People v Castillos
2023 NY Slip Op 34933(U)
September 19, 2023
Supreme Court, Westchester County
Docket Number: Indictment No. 23-71569
Judge: Anne E. Minihan
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

FILED
AND ENTERED
ON 9-19- 2023
WESTCHESTER
COUNTY CLERK

SUPREME COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK

FILED
SEP 22 2023
TIME
COUNTY OF WESTCHESTER

-against-

ELENI CASTILLOS

Defendant.

DECISION & ORDER
Indictment No. 23-71569

---X

MINIHAN, J.

Defendant, Eleni Castillos, is charged by Westchester County Indictment Number 23-71569 with Vehicular Manslaughter in the First Degree (Penal Law § 125.13[1]), Vehicular Manslaughter in the Second Degree (Penal Law § 125.12[1]) (3 counts), Aggravated Driving While Intoxicated (Vehicle and Traffic Law § 1192[2-a][a]), Aggravated Driving While Intoxicated (Vehicle and Traffic Law § 1192[2-a][b]) (3 counts), Driving While Intoxicated; Per Se (Vehicle and Traffic Law § 1192[2]), Driving While Intoxicated (Vehicle and Traffic Law § 1192[3]), Driving While Ability Impaired by the Combined Influence of Drugs or of Alcohol and any Drug or Drugs (Vehicle and Traffic Law § 1192[4-a]), and Endangering the Welfare of a Child (Penal Law § 260.10[1]).

Defendant has filed an omnibus motion consisting of a Notice of Motion, an Affirmation in Support, and a Memorandum of Law. Attached thereto is one Exhibit, the People's Accident Reconstruction Report. In response, the People filed an Affirmation in Opposition and a Memorandum of Law.

I.

MOTION for DISCOVERY, DISCLOSURE, and INSPECTION
CPL ARTICLE 245

To whatever extent material that is discoverable under CPL Article 245 has not already been provided to the defense by the People, the defendant's motion is granted and such discovery, including both *Brady*[1] material and *Rosario* material, shall be provided forthwith. Leave is granted for either party to seek a protective order (CPL Article 245).

The People provided discovery in this matter on the following dates in 2022: July 28, July 30, August 2, August 8, September 22, and on the following dates in 2023: February 17, May 23, June 23, June 29, July 10, August 1, August 9, and August 14.

---

[1] The People acknowledge their continuing duty to disclose exculpatory material (*Brady v Maryland*, 373 US 83 [1963]; *see Giglio v United States*, 405 US 150 [1971]). The People also acknowledge that they have or will comply with their obligations under CPL 245.20(1) (k), (l), and (p). If the People are or become aware of any such material which is arguably subject to disclosure under *Brady* and its progeny and CPL Article 245 which they are unwilling to consent to disclose, they are directed to bring it to the immediate attention of the Court and to submit it for an in-camera inspection by the Court and determination as to whether it constitutes *Brady* material discoverable by defendant. The Court has served a *Brady* Order on the People, dated August 22, 2023, which details the time period their disclosure must be made in accordance with the standards set for in the United States and New York State Constitutions and CPL Article 245.

The People filed a Certificate of Compliance on July 18, 2023 and they are reminded of their continuing obligation to remain in compliance with the discovery mandates set forth in CPL Article 245 and to file supplemental Certificates of Compliance as the need arises.

The People must 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]).

II.

MOTION for *SANDOVAL* and *VENTIMIGLIA* HEARINGS

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 defendant's prior criminal convictions or prior uncharged criminal, vicious, or immoral conduct. On the People's consent, the court orders a pre-trial *Sandoval* hearing (*see People v Sandoval*, 34 NY2d 371[1974]). At said hearing, the People shall notify defendant, in compliance with CPL Article 245, 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 defendant's credibility if she elects to testify at trial, and, in any event, not less than 15 days prior to the first scheduled trial date. 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. 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]).

