

People v Karshenboym
2006 NY Slip Op 30842(U)
July 26, 2006
County Court, Westchester County
Docket Number: 05-0381
Judge: Robert M. DiBella
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COUNTY COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK

- against -

ALEXANDER KARSHENBOYM;
SERGEY CHIZHOV;
ELLA CHIZHOV;
ELM NEUROLOGICAL CARE, PC;
COMPAS MEDICAL, PC;
ANDA MANAGEMENT CORPORATION;
ALL-SHURE CORPORATION;

Defendants.

THE PEOPLE OF THE STATE OF NEW YORK

- against -

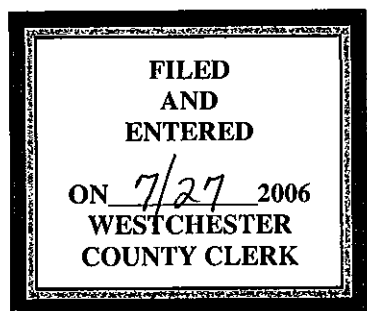
LEONID SLUTSKY, MD;
ELLA CHIZHOV;

Defendants.

DIBELLA, J.

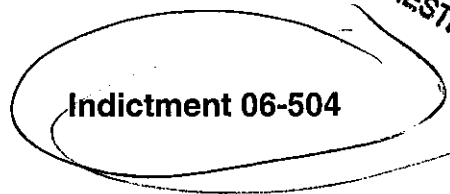
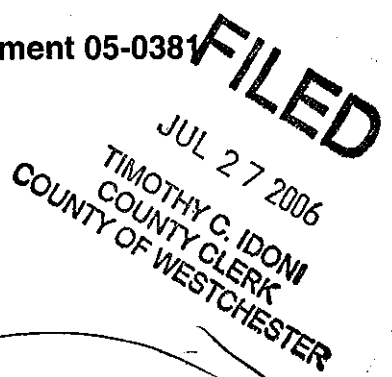
By notice of motion, the People move this Court for an order consolidating the above-referenced indictments pursuant to CPL 200.40. Defendant Slutsky has filed an Affirmation in Opposition. The People's Motion is granted and Indictments 05-0381 and 06-504 are consolidated for trial.

On August 2005, the People empaneled Grand Jury "D" for the purpose of hearing evidence about an alleged criminal enterprise centered around a medical clinic located in



DECISION AND ORDER

Indictment 05-0381



Indictment 06-504

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Westchester County. The People assert that the presentation was the product of a lengthy investigation of numerous individuals and corporations that worked collectively to defraud New York No-Fault insurance laws by submitting fraudulent claims for medical services rendered to car accident victims. The People allege that the basic scheme was to recruit accident victims, regardless of whether they had actually been in an accident, and refer them to a medical clinic at One Elm Street, Tuckahoe, New York. At the clinic different physicians and office managers allegedly exaggerated and fabricated the medical services rendered to these "victims", and then submitted fraudulent claims to different insurance companies seeking payment for the phony treatment.

Grand Jury "D" heard evidence from May 4, 2005, to September 28, 2005. This evidence included the testimony of seven police officers who posed as accident victims and received treatment at the Elm Street Clinic, the review and analysis of over 900 patient records seized from the clinic, the review and analysis of bank records and financial documents covering a five year period, and evidence obtained from a court-ordered electronic eavesdropping warrant. On September 30, 2005, Grand Jury "D" returned a true bill under Indictment Number 05-0381 charging, *inter alia*,¹ defendants Alexander Karshenboym, Sergey Chizhov, Ella Chizhov, Elm Neurological Care, P.C., Compas Medical, P.C., Anda Management Corporation, and All-Shure Corporation with numerous criminal offenses including Enterprise Corruption, Insurance Fraud in the First, Second, and Third Degrees,

¹For purposes of this decision this court has omitted reference to those codefendants that are not proceeding to trial.

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Grand Larceny in the Second and Third Degrees, Money Laundering in the First Degree, Conspiracy in the Fourth Degree, and Scheme to Defraud in the First Degree.

On April 28, 2006, and May 5, 2005, the People presented additional witnesses and evidence to Grand Jury "D" about the criminal enterprise. The evidence concerned alleged activities by a previously identified, but uncharged coconspirator and an individual already indicted under Indictment 05-0381. At the conclusion of the presentation, the People instructed the Grand Jury that they were permitted to consider the prior testimony and evidence about the criminal enterprise when voting on the additional charges.

