

People v Shrkeli

2016 NY Slip Op 33250(U)

August 11, 2016

County Court, Westchester County

Docket Number: Indictment No. 15-0794

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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WESTCHESTER

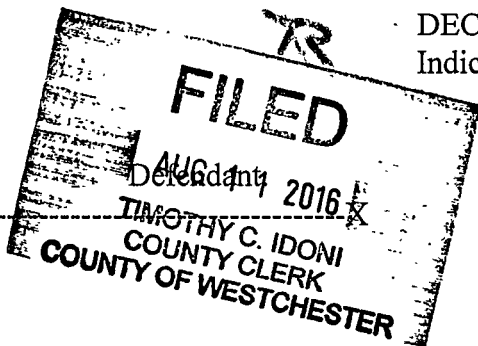
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THE PEOPLE OF THE STATE OF NEW YORK

-against-

MONIKA SHRKELI,

MINIHAN, J.

AMENDED
DECISION & ORDER
Indictment No.: 15-0794¹



Defendant MONIKA SHRKELI, having been indicted on or about April 28, 2016 for Driving While Intoxicated (Vehicle and Traffic Law § 1192[3]), as a felony; Speeding (Vehicle and Traffic Law § 1180[d][1]); and Bail Jumping in the Second Degree (Penal Law § 215.56) has filed an omnibus motion which consists of a Notice of Motion and an Affirmation in Support. In response, the People have filed an Affirmation in Opposition together with a Memorandum of Law. Upon consideration of these papers, the stenographic transcript of the grand jury minutes and the consent discovery order entered in this case, this Court disposes of this motion as follows:

1. & 7.

MOTION to INSPECT, DISMISS and/or REDUCE
CPL ARTICLE 190

The Court grants the defendant's motion to the limited extent that the Court has conducted, with the consent of the People, an *in camera* inspection of the stenographic transcription of the grand jury proceedings. Upon such review, the Court finds no basis upon which to grant defendant's application to dismiss or reduce the indictment.

The indictment contains a plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of the offense charged and the defendant's commission thereof with sufficient precision as to clearly apprise the defendant of the conduct which is the subject of the indictment (CPL §200.50). The indictment charges each and every element of the crimes, and alleges that the defendant committed the acts which constitute the crimes at a specified place during a specified time period and, therefore, is sufficient on its face (*People v Cohen*, 52 NY2d 584 [1981]; *People v Iannone*, 45 NY2d 589 [1978]).

¹The decision was amended to reflect a typographical error of the defendant's name and the indictment number.

The Grand Jury was properly instructed (*see People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]). The evidence presented, if accepted as true, is legally sufficient to establish every element of each offense charged (CPL 210.30[2]). Additionally, the minutes reveal a quorum of the grand jurors was present during the presentation of evidence, that the Assistant District Attorney properly instructed the Grand Jury on the law, and only permitted those grand jurors who heard all the evidence to vote the matter.

Based upon the *in camera* review, since this Court does not find release of the Grand Jury minutes or any portion thereof necessary to assist it in making any determinations and as the Defendant has not set forth a compelling or particularized need for the production of the grand jury minutes, defendant's application for a copy of the Grand Jury minutes is denied (*People v Jang*, 17 AD3d 693 [2d Dept 2005]; CPL 190.25[4][a]).

2. & 3.

MOTION for a FURTHER BILL OF PARTICULARS
CPL 200.95

Defendant's motion for a further Bill of Particulars is denied. The Bill of Particulars set forth in the Consent Discovery Order which has been provided to the defendant adequately informs the defendant of the substance of her alleged conduct and in all respects complies with CPL 200.95.

To any further extent, the application is denied as seeking material or information beyond the scope of discovery (*see People v Colavito*, 87 NY2d 423 [1996]; *Matter of Brown v Grosso*, 285 AD2d 642 [2d Dept 2001]; *Matter of Brown v Appelman*, 241 AD2d 279 [2d Dept 1998]; *Matter of Catterson v Jones*, 229 AD2d 435 [2d Dept 1996]; *Matter of Catterson v Rohl*, 202 AD2d 420 [2d Dept 1994]).

Defendant's application for the People to turn over transcripts of court proceedings is denied.

4.

