People v Bletnitskiy
2009 NY Slip Op 33390(U)
November 23, 2009
Sup Ct, New York County
Docket Number: 843/2008
Judge: Rena K. Uviller

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 72

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THE PEOPLE OF THE STATE OF NEW YORK

- against -

YAKOV BLETNITSKIY, ORIENT ACUPUNCTURE SERVICE, P.C., et. al,

Defendants.

Indictment No. 843/2008

DECISION & ORDER

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R. UVILLER, J.:

Defendant Yakov Bletnitskiy is one of twenty-one individuals and corporations charged with Enterprise Corruption, Scheme to Defraud and First Degree Grand Larceny. He is also charged with Falsifying Business Records and Money Laundering. He moves to dismiss the indictment, asserting that the various counts were not supported by legally sufficient evidence before the Grand Jury.

In reviewing the sufficiency of evidence before a Grand Jury, the court must consider 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 a conviction." People v. Swamp, 84 NY2d 725, 730.

The Grand Jury heard evidence that defendant Bletnitskiy, a licensed acupuncturist, worked at the St. Nicholas Group, a no-fault medical clinic, that was managed by and patient treatment controlled by, co-defendant Gregory Vinarsky, who is not a physician. The St. Nicholas Group also employed physicians, acupuncturists, chiropractors, technicians and other support staff.

Evidence was adduced that over a five-year period between September 1, 2002, through September 30, 2007, the St. Nicholas Group arranged fake automobile accidents and then submitted to various insurance companies numerous bills for testing and treatment of these "patients." Further,

in regard to individuals with real injuries from real accidents, bills for testing and treatment that were either not provided or were medically unnecessary, were also submitted for reimbursement; that the foregoing activity enabled defendant Bletnitskiy and various co-defendants fraudulently to obtain in excess of six million dollars from various carriers.

Enterprise Corruption and Scheme to Defraud

A person is "guilty of enterprise corruption when, having knowledge of the existence of a criminal enterprise and the nature of its activities, and being employed by or associated with such enterprise, he . . . intentionally conducts or participates in the affairs of an enterprise by participating in a pattern of criminal activity." Penal Law §460.20[1][a].

A criminal transaction is defined as "conduct which establishes at least one offense, and which is comprised of two or more or a group of acts either (a) so closely related and connected in point of time and circumstance of commission as to constitute a single criminal incident, or (b) so closely related in criminal purpose or objective as to constitute elements or integral parts of a single criminal venture." Criminal Procedure Law §40.10[2].

The Grand jury heard testimony and received documentary evidence that during the five-year period defendant Bletnitskiy either personally, or as an accomplice to various co-defendants (i) held the St. Nicholas Group out to be operating legally, whereas in fact it was operating in violation of New York State law in that it was managed and patient treatment controlled by a non-physician, co-defendant Gregory Vinarsky[1]; (ii) that St. Nicholas engaged "runners" to stage automobile accidents and to bring their uninjured passengers to the clinic for testing and treatment; (iii) directed the clinic's employees to bill for tests, procedures and other treatments for these "patients" as well as

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[1] See, Business Corporation Law §§1503;1504; Public Health Law §2801-a; Education Law §6512-6514

for people who were injured in real accidents but were either never treated or treated unnecessarily; and that (iv) St. Nicholas repeatedly obtained reimbursement from insurance carriers under New York's no-fault insurance law for unperformed or unnecessary services.

Sufficient evidence was thus adduced to establish a common goal of the acts, to wit, defrauding insurance companies for monetary gain and that, as a medical clinic, the criminal enterprise had an ascertainable structure apart from a pattern of criminal activity, with a system of authority that included managers, professional employees and administrative workers that enabled its members to commit a pattern of criminal activity.

Further, the criminal enterprise was not dependent on the commission of any particular criminal act and did not depend upon any particular criminal transaction or the defrauding of one particular insurance company. It did not exist simply or solely for the purpose of committing one or a few of the alleged criminal acts. Rather, that the St. Nicholas enterprise was involved in a continuous and ongoing pattern of criminal activity over a five year period, with no pre-planned termination date.