On May 5, 2006, Grand Jury "D" returned Indictment Number 06-504 charging Leonid Slutsky with Enterprise Corruption, Insurance Fraud in the First and Second Degrees, Grand Larceny in the Second Degree, Money Laundering in the First Degree, Conspiracy in the Fourth Degree, and Scheme to Defraud in the First Degree, and charging Ella Chizhov with Conspiracy in the Fourth Degree, and Scheme to Defraud in the First Degree.

The People now move for consolidation under CPL § 200.40, alleging that all the offenses charged in both indictments are based on a common scheme or plan and are based on the same criminal transaction. See CPL § 200.40. They further argue that the interests of judicial economy warrant consolidation. This court agrees.

CPL 200.40(2) provides that "[w]hen two or more defendants are charged in separate indictments with an offense or offenses but could have been so charged in a single indictment . . . , the court may, upon application of the people, order that such indictments be consolidated and the charges be heard in a single trial." Pursuant to CPL 200.40(1)(b) and (c), "[t]wo or more defendants may be jointly charged in a single indictment provided that (b) all the

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offenses charged are based upon a common scheme or plan; or (c) all the offenses charged are based upon the same criminal transaction. . .”

In the instant case, the court finds that joinder of the defendants and the consolidation of the instant indictments for trial is clearly authorized since the charges contained in each of the two indictments are based upon a common scheme and arise from the same criminal transaction. See CPL § 40.10(2). Each count against defendant Slutsky in Indictment 06-504 charges that he was acting in concert and was aided and abetted by all of the remaining defendants charged in Indictment 05-0381. These same defendants are also named as co-conspirators in Count Fifteen of Indictment 06-504, charging that between January 1, 2000, and July 1, 2004, Slutsky conspired with these individuals to commit Insurance Fraud and Grand Larceny.

An examination of the indictment and the supporting documents submitted by the People reveals that the charges against defendant Slutsky and the charges set forth in Indictment 05-0381 are virtually identical and arise from the same criminal enterprise. See eg. People v. Ruiz, 130 Misc.2d 191, 496 N.Y.S.2d 612 (Sup. Ct. N.Y.Co. 1985). Accordingly, it is clear that the proof against the defendants will be supplied by the same evidence. Under such circumstances a strong public policy favors joinder and “only the most cogent reasons warrant separate trials.” See People v. Mahboubian, 74 N.Y.2d 174, 183 (1989).

In addition, defendant Slutsky has failed to make a convincing showing of undue prejudice should the two indictments be consolidated for trial. See CPL § 200.40(1); People v. Mahboubian, 74 N.Y.2d at 183,184. Although he asserts that he intends to testify in defense of Elm Neurological Care, P.C., and Compas Medical P.C., about the charges set

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forth in Indictment 05-0381, but will not testify at trial about the charges directed against him personally in Indictment 06-0504, he fails to allege sufficient facts in support of his claim. His conclusory allegations do not enable this court to “intelligently weigh the considerations of ‘economy and expedition in judicial administration’ against the defendant’s interest in having a free choice with respect to testifying.” People v. Lane, 56 N.Y.2d 1, 8 (1982)(quoting Baker v. United States, 401 F.2d 958). Accordingly, the court does not find good cause to order that defendant Slutsky be tried separately from the other charged defendants.

Finally, this court rejects defendant Slutsky’s suggestion that consolidation of these indictments may only occur pursuant to CPL § 200.40(1)(d) because both indictments include counts of enterprise corruption. Initially, CPL § 200.40(1) is written in the disjunctive and this court may not ignore the unambiguous language of the statute. Moreover, the legislature enacted subsection (d) to permit multiple defendants accused of participating in the same criminal enterprise to be tried together when the traditional joinder rules did not apply. See Preiser, Practice Commentaries, McKinneys Cons. Laws of N.Y., Book 11A, CPL § 200.40. Here, the charges in the two indictments clearly satisfy the traditional joinder requirements of CPL § 200.40(1) subsections (b) and (c). Hence, the court finds it unnecessary to consider whether consolidation is also appropriate under subsection (d).

This constitutes the Decision and Order of the court.

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The court considered the following papers:

- (1) People's Notice of Motion to Consolidate and Affirmation of ADA Christopher Shaw dated May 16, 2006 with annexed Memorandum of Law and Exhibits "A" through "D";
- (2) Affirmation in Opposition of Arthur Morrison dated May 26, 2006; and
- (3) Reply Affirmation of ADA Christopher Shaw dated June 2, 2006;

Dated: White Plains, New York
July 26, 2006


HON. ROBERT DIBELLA, J.C.C.