

STATE OF NEW YORK
COUNTY COURT

COUNTY OF SARATOGA

THE PEOPLE OF THE STATE OF NEW YORK,

**DECISION AND ORDER
OMNIBUS MOTION**

-against-

Indictment No.: H-067-2022

JOHN F. LINCOLN-LYNCH,

Defendant.

APPEARANCES:

For the People: Shawn M. Lescault, Assistant District Attorney
Saratoga County Office of the District Attorney

For Defendant: Andrew R. Safranko, Esq.
Attorney for Defendant

MURPHY, III, J.

Defendant has filed a Notice of Omnibus Motion and supporting Affirmation moves this Court to inspect the grand jury minutes, and upon such inspection, to dismiss the count charged based on a claim that the evidence presented was legally insufficient to support the charges, and any lesser-included offenses. He also challenges the propriety of the legal instructions provided.

Preliminarily, according to the People's Certificate of Compliance dated April 18, 2022 defendant was provided with the grand jury testimony of each of the witnesses who testified in compliance with Article 245 of the CPL. This Court denies disclosure of the grand jury legal instructions to defendant, as the determination of the instant motion does not require their disclosure. *Matter of Brown v. LaTorella*, 229 A.D.2d 391.

Defendant is charged with one count of leaving the scene of an incident without reporting, a class D felony in violation of Sections 600(2(a) and (c) of the Vehicle and Traffic Law of the state of New York. The Pattern Criminal Jury Instructions (CJI) for this charge require the grand jury to have found reasonable cause to believe the following four elements: (1) defendant operated a motor vehicle; (2) defendant knew or had cause to know that personal injury had been caused to another person, due to an incident involving the motor vehicle operated by the defendant; (3) defendant did not, before leaving the place where the personal

injury occurred, stop and, in the event that no police officer was in the vicinity of the place of the injury report the incident as soon as physically able to the nearest police station or judicial officer; and (4) that the personal injury involved resulted in death.

The Court has inspected the minutes and instructions to the Grand Jury in camera. The minutes reveal that a quorum of the Grand Jurors was present during the presentation of evidence. The indictment substantially conforms to the requirements set forth in CPL§ 200.50. However, the Court finds multiple errors impaired the integrity of the Grand Jury proceeding and prejudice to the defendant may have resulted which requires the dismissal of the indictment. [CPL §210.35(6)]

In general, defects in a grand jury presentation require dismissal where “the integrity of the Grand Jury proceeding is impaired ‘and prejudice to the defendant may result.’ (*People v. Huston*, 88 N.Y.2d 400 (1996) [quoting CPL §210.35(5)]. The statute requires only the possibility of prejudice rather than actual prejudice. [CPL §210.35[5]; *People v. Huston*, 88 N.Y.2d (1996); *People v. Wisdom*, 23 N.Y.3d 970; *People v. Maddox*, 31 A.D.3d 970.

Additionally, while instructions to the Grand Jury need not be as precise as those given to a petit jury, they may not be so misleading or incomplete as to substantially undermine the integrity of the proceedings. (*People v. Caracciola*, 78 NY2d 1021 [1991]) In *People v. Calbud, Inc.* (49 NY2d 389), the standard for reviewing the quality of Grand Jury instructions was discussed. In that case, the court said: "We deem it sufficient if the District Attorney provides the Grand Jury with enough information to enable it intelligently to decide whether a crime has been committed and to determine whether there exists legally sufficient evidence to establish the material elements of the crime." (*Id.*, at 394-395; see also, *People v. Goetz*, 68 NY2d 96.) After establishing this relatively lenient standard, the court nonetheless went on to caution that the Grand Jury's integrity might well be deemed impaired within the meaning of CPL 210.35 (5) "[when] the District Attorney's instructions to the Grand Jury are so incomplete as to substantially undermine [the Grand Jury's] function". (*People v. Calbud, Inc.*, 49 NY2d, at 396, *supra*).

It is alleged that on February 27, 2022 in the Town of Moreau, defendant was driving his Subaru Forrester, struck a pedestrian causing his death and knowing or having cause to know that personal injury occurred, did not stop, and report the matter prior to leaving the scene. The prosecution called eight witnesses to testify in this matter. Defendant's wife, Investigator Robinson and Investigator Kavanagh ,testified regarding statements made by the defendant to them. In sum and substance, defendant stated that it was dark, he didn't see the victim, he thought the victim had fallen in the road, by the time he saw something in the road it was too late to brake or swerve, and he was scared. VTL §§600(2)(a) and (c) requires, and the grand jury was instructed, in order to indict it must have reasonable cause to believe, *inter alia*, “that at the time and place [of the incident] the defendant knew or had cause to know that personal injury had been caused to another person, due to an incident involving the motor vehicle operated by defendant”. [CJI for VTL §§600(2)(a) and (c)]