The 95 individual criminal acts alleged in the indictment satisfy the statutory requirements of timeliness, continuity and relationship, sufficient to create a pattern of criminal activity with the common purpose of profiting by defrauding no-fault insurance carriers.

The evidence further demonstrated that Bletnitskiy had knowledge of the criminal enterprise and the nature of its criminal activities and, with intent to participate in or advance the affairs of the enterprise, he personally committed or was otherwise criminally liable for the acts alleged in the indictment. Whether he personally engaged in each of the 95 criminal acts alleged in the indictment is irrelevant. A member of the enterprise need not participate in all of the enterprise's activities, or even have knowledge of them, as long as he or he is aware of the basic structure and purpose of the enterprise and engages in the requisite number of acts as part of the pattern. Penal Law §§460.10(4);

460.10(1)(a); 460.20(2). See, People v. Canterella, 160 Misc.2d 8, 14; People v. Wakefield Financial Corporation, 155 Misc.2d 775, 785; People v. Pustilnik, 14 Misc.3d 1237A (N.Y. Sup. Ct., March 1, 2007, R. Hayes, J.). See also, United States v. Young, 906 F.2d 615, 619-620; United States v. Mitchell, 777 F.2d 248, 260, *cert. denied*, 476 U.S. 1184; United States v. Cagnina, 697 F.2d 915, 920-922, *cert. denied*, 464 U.S. 856.

Based on the foregoing, sufficient *prima facie* evidence was adduced to support both the count of Criminal Enterprise, as well as the count of Scheme to Defraud.

First Degree Grand Larceny

With respect to the two counts of First Degree Grand Larceny, the Grand Jury was properly instructed and sufficient evidence was adduced to establish each element of the crimes. The amount totaled an excess of one million dollars.

In as much as the St. Nicholas Group was operating in violation of State law, any reimbursement it received from the insurance carriers was illegally obtained and the amount received exceeded one million dollars.

Second Degree Money Laundering

Evidence was adduced that Bletnitskiy and his corporation, Orient Acupuncture Service, P.C., received reimbursement in excess of one hundred thousand dollars directly from insurance carriers and thereafter engaged in financial transactions from his corporation to co-defendant Vinarsky and Vinarsky's controlled corporations, whereby in excess of one hundred thousand dollars was transferred, in order to launder the proceeds of the alleged criminal conduct to conceal the nature, location, source, ownership and control of the proceeds of the St. Nicholas clinic.

Evidence was thus presented that the amount laundered was in excess of one hundred thousand dollars.

Defendant's reliance on United States v. Santos, __ U.S. __, 128 S. Ct. 2020 (2008), a plurality decision, is misplaced.[2] Subsequent to Santos the United States Supreme Court and other federal courts have limited the precedential effect of that case to its facts, which involved an illegal gambling operation, and not to money laundering arising from non-gambling operations. People v. Howard, 2009 U.S. App. LEXIS 1716 (4th Cir. 2009); United States v. Fleming, 2008 U.S. App. LEXIS 17737 (3rd Cir. 2008); United States v. Peters, 2009 U.S. Dist. LEXIS 22451 (W.D.N.Y 2009); Gotti v. United States, 2009 U.S. Dist. LEXIS 6018 (E.D.N.Y. 2009); United States v. Catapano, 2008 U.S. Dist. LEXIS 79622 (E.D.N.Y. 2008); United States v. Prince, 2008 U.S. Dist. LEXIS 91265 (W.D. Tenn. 2008); Bull v. United States, 2008 U.S. Dist. LEXIS 100764 (C.D. Cal 2008); People v. Posner, Sup. Ct. N.Y. County (June 11, 2009, M. Obus, J.).

Falsifying Business Records

The Grand Jury reviewed documents submitted to insurance carries for "patients" involved in fake accidents and for real no-fault patients for whom either unnecessary, exaggerated or no treatment was performed or exaggerated treatment was billed.

The insurance companies, relying upon the information received from the St. Nicholas Group, processed the claims and made payment thereon based upon these allegedly fraudulent documents. These documents became business records of those companies. See, People v. Weinfeld, 65 AD2d 911, *lv denied* 46 NY2d 846; People v. Linardos, 104 Misc.2d 56; People v. Dove, 15 Misc.3d 1134A. See also, People v. Bloomfield, 6 NY3d 165; People v. Marasa, 32 AD3d 369; People v. Coe, 71 NY2d 852.

