes* 170 AD2d 981 [4th Dept 1991]). Moreover, the testimony of Melissa Celic may have been based upon hearsay statements of her boyfriend rather than her own recollection (see footnote 2). Nothing was stated to the Grand Jurors to ensure that testimony was not improperly corroborated in this manner. Accordingly, counts 8, 9 and 10, rest on uncorroborated accomplice testimony. For this reason and for the reasons set forth in the preceding paragraphs, Counts 8, 9 and 10 of the indictment are dismissed.

Motion to Sever:

The Court will address this issue to avoid the potential for a future delay in the proceedings. Defendant moves pursuant to CPL 200.20[3] for an order severing counts 1 through 7 from counts 8 through 10. Defendant argues that “The sale and/or possession of drugs in July of 2013 has no relation to a vehicular accident which took place on January 9, 2014 and proof of either grouping of charges is not relevant to the proof of the other.” Criminal Procedure Law 200.20[2][b] states:

Even though based upon different criminal transactions, such offenses, or the criminal transactions underlying them, are of such nature that either proof of the first offense would be material and admissible as evidence in chief upon a trial of the second, or proof of the second would be material and admissible as evidence in chief upon a trial of the first.

The People claim that proof of the conspiracy under count 8, the possession under count 9 and the sale under count 10 in addition to being related to each other, would be material and admissible as evidence in chief upon the trial of the other counts related to the manslaughter and related counts. This is based on the testimony of Melissa Celic where she states she was given a

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capsule containing MDMA by defendant who ingested a capsule at about the same time. Melissa Celic claims to know the effects of MDMA and experienced those effects some time later when she took the capsule given to her by defendant.

The People argue that the offenses are properly joined pursuant to CPL 200.20[2][b]. If the counts are properly joined and if the counts are not solely joined merely because of their similar nature, the Court is without statutory authority to sever the counts (*see People v. Bongarzone*, 69 NY2d 892 [1987]; *People v. Lane* 56 NY2d 1 [1982]; *People v. Zinaman*, 259 AD2d 327 [1st Dept 1999]). Accordingly, counts 8, 9 and 10 must be legally sufficient and proof that established these counts must be admissible as proof of defendant's guilt of counts 1 through 7.

The issue raised by defendant in her motion is whether or not there is proof that the counts are based upon the same criminal transaction (CPL 200.20[2][a]) and/or proof of one offense is admissible as proof of the other (CPL 200.20[2][b]). First, although Count 8 of the indictment groups conduct occurring in 2013 and 2014 together, there is a break in time of approximately 6 months between the overt acts alleged to have occurred in July 2013 and those alleged in 2014 and there is an obvious issue of whether or not these events are, in fact, related despite the generally similar nature of the allegations.

Count 8 alleges a series of overt acts occurring in July 2013 and a single event in January 2014. There was no proof presented to the Grand Jury that defendant agreed with one or more persons to sell MDMA to another person in January 2014 and therefore, there is no relationship between the events in January and the events of July of the previous year that is related to a conspiracy. The defendant's conduct in July 2013 and January 2014 are unrelated in time and

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purpose. The proof indicates that on one occasion in July 2013, defendant and her then boyfriend Kurt Mylonas purchased MDMA which was delivered to them by Melissa Celic. Thereafter, defendant and Kurt Mylonas repackaged the MDMA by breaking it apart and placing it into numerous capsules which they intended to use themselves, to share with others and to sell at a concert in Connecticut in July 2013. Although it appears from the testimony that MDMA may have been brought into the defendant's apartment on other occasions, there is no proof of a further conspiracy to sell between defendant Linda Ibrahim, Kurt Mylonas, Melissa Celic or anyone else.

