

**People v Griswold**

2019 NY Slip Op 31241(U)

April 24, 2019

County Court, Steuben County

Docket Number: 2018-0038 CR

Judge: Philip J. Roche

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State of New York  
County of Steuben

County Court

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THE PEOPLE OF THE STATE OF NEW YORK,

vs.

**DECISION & ORDER**  
Indictment No. 2019-30B  
Index No.: 2018-0038 CR

AMANDA R. GRISWOLD,

Defendant.

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Appearances: *Brooks T. Baker, District Attorney, Bath (Joseph G. Pelych, of counsel) for the People*

*Brenda Aston, Conflicts Defender, Bath for the Defendant*

The defendant has been charged in this indictment with two counts of Aggravated Driving While Intoxicated and two counts of Endangering the Welfare of a Child. She has moved to dismiss the indictment on the grounds that the evidence presented to the grand jury was insufficient, as a matter of law, to sustain the charges, the proceedings were defective and the instructions given were inaccurate or inadequate. The Court reserved decision on the defendant's application pending an *in camera* review of the grand jury minutes.

In reviewing the sufficiency of the evidence before the grand jury, this court must consider "whether the evidence viewed in the light most favorable to the People, if unexplained or uncontradicted, would warrant conviction by a petit jury" (*People v. Jennings*, 69 NY2d 103, 114 [1986]; *People v. Bello*, 92 NY2d 523, 525 [1998]; *People v. Swamp*, 84 NY2d 725, 730 [1995]). The court must assess whether the facts, if proven, and the inferences that logically flow from those facts,

supply proof of every element of the crime charged (*People v. Deegan*, 69 NY2d 976, 979 [1987]; *People v. Bello*, *supra* at 526). While the court is not to assess the quality or the weight of the evidence, it still must determine if the evidence is legally sufficient to support each element of the crime charged.

The Court has thoroughly reviewed the grand jury minutes and relevant case law and finds that defendant's application must be granted in part and denied in part.

Legally sufficient evidence was presented which, if uncontradicted or unexplained, would support Counts Three and Four of the indictment. These counts charge the defendant with Endangering the Welfare of a Child, one count for each of the two children present in the vehicle. This charge requires legally sufficient proof that the defendant "knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less the seventeen years old ..." (PL 260.10 (1)).

In this case, the People's theory of prosecution is that the defendant, who was the sole caretaker of her young children on the date of the incident, directed the children to get into a vehicle operated by the co-defendant, Sheldon Greene (Greene), whom the defendant knew or should have known was impaired, because she had spent the day drinking and smoking marijuana with him.

Sufficient evidence was presented which, if accepted as true, established that the children were both under the age of seventeen on the day of this event, Greene had been drinking and smoking marijuana before driving the vehicle with

the children, and he later exhibited symptoms consistent with impairment of his physical condition based on alcohol and drug ingestion. This evidence is legally sufficient to support a finding that, when the defendant directed her children to get into Greene's vehicle for the ride home, she created a situation that was likely to be injurious to the children's physical, mental or moral welfare. Therefore, the defendant's application to dismiss Counts Three and Four based on her claim that the evidence presented to the grand jury was legally insufficient to support these charges is denied. Further, the grand jury proceedings related to Counts Three and Four were not defective and the instructions given were accurate and adequate. Therefore, the defendant's motion to dismiss Counts Three and Four is denied.

Counts One and Two charge both the defendant and Greene with Aggravated Driving While Intoxicated in violation of Vehicle and Traffic Law (VTL) 1192(2-a)(b) and 1192(4-a). The Court notes that Counts One and Two of the indictment charge the defendant with violating VTL 1192(3), Driving While Intoxicated. However, this appears to be a scrivener's error as the proof presented, and the instructions given, refer to VTL 1192(4-a), Driving While Ability Impaired by the combined influence of drugs and alcohol. This charge requires legally sufficient proof that the defendant operated a motor vehicle while her "ability to operate such vehicle (was) impaired by the combined influence of drugs or of alcohol and any drug or drugs" while a child, who is under 15 years of age, was a passenger in that motor vehicle. The People acknowledge that only Greene

physically operated the motor vehicle in an impaired condition. However, the People contend that the defendant also committed the crime of Aggravated Driving While Intoxicated based on an accomplice liability theory. They contend that she committed this offense by directing her children to get into Greene's vehicle knowing that he had consumed alcohol and marijuana for several hours prior. This application of accessory liability to a Driving While Intoxicated charge appears to be a novel theory and the People did not offer any statutory references or case law in support of their position.