If the People determine that they will seek to introduce evidence at trial of any prior uncharged misconduct and criminal acts of defendant, including acts sought to be used in their case in chief, they shall so notify the court and defense counsel, in compliance with CPL Article 245, and, in any event, not less than 15 days prior to the first scheduled trial date, and a *Ventimiglia/Molineux* hearing (*see People v Ventimiglia*, 52 NY2d 350 [1981]; *People v Molineux*, 168 NY 264 [1901]) shall be held immediately prior to trial to determine whether or not any evidence of uncharged crimes may be so used by the People. The People are urged to make an appropriate decision in this regard sufficiently in advance of trial to allow any *Ventimiglia/Molineux* hearing to be consolidated and held with the other hearings herein.

III.

MOTION to STRIKE THE PEOPLE'S CERTIFICATE OF COMPLIANCE AND STATEMENT OF READINESS

Defendant moves to strike the People's Certificate of Compliance ("COC") and Statement of Readiness ("SOR") filed on July 18, 2023[2] as illusory, arguing that their filing before Grand Jury minutes were disclosed was premature. The motion to strike is denied.

[2] Defendant states that the People served COCs and SORs on June 23, 2023, July 10, 2023, and July 18, 2023. However, the Court is in receipt of only one COC and SOR, filed on July 18, 2023.

Defendant is not in custody and therefore, pursuant to CPL 245.10(1)(a)(ii), the prosecutor must perform his initial discovery obligations within 35 days after defendant's arraignment on the indictment. However, CPL 245.20(1)(b) allows for an additional 30-day grace period for turning over Grand Jury minutes,[3] for a total of 65 allowable days to disclose after the date of arraignment. Here, defendant was arraigned on the indictment on August 20, 2023, making disclosure of the Grand Jury minutes due by October 24, 2023. The People provided the minutes to defendant as they were received by the stenographer, on August 1, 9, and 14, 2023, which was clearly well within the statutory allowable time frame.

Moreover, perfect compliance is not required by statute before filing a COC. If the Legislature intended to require complete disclosure of every single discoverable item prior to filing a COC or SOR, it would have explicitly stated as such (*see People v Askin*, 68 Misc3d 372 [County Ct Nassau County April 28, 2020] [rejecting claim that complete disclosure of discovery is required before filing COC as "not reasonable" and "clearly not what the Legislature intended"]). In fact, CPL Article 245 allows for, and mandates, the filing of multiple Certificates of Compliance and such subsequent filings do not negate or vitiate the prior filing of the People if done in good faith and after diligent efforts were made to obtain the required materials (*see People v Cano*, 71 Misc3d 728, 739 [Sup Ct Queens County December 3, 2020]; *People v Percell*, 67 Misc3d 190 [Criminal Ct New York County February 10, 2020]).

"By allowing for the possibility that the People be deemed ready even when some discovery is outstanding, the legislature acknowledged that unavoidable delays and unforeseen hurdles may prevent a diligent prosecutor from complying fully with their discovery obligations, despite their best efforts to obtain all the relevant material in a timely fashion" *(People v McGee,* 78 Misc3d 1229(A) [Criminal Ct Kings County April 25, 2023], *citing People v Aquino,* 72 Misc3d 518, 523 [Criminal Ct Kings County May 7, 2021]); *see also People v Weston,* 66 Misc3d 785 [Criminal Ct Bronx County February 20, 2020]).

Here, only the disclosure of the Grand Jury minutes was delayed, and still turned over within the statutory timeframe. For these reasons, defendant's motion to strike the People's COC and SOR filed on July 18, 2023 is denied.

IV.

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

Defendant moves pursuant to CPL 210.20 to dismiss the indictment, or reduce the counts charged against her, on the grounds that the evidence before the Grand Jury was legally insufficient and the Grand Jury proceeding was defective within the meaning of CPL 210.35. On consent of the People, the Court has reviewed the minutes of the proceedings before the Grand Jury.