Motion to Dismiss Counts 1 through 7:

It does not appear that the introduction of the uncorroborated testimony of Melissa Celic and Kurt Mylonas impaired the integrity of the Grand Jury proceedings as a whole which would warrant dismissal of the remaining counts. Further, Melissa Celic's testimony about the packaging of MDMA by defendant may be based upon hearsay conversations with her boyfriend rather than the direct observation that she testified to during her testimony in the Grand Jury. This inaccurate testimony also does not impair the Grand Jury's determination with respect to counts 1 through 7. With respect to counts 1 through 7 in this indictment, the Court has reviewed the minutes of the Grand Jury and finds that the indictment is based upon legally sufficient evidence and that the Grand Jury was properly instructed with respect to the applicable law.

Motion to Suppress Evidence

Defendant moves to suppress certain evidence. Prior to the filing of this superseding indictment and after defendant's omnibus motion was decided, hearings were held and a written

decision was rendered determining the admissibility of evidence. There is no need to hold new hearings on these issues which were previously decided. The cases cited by defendant are not relevant to the procedural status of this case. In *People v. McCullough*, 38 AD3d 1203 [4th Dept 2007], defendant's counsel failed to move to suppress evidence. When reversing this conviction, the Appellate Division specifically stated that defendant's new counsel could move to suppress. The suppression issue in *McCullough* had not be litigated in the original trial and there was no legitimate reason for trial counsels failure to move for suppression. In *People v. Malizia*, 62 NY2d 755 [1984], the Court of Appeals held that the evidentiary rulings of a first trial did not automatically apply to a second trial (see *People v. Nieves*, 67 NY 125 [1986]). The court was not discussing suppression issues made pursuant to CPL art. 710, but was instead referring to trial rulings regarding evidence.

This is a superseding indictment and the issues previously litigated are the same issues present in this indictment an have been fully litigated. There is no basis to relitigate any suppression issues previously decided after a full hearing.

Motion to Suppress Statements

The motion is denied. The Court has already held a hearing and rendered a Decision After Hearing on the statements made by defendant to law enforcement personnel pursuant to CPL 710.60(4).

Motion to Suppress Physical Evidence

The motion is denied. The Court has held a hearing and rendered a Decision and Order After Hearing pursuant to CPL §710.60(4) which decided the admissibility of any physical evidence allegedly seized from defendant.

Motion for a *Sandoval* Ruling

The motion is granted to the extent that a hearing is hereby ordered which will be held immediately prior to trial to determine which, if any, bad acts or convictions may be used as impeachment in the event that the defendant elects to testify at trial. The Court further orders the District Attorney to disclose to defendant's attorney any and all bad acts and convictions which will be used to impeach defendant three days prior to the commencement of trial in accordance with CPL §240.43.

Motion Pursuant to *Ventimiglia/Molineux*

The motion is granted to the extent that a hearing is hereby ordered which will be held immediately prior to trial to determine which, if any, bad acts or convictions may be used as evidence in the People's case. The Court further orders the District Attorney to disclose to defendant's attorney any and all acts and convictions which he intends to present during its direct case.

Motion for Discovery and Inspection

The defendant's motion for discovery and inspection is granted to the extent information has been provided to the defendant in the Voluntary Disclosure Form and as set forth in the People's affirmation in response. In all other respects, this branch of defendant's motion is denied. There is no reason set forth by defendant that would cause this court to believe that she should be given a second set of material.

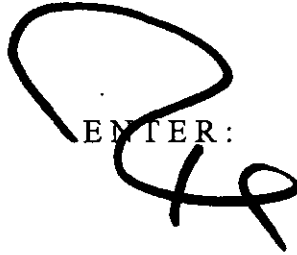
Motion to Compel Discovery by the People

The People failed to serve a notice of cross-motion on defendant and the Court will not issue an order based upon a defective motion. Notwithstanding procedural defects present here,

defendant is required to provide reciprocal discovery and the parties are urged to comply, when appropriate to avoid unnecessary litigation.

The foregoing constitutes the Decision and Order of the Court.

Dated: Goshen, New York
July 15, 2016



ENTER:

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County Court Judge

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