

<b>Matter of Sinanovic</b>
2016 NY Slip Op 32713(U)
December 1, 2016
County Court, Westchester County
Docket Number: 16-0895
Judge: Barbara G. Zambelli
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COUNTY COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

**FILED**

**DEC 02 2016**

TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

-----X

IN THE MATTER

OF

THE APPLICATION FOR A SUBPOENA DUCES  
TECUM TO BE ISSUED COMPELLING  
WESTCHESTER COUNTY MEDICAL CENTER TO  
PROVIDE RECORDS PERTAINING ANY  
MEDICATION AND/OR DRUGS GIVEN OR  
ADMINISTERED TO NERIM SINANOVIC (DOB  
02/13/1982) ON OR ABOUT AUGUST 15, 2015, AS  
WELL AS THE RESULTS OF ANY AND ALL  
BLOOD AND/OR URINE TESTS PERFORMED ON  
SAMPLES TAKEN FROM NERIM SINANOVIC ON  
OR ABOUT AUGUST 15, 2015

DECISION AND ORDER

IND. NO. 16-0895

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ZAMBELLI, J.

The following papers numbered 1 to 5 read on this application for a Court-ordered subpoena duces tecum pursuant to CPL §610.10 and §610.25:

PAPERS NUMBERED

Order to Show Cause, O'Connor Affirmation in Support, & Memorandum of Law	1-3
Defendant's Affirmation in Opposition with Attachment	4-5

Upon the foregoing papers it is ordered that this application is disposed of as follows:

The People bring this application seeking a Court ordered subpoena duces tecum to the Westchester County Medical Center for records pertaining to any medications and/or drugs administered to defendant Nerim Sinanovic ("defendant") upon his admission to that facility on August 15, 2015, as well as for the results of any and all blood or urine tests given or performed on samples taken from defendant upon his admission on that date. Defendant has been charged under the above indictment number with having committed the crimes of criminally negligent homicide, reckless driving and a speeding violation. The charges arose from an automobile crash which occurred on August 15, 2015 and which resulted in the deaths of three other motorists as well as the death of defendant's two year old daughter, who was ejected from his vehicle. According to the People, as part of the investigation of the crash, defendant was transported to the Westchester County Medical Center, where, inter alia, he consented to a sample of his blood being drawn for testing. The People allege that the testing of this sample revealed that four hours after the incident, 120 ng/mL of Alprazolam (Xanax), which is a controlled substance, was found in defendant's blood, as well as amounts of "TCH", and further contend that according to their toxicologist and a psychiatrist, the levels of Alprazolam in defendant's system was "in excess of therapeutic level". The People further submit that based upon their conversations with the chief attending physician at the Westchester County Medical Center, Alprazolam is rarely, if ever, given to emergency room patients. They also submit that the EMT who treated defendant stated that she did not administer Alprazolam to him. The People submit that defendant's medical records are necessary to determine whether defendant was administered Alprazolam while at the hospital. The People argue that this application should be granted because they have met the test for the issuance of a subpoena duces

tecum, and because, while they make no argument that the physician - patient privilege does not apply in this case, they submit that defendant's generalized assertion of the privilege of confidentiality in relation to his medical records must yield to their demonstrated, specific need for the evidence in this case.

Defendant opposes the motion and argues that the application should be denied because they are protected by the physician - patient privilege and defendant has not waived that privilege. He further argues that there are no statutory provisions which would allow disclosure absent waiver by the defendant.

The People's application is denied with leave to renew before the trial court. The physician-patient privilege is statutory and is to be construed in accordance with its purpose which is to encourage full disclosure by the patient so that the physician can provide appropriate treatment (Matter of Grand Jury Investigation of Onondaga County, 59 N.Y.2d 130, 134 (1983)). Moreover, the privilege is to be given a broad and liberal construction in order to fulfill its purpose (Id.). While the statutory codification of the privilege contains exceptions (CPLR §4504), "there is no exception for Grand Jury proceedings or criminal investigations generally." (Matter of Grand Jury Subpoena Duces Tecum Dated Decemeber 14, 1984, 69 N.Y.2d 232 (1987)). Indeed, in People v. Decina, 2 N.Y.2d 133 (1956), the defendant therein was charged with criminal negligence in operating a vehicle with knowledge that he was subject to having epileptic attacks which caused him to lose consciousness and that while so operating a vehicle, he did have such an attack, which resulted in the deaths of four persons. To prove defendant's knowledge of his condition, the People introduced his medical records which demonstrated a history of epilepsy. The Court of Appeals held that the medical evidence of defendant's history

of epilepsy was privileged and should not have been admitted at his trial, and therefore affirmed the order of the Appellate Division which reversed defendant's conviction (Id.).

However, courts are "unwilling to permit the privilege to be utilized or manipulated in such a way that one party [may] obtain [...] an unjust benefit." (Hughson v. St. Francis Hospital of Port Jervis, 93 A.D.2d 491, 500 (2d Dept. 1983)). Thus, the privilege may be waived by the actions of a defendant. "Waiver occurs when the patient personally, or through his witnesses, either lay or medical, introduces testimony or documents concerning privileged information. . . ." (Id.). Accordingly, the People's application is denied with leave to renew before the trial judge.

This Decision constitutes the Order of the Court.

Dated: White Plains, New York  
December 1, 2016

  
BARBARA G. ZAMBELLI  
A.J.S.C.

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