The Court denies defendant's motion to dismiss or reduce the counts in the indictment for legally insufficient evidence because a review of the minutes reveals that the evidence presented, if

[3] The Legislature provided an extended deadline specifically for Grand Jury minutes, recognizing that their preparation may require more time compared to other discoverable materials since transcription service might be limited. In fact, Grand Jury testimony can be provided as late as thirty days before the first scheduled trial date (*see* CPL 245.20[1][b]).

accepted as true, would be legally sufficient to establish every element of the offenses charged, including that defendant's alleged intoxication (a BAC reading of .21) and the manner in which she operated her motor vehicle was a direct cause of the collision which resulted in the victim's death (*see* CPL 210.30[2]). Moreover, contrary to defendant's claim, the People presented evidence regarding the driver of the third vehicle which struck defendant's vehicle. In fact, he testified before the grand jury, explaining the accident in detail.

Pursuant to CPL 190.65(1), an indictment must be supported by legally sufficient evidence which establishes that the defendant committed the offenses charged. "Courts assessing the sufficiency of the evidence before a grand jury must evaluate whether the evidence, viewed most favorably to the People, if unexplained and uncontradicted--and deferring all questions as to the weight or quality of the evidence--would warrant conviction" (*People v Mills*, 1 NY3d 269, 274-275 [2002]). Legally sufficient evidence means competent evidence which, if accepted as true, would establish every element of an offense charged and the defendant's commission thereof (CPL 70.10[1]; *see People v Flowers*, 138 AD3d 1138, 1139 [2d Dept 2016]). "In the context of a Grand Jury proceeding, legal sufficiency means prima facie proof of the crimes charged, not proof beyond a reasonable doubt" (*People v Jessup*, 90 AD3d 782, 783 [2d Dept 2011]).

With respect to defendant's claim that the Grand Jury proceeding was defective within the meaning of CPL 210.35, a review of the minutes reveals that a quorum of the grand jurors was present during the presentation of evidence and that the Assistant District Attorney properly and clearly instructed the Grand Jury on the law, including on the definition of "cause of death" as defined in the New York State Criminal Jury Instructions ("CJI"). Indeed, the prosecutor referred to the second accident as an intervening act and read that definition from the CJI. The grand jurors were instructed on the entirety of the law they needed to decide the case. Moreover, the prosecutor only permitted those grand jurors who heard all the evidence to vote the matter (*see People v Collier*, 72 NY2d 298 [1988]; *People v Calbud*, 49 NY2d 389 [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]).

To the extent that defendant's motion seeks disclosure of portions of the Grand Jury minutes beyond the disclosure directed by CPL Article 245, such as the prosecutors' instructions and/or colloquies, the Court denies that branch of the motion.

Defendant also argues that counts 3 and 4 of the indictment are multiplicitous of count 2 and should be dismissed. "An indictment is multiplicitous when two separate counts charge the same crime" but not when "each count requires proof of an additional fact that the other does not" (*People v Saunders*, 290 AD2d 461, 463 [2002] [citations and internal quotation marks omitted]). In *People v O'Brien*, 186 AD3d 1406 (2d Dept 2020), the People charged the defendant with four counts of vehicular manslaughter in the second degree, each predicted on a different subdivision of VTL § 1192. The defendant was convicted of all four counts and appealed. Although the People argued that each count required them to prove additional facts that the others did not, the court held, in order to prove guilt under Penal Law § 125.12(1), the People were only required to prove that the defendant violated one subdivision of VTL § 1192.

> "The court found the People's election to proceed on a theory that the defendant had violated more than one subdivision by presenting evidence of his multiple, distinct manners of intoxication was not necessary to establish guilt and that

> 'a conviction on one count of vehicle manslaughter in the second degree would have been inconsistent with an acquittal on any other count charging the same offense predicated upon a different manner of intoxication'"

(*People v Morgan*, 77 Misc3d 1214(A) [Sup Ct Queens County December 12, 2022], *citing People v O'Brien*, 186 AD3d at 1409).