MOTION for BRADY MATERIAL

As to defendant's demand for exculpatory material, the People recognize their continuing duty to disclose exculpatory material at the earliest possible date upon its discovery (*see Brady v Maryland*, 373 US 83 [1963]; *Giglio v United States*, 405 US 150 [1972]). The People further acknowledge their duty to comply with *People v Rosario*, (9 NY2d 286 [1961]). If the People are or become aware of any material which is arguably exculpatory and they are not willing to consent to its disclosure to the defendant, they are directed to immediately disclose such material to the Court to permit an *in camera* inspection and determination as to whether such must be disclosed to the Defendant.

The People recognize their continuing duty to disclose the terms of any deal or agreement made between the People and any prosecution witness at the earliest possible date (*see People v Steadman*, 82 NY2d 1 [1993]; *Giglio v United States*, 405 US 150 [1972]; *Brady v Maryland*, 373 US 83 [1963]; *People v Wooley*, 200 AD2d 644 [2d Dept 1994]).

5.

MOTION to SUPPRESS STATEMENTS

This branch of defendant's motion seeking to suppress statements on the grounds that they were unconstitutionally obtained is granted to the limited extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by defendant, which have been noticed by the People pursuant to CPL 710.30(1)(a), were involuntarily made by defendant within the meaning of CPL 60.45 (CPL 710.20[3]; CPL 710.60[3][b]; *People v Weaver*, 49 NY2d 1012 [1980]), obtained in violation of the Defendant's Sixth Amendment right to counsel, and/or obtained in violation of the Defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

6.

MOTION for a SANDOVAL HEARING

Defendant has moved for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into the Defendant's prior criminal convictions, prior uncharged criminal, vicious or immoral conduct. The People have consented to such hearing. Accordingly, it is ordered that immediately prior to trial a hearing shall be conducted pursuant to *People v Sandoval* (34 NY2d 371[1974]). At said hearing, the People shall be required to notify the defendant of all specific instances of her criminal, prior uncharged criminal, vicious or immoral conduct of which they have knowledge and which they intend to use in an attempt to impeach the defendant's credibility if she elects to testify at trial (CPL 240.43).

At the hearing, the defendant shall bear the burden of identifying any instances of her prior misconduct that she submits the People should not be permitted to use to impeach her credibility. The defendant shall be required to identify the basis of her belief that each event or incident may be unduly prejudicial to her ability to testify as a witness on her own behalf (*see People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

Defendant's application for this Court to provide a copy of her Division of Criminal Justice Services Report is denied.

8.

MOTION for DISMISSAL in the INTEREST OF JUSTICE

As the Court finds that the People were within their rights to proceed directly to the Grand Jury, it follows that their action provides no basis for dismissal in further of justice since, on this record, there is no compelling factor under CPL 210.40 warranting a dismissal of this indictment.

9.

MOTION for SUPPRESSION of VENTIMIGLIA / MOLINEAUX EVIDENCE

Defendant's application is for a hearing pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]), it is denied as premature since the People have not indicated an intention to use evidence of any prior bad act or uncharged crimes of the defendant during its case in chief (*see People v Molineaux*, 168 NY 264 [1901]). If the People move to introduce such evidence, the defendant may renew her application.

10.

MOTION for AUDIBILITY HEARING

The unopposed branch of the motion is granted the limited extent that a hearing will be held before trial to determine whether the videotape recordings are so inaudible and indistinct that a jury must speculate as to their contents (*see People v Harrell*, 187 AD2d 453 [2d Dept 1992] ; *People v Morgan*, 175 AD2d 930, 932 [2d Dept 1991]).

11.

MOTION for LEAVE to FILE FUTURE MOTIONS

This motion is denied. Should defendant intend to bring further motions for omnibus relief, she must do so by order to show cause setting forth reasons as to why her motion was not and could not have been brought in conformity with CPL 255.20.

12.

MOTION to CONDUCT PRE-TRIAL HEARINGS
TWENTY DAYS in ADVANCE of TRIAL

While not incorporated into her notice of motion, defendant makes an application requesting that pre-trial hearings be held twenty days prior to trial. Her motion is denied.


13.

MOTION to PRECLUDE UNNOTICED
CPL 710.30 STATEMENTS and IDENTIFICATIONS

While not incorporated into her notice of motion, defendant makes an application to preclude statements and identifications not timely noticed under CPL 710.30. Her motion is denied, with leave to renew, should the People seek to file an untimely statement or identification notice (CPL 710.30[2]).

The foregoing constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
August 11, 2016


Honorable Anne E. Minihan
Westchester County Court Justice

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