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[2]The question raised in Santos, which involved an illegal lottery, was whether the term "proceeds" in the federal money laundering statute means "profits" as opposed to "receipts."

The totality of the evidence before the Grand Jury was sufficient to establish that the defendant had knowledge of, and acting-in-concert with various co-defendants, participated in, the submission of these claims to the insurance carriers.

The Grand Jury proceeding was not otherwise defective or impaired. Request for release and inspection the Grand Jury minutes is **denied**.

To the extent defendant has moved to dismiss the indictment on unspecified grounds raised by various co-defendants, that motion is also **denied**.

Motion to Suppress Statements and/or Huntley Hearing

A Huntley hearing is **denied.** The People aver that they do not intent to offer in their direct case at trial any statement made by the defendant to a law enforcement officer.

Motion to Suppress Identification Evidence and/or Wade Hearing

A Wade hearing is **denied**. The identifications were made by police officers, not civilians, and were confirmatory in nature. People v. Wharton, 74 NY2d 921; People v. Morales, 37 NY2d 262; People v. Francis, 139 AD2d 527; People v. Applewhite, 202 AD2d 250; People v. Lewis, 258 AD2d 287; People v. Harris, 288 AD2d 20, *lv denied* 97 NY2d 755; People v. Rumph, 248 AD2d 142.

Motion to Sever

Defendant moves to sever his case from the co-defendants, claiming that he will be prejudiced by the extensive amount of evidence that will be presented against various co-defendants.

The decision to sever rests in the sound discretion of the trial judge. CPL §200.20(3); People v. Mahboubian, 74 NY2d 174; People v. Watts, 159 AD2d 740. Strong public policy concerns favor the joinder of co-defendants when, as here, proof against the defendant is provided by the same evidence required for a co-defendant or defendants. People v. Mahboubian, supra; People v.

Caldwell, 78 NY2d 996; People v. Bornholdt, 33 NY2d 75, 87. In such situations, "only the most cogent reasons warrant a severance." People v. Bornholdt, 33 NY2d 75. Any potential prejudice to defendant from a joint trial can be addressed by proper limiting instructions to the jury.

The motion to sever is **denied**.

Motion for Mapp Hearing

A Mapp hearing is **denied**. The property was recovered pursuant to a search warrant and defendant has not alleged any factual allegations to establish an expectation of privacy in the premises searched. People v. Donaldson, 209 AD2d 633, *lv denied* 84 NY2d 1030 (employee of commercial establishment lacks standing to challenge search thereof); People v. Norberg, 136 Misc.2d 550; People v. Ramirez-Portoreal, 88 NY2d 99, 108; People v. Ponder, 54 NY2d 160; People v. Wesley, 73 NY2d 351.

Defendant's bare boned claim of insufficient probable cause for the issuance of the warrant is without merit. See, People v. Christian, 248 AD2d 960, *lv denied* 91 NY2d 1006. The warrant and underlying affidavit have been examined in camera. They are not perjurious on their face and were validly issued upon probable cause.

Motion to Preclude Prior Bad Acts

The defendant's motion to preclude is denied. However, a Sandoval hearing is granted and shall be held by the trial court immediately prior to jury selection.

Bill of Particulars/Discovery/Brady

The detailed indictment, the Voluntary Disclosure Form, the discovery materials provided to date, the Answer to the defendant's Omnibus Motion, and the information provided at Supreme Court arraignment satisfy the People's burden to provide a bill of particulars and discovery. The People are reminded of their continuing obligation under Brady v. Maryland (373 U.S. 83). The defendant is directed to comply with the People's reciprocal demand for discovery.

Application to File Additional Motions

The defendant's application to file additional motions is **denied** without prejudice and with leave to renew the application upon a showing of the necessity for renewal. CPL §255.20(3).

This constitutes the Decision and Order of this Court.

DATED: November 23, 2009

Rena K. Uviller

RENA K. UVILLER, J.S.C.

PEOPLE: ADA Michael Ohm
ADA Andrew Seewald

DEFENSE: Martin J. Siegel, Esq.