Based on the foregoing, the Appellate Division, Second Department dismissed three counts of the indictment charging Vehicular Manslaughter in the Second Degree as multiplicitous of the fourth count (*People v O'Brien*, 186 AD3d at 1409). Here, counts 2, 3, and 4, charging Vehicular Manslaughter in the Second Degree, involve the same victim and the same conduct, but each count accuses defendant of committing the offense by violating a different subdivision of VTL § 1192 and, as such, in accordance with the holding in *O'Brien*, they are multiplicitous. Similarly, counts 6, 7, and 8, charging Aggravated Driving While Intoxicated under VTL § 1192(2-a)(b) are multiplicitous, since they too accuse defendant of committing the offense by violating a different subdivision of VTL § 1192. Aggravated Driving While Intoxicated under this subdivision, like Vehicular Manslaughter in the Second Degree, requires the People to prove that defendant violated one subdivision of VTL § 1192. A conviction on one count of Aggravated Driving While Intoxicated pursuant to VTL § 1192(2-a)(b) would be inconsistent with an acquittal on any other count charging Aggravated Driving While Intoxicated pursuant to VTL § 1192(2-a)(b) upon a different theory of intoxication (*see People v O'Brien*, 186 AD3d at 1409). "The essential elements of both crimes do not address the specific manner in which defendant was impaired; rather, they include only a single offense of some form of impaired driving [under subdivisions 2, 3, 4, or 4-a of VTL § 1192]" (*People v Hoffman*, 130 AD3d 1152, 1154 [3d Dept 2015]).

Accordingly, at an appropriate time, the trial court will order the People to make an election of Count 2, 3, or 4; and an election of Count 6, 7, or 8, or defendant may renew her motion to dismiss.

V.

MOTION to SUPPRESS PHYSICAL EVIDENCE

This branch of defendant's motion is granted solely to the extent of conducting a *Mapp* hearing prior to trial to determine the propriety of any search resulting in the seizure of property (*see Mapp v Ohio*, 367 US 643[1961]). The hearing will also address whether any evidence was obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]).

Insofar as defendant challenges the seizure of evidence not obtained from her person, the pre-trial hearing will address whether defendant had a reasonable expectation of privacy in any of the locations searched to constitute standing to challenge the seizure of any physical evidence (*see Rakas v Illinois*, 439 US 128 [1978]; *People v Ramirez-Portoreal*, 88 NY2d 99 [1996]; *People v Rice*, 204 AD3d 834 [2d Dept 2022]). If it is determined that defendant has standing, then the *Mapp* hearing will also determine the propriety of the subject search and seizure.

Defendant also moves to suppress the results of the chemical test performed on a sample of her blood taken at the hospital. Defendant's motion is granted to the extent that a pre-trial hearing

will be held to determine whether the blood was obtained, and the test administered, in accordance with the provisions of VTL § 1194(2), (4), or any other applicable law (*see People v Badia*, 130 AD3d 744 [2d Dept 2015]).

With respect to any evidence which was retrieved pursuant to a search warrant, the motion to suppress is denied. The results of a search conducted pursuant to a facially sufficient search warrant are not subject to a suppression hearing (*People v Duval*, 36 NY3d 384 [2021]). Upon review of the four corners of the search warrant affidavits, provided to the Court, the warrants were adequately supported by probable cause (*see People v Fernandez,* 210 AD3d 693 [2d Dept 2022]; *see generally People v Bigelow*, 66 NY2d 417 [1985]; *People v Nieves*, 36 NY2d 396 [1975]).

VI.

MOTION to SUPPRESS NOTICED STATEMENTS

The People, pursuant to CPL 710.30(1)(a), noticed three oral statements allegedly made by defendant to members of the Westchester County Police Department on July 1, 2022. Defendant moves to suppress these statements as involuntary, the product of an unlawful arrest, made without being adequately apprised of *Miranda* warnings, and in violation of her right to counsel.