To understand the People's claim, it is necessary to revisit the fundamentals of criminal liability. Every criminal offense is divided into one of two classifications: (1) crimes committed based on a "culpable mental state" (Penal Law (PL) § 15.00(6)), or (2) crimes committed based on strict liability (PL § 15.10). A crime based on a "culpable mental state" requires proof that the perpetrator voluntarily engages in criminal conduct which is done "intentionally", "knowingly", "recklessly" or with "criminal negligence" (PL § 15.00(6)). For example, a person who conceives and executes a plan to break into a dwelling of another with the intent to steal property therein is guilty of Burglary in the Second Degree. This is a crime based on the culpable mental state of intent. Further, a person who does not physically commit a crime, can be criminally liable for a crime committed by another, by "sharing the identical "mental culpability" required for the commission of the crime (*People v. Kaplan*, 76 N.Y.2d 140, 142–47 [1990]). This person is referred as an accomplice whose liability is set forth in PL § 20.00 as follows:

“When one person engages in conduct which constitutes an offense, another person is criminally liable for such conduct when, **acting with the mental culpability required for the commission thereof**, he solicits, requests, commands, importunes, or intentionally aids such person to engage in such conduct.” (emphasis added).

In contrast to a crime based on a culpable mental state, a strict liability offense requires only that a person voluntarily engages in a prohibited act. Whether the person intends, or knows, that he or she is committing a crime, or whether the acts performed are done recklessly or with negligence is irrelevant to the actor’s liability under the theory of strict liability. For example, if an individual voluntarily consumes alcohol to the extent he or she is impaired, intoxicated or registers a blood alcohol content (BAC) above the statutory limit, and operates a motor vehicle while in this condition, that person is guilty of an offense whether the individual is aware of the impairment, intoxication or BAC, or not.

As there is accomplice liability only where the parties have a shared “mental culpability” and as strict liability crimes do not, by definition, include “culpable mental states,” there can be no accomplice liability theory when the crime charged is a strict liability crime. In this case, the defendant is charged with Aggravated Driving While Intoxicated which is a strict liability crime. For this reason, this defendant cannot be prosecuted for the strict liability crime of Aggravated Driving While Intoxicated based on accessorial liability. Tellingly, there is no accomplice

liability charge in VTL Article 31 which codifies the charges related to DWI, and, as a result, the People have had to rely on the penal law accomplice liability provisions to support the charges against the defendant.

Further, it is worth noting that the Court of Appeals, in its detailed analysis of VTL Article 31 in *People v. Prescott* (95 NY2d 655, 663 [2001]), referred to the “highly integrated statutory scheme” and “the distinct nature” of the statutory DWI provisions. While the Legislature did not specifically draft either accessorial liability or liability for facilitation (Penal Law Article 115) into the provisions of VTL Article 31, perhaps due to the unique nature of Article 31 which generally limits liability to the operator of a motor vehicle, the Legislature did create an offense prohibiting facilitation within VTL 511-a (aggravated unlicensed operation). This specific inclusion in VTL 511-a indicates that the Legislature was aware of, and could have included, liability for facilitation or accomplice conduct in VTL Article 31 if they had chosen to do so. That they chose not to do so is instructive and this Court is not going second guess legislative decision making on this point.

By charging the defendant with Aggravated Driving While Intoxicated based on the theory of accessorial liability, the People are asking this Court to impose criminal accomplice liability on the defendant for a strict liability crime. This would create an offense “not contemplated by the detailed statutory scheme” (*People v. Prescott*, *Id.* at 661). This Court declines to do so.

Therefore, based on the above, Counts One and Two of the indictment are dismissed.

This constitutes the decision and order of the Court.

Dated: April 24, 2019.

ENTER:



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HON. PHILIP J. ROCHE  
Steuben County Court Judge