It is defendant's emotional statements to his wife and law enforcement that suggest his knowledge at the time of the incident, which is the gravamen of the crime. The prosecutor did not instruct the Grand Jury pursuant to CPL §60.50, which advises the grand jurors that a person may not be convicted (indicted) of any offense solely upon evidence of a confession or admission made

by him without additional proof that the offense charged has been committed. [CPL§ 60.50]. *People v Samuel*, 71 Misc 3d 1203[A], 2021 NY Slip Op 50265[U] [Sup Ct, Queens County 2021]) Without being so instructed it cannot be said the Grand Jury did not indict based upon defendant's statements alone, which suggest his knowledge at the time of the incident. Without defendant's knowledge of personal injury at the time of the incident, actual or constructive, there is no crime.

Additionally, testimony heard by the Grand Jury is replete with hearsay and the record is void of any instruction regarding exceptions to the hearsay rule or for what purposes these out of court statements may be used as opposed to the truth of the matter stated. By way of example, defendant's stepdaughter testified regarding her statements to defendant, her conversations with her boyfriend and a tow truck driver the night of the accident. Defendant's wife testified as to her conversation with her daughter the night of the incident and what defendant's father told her and defendant about what he saw on the news. Investigator Robinson testified about conversations he had with defendant's wife related to her knowledge of the incident. He also testified about a conversation he had with Captain Brown where defendant reported (presumably to another officer) that his wife knew he was involved in the accident. Hearsay regarding Investigator Robinson's conversation with Investigator Kavanaugh and defendant's wife about the dash camera also indicated she was aware of the accident was also improperly permitted.

The victim's widow was the first called to testify in grand jury and the People, in question-and-answer format, elicited the couple's town of residence, their age and length of marriage. However, the People then asked the wife to describe the victim to the grand jurors. In narrative form she explained where the victim grew up, how they met, that they married at 19 years of age, he graduated from the local community college, was a business teacher for 30 years in the area, he was a dedicated school teacher, little league, soccer, wrestling and football coach. She described him as "those quiet assistant coaches on the side, taking care of the kids as they came off the field..." (Grand Jury Transcript pg.10) The witness continued to explain how well known he was because of the many kids who came through his classes and sports programs and how she was "amazed at the number of people that have reached out to me and my family because he was so known and loved in the area." (*Id.* pg. 11) Her testimony ended with the admission of her hearsay statements to her deceased husband as he lay in the roadway. She testified that she told him, "I was sorry, and I said good-bye to him, and told him I would see him again someday." (*Id.* pg. 22-23). This inadmissible hearsay evidence could not have enlightened the Grand Jury as to the happening of the accident or circumstances of it. It is, however, highly likely to elicit sympathy for this victim and his family and prejudicial to the defendant.

Also troubling to the Court, is the prosecutor's questioning of not only the defendant's wife but also his stepdaughter regarding defendant's medical treatment for a prior injury. It is apparent the purpose of this repeated line of questioning from the prosecutor was to elicit testimony regarding defendant's use of pain medication over an extended period of time which, intentional or not, likely resulted in an inference that defendant had taken pain medication on the day of the incident. This testimony is not only speculative and irrelevant to the charge in the indictment but also prejudicial to the defendant in these circumstances.

While any one of these instances may not warrant dismissal, the Court finds the cumulative effect of these evidentiary and instructive errors was such that it impaired the integrity of the Grand

Jury proceedings and may have prejudiced the defendant therefore concludes that the Grand Jury proceeding was defective pursuant to CPL § 210.20(1)(c). The Grand Jury proceeding did not comport to CPL § 190.00 and the failure to conform impaired the integrity of the proceedings, which may have resulted in prejudice to the defendant. *People v. Sutherland*, 104 AD3d 1064, 1066 [3d Dept. 2013].

The defendant's motion to dismiss is hereby granted without prejudice and the People are granted leave to re-present the case to a new Grand Jury within thirty (30) days from the date of the filing of this Decision and Order. ¹

In light of this result, the Court need not consider defendant's remaining claims.

The foregoing constitutes the Decision and Order of the Court.

Dated: December 19, 2022
Ballston Spa, New York

ENTER



HON. JAMES A. MURPHY, III
SARATOGA COUNTY COURT

¹ The Court is in receipt of the post-indictment Collision Investigative Report provided to defendant on September 9, 2022 and based upon the foregoing it is unnecessary to address defendant's request for preservation of material related to that report. However, in the event the People re-present the matter to the Grand Jury, they are reminded of said obligations.