Defendant's motion to suppress is granted to the extent that a pre-trial *Huntley* hearing shall be held, on consent of the People, to determine whether the alleged statements were involuntarily made within the meaning of CPL 60.45 (*see* CPL 710.20(3); CPL 710.60[3][b]; *People v Weaver*, 49 NY2d 1012 [1980]). The hearing will also address whether the alleged statements were obtained in violation of defendant's Fourth Amendment rights (*see Dunaway v New York*, 442 US 200 [1979]), or her Sixth Amendment right to counsel.

VII.

MOTION to DISMISS on CONSTITUTIONAL GROUNDS

Defendant moves to dismiss Counts 1 through 4 of the indictment on the ground that the vehicular manslaughter statutes violate her constitutional right to due process under the United States and New York State Constitutions (US Const, Amend XIV; NY Const, Art I, § 6).[4]

Defendant argues that the rebuttable presumption set forth in Penal Law §§ 125.13 and 125.12 is unconstitutional because it shifts the burden of proof on the element of causation and is unconstitutionally vague. Penal Law § 125.13 provides that, "[i]f it is established that the person operating such motor vehicle caused such death [] while unlawfully intoxicated or impaired by the use of alcohol or a drug, . . . then there shall be a rebuttable presumption that, as a result of such intoxication or impairment[,] . . . such person operated the motor vehicle in a manner that caused such death." In *People v Stickler*, 97 AD3d 854 [3d Dept 2012), the Appellate Division, Third Department held that the presumption set forth in Penal Law § 125.12, which is substantially the same as the one set forth in Penal Law § 125.13, does not shift the burden of proof on the element of causation, explaining that the presumption is permissive and arises only after the People prove beyond a reasonable doubt that the person operating the motor vehicle caused the victim's death

[4] The New York Attorney General's Office, in a letter dated September 15, 2023, has indicated it will not intervene in this challenge.

while intoxicated by alcohol or impaired by a drug (*see People v Caden N*, 189 AD3d 84 [3d Dept 2020]).

In *Tot v United States*, 319 US 463 (1943), the Supreme Court held that the controlling test for determining the validity of a statutory presumption was that there be a "rational connection between the fact proved and the ultimate fact presumed" (*Tot v US*, 319 US at 467). "There is a fair and rational connection between the fact that a defendant caused death or serious physical injury by operating a vehicle while impaired by alcohol and the presumption that it was the alcohol impairment that caused the defendant to operate the vehicle in a dangerous manner" (*People v Stickler*, 97 AD3d 854 at 856-857).

Moreover, the rebuttable presumption does not render Penal Law §§ 125.13 and 125.12 unconstitutionally vague because it "contains sufficient standards to afford a reasonable degree of certainty so that a person of ordinary intelligence is not forced to guess at its meaning, and to safeguard against arbitrary enforcement" (*People v Stickler*, 97 AD3d at 856).

Based on the foregoing, defendant's motion is denied.

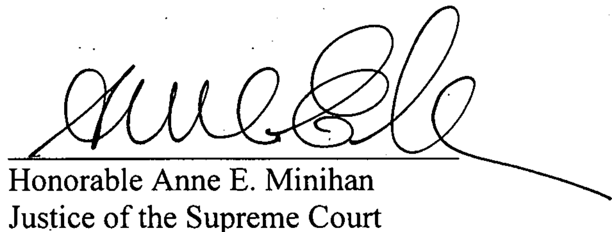
VIII.

LEAVE TO MAKE ADDITIONAL MOTIONS

Defendant's motion for leave to make additional motions is denied. Defendant must demonstrate good cause for any further pre-trial motion for omnibus relief, in accordance with CPL 255.20(3).

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
September 19, 2023



Honorable Anne E. Minihan
Justice of the Supreme Court

To:
Hon. Miriam E. Rocah
District Attorney, Westchester County
111 Dr. Martin Luther King, Jr., Blvd.
White Plains, NY 10601
Attn: ADA Adrian Murphy
AMurphy@westchesterda.net

The Office of Clare J. Degnan
Legal Aid Society of Westchester County
150 Grand Street, Suite 100
White Plains, NY 10601
Attn: Christine Asch, Esq.
CAsch@laswest.org
Attorney for defendant, Eleni Castillos