

People v Meisels (Zvi)
2011 NY Slip Op 50873(U)
Decided on May 12, 2011
Appellate Term, Second Department
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Decided on May 12, 2011

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE TERM: 9th and 10th JUDICIAL DISTRICTS

PRESENT: : NICOLAI, P.J., TANENBAUM and LaCAVA, JJ

The People of the State of New York, Respondent, NO~ 2010-95 OR CR

against

Zvi Meisels, Appellant.

Appeal from a judgment of the Justice Court of the Village of Goshen, Orange

County (Thomas J. Cione, J.), rendered December 18, 2009. The judgment convicted defendant, after a nonjury trial, of following another vehicle too closely.

ORDERED that the judgment of conviction is reversed, as a matter of discretion in the interest of justice, the information is dismissed, and the fine, if paid, is remitted.

Defendant was charged in a simplified traffic information with following another vehicle too closely (Vehicle and Traffic Law § 1129 [a]). Prior to trial, the Justice Court dismissed the simplified traffic information because the People had failed to respond to defendant's request for the complaining officer's supporting deposition. Thereafter, a long form information was filed charging defendant with the same traffic violation based on the same incident. At trial, the complaining officer acknowledged that he had filed a long form information after the original simplified traffic information had been dismissed for his failure to provide defendant with a supporting deposition. Following the nonjury trial, the Justice Court convicted defendant of the charged offense.

This court has consistently held that where an earlier simplified traffic information is dismissed for failure to serve defendant with a requested supporting deposition, the People may not proceed to trial on a re-filed accusatory instrument "absent special circumstances warranting re-prosecution of the defendant" ([People v Rathgeber, 23 Misc 3d 130](#)[A], 2009 NY Slip Op 50653[U] [App Term, 9th & 10th Jud Dists 2009]; *see* CPL 100.40 [2]; [People v Berger, 16 Misc 3d 133](#)[A], 2007 NY Slip Op 51498[U] [App Term, 9th & 10th Jud Dists 2007]; *People v Rosenfeld*, 163 Misc 2d 982, 983 [App Term, 9th & 10th Jud Dists 1994]; *People v Aucello*, 146 Misc 2d 417 [App Term, 9th & 10th Jud Dists 1990]; *cf. People v Nuccio*, 78 NY2d 102 [1991]). No special circumstances exist in this case to warrant defendant's re-prosecution. A ruling to the contrary "would defeat the purpose of CPL 100.40 (2), disregard the interest of judicial economy, and erode the confidence of the public in the criminal justice system" ([People \[*2\]v Rathgeber, 23 Misc 3d 130](#)[A], 2009 NY Slip Op 50653[U] at *2 [internal citations omitted]). In light of our determination, we do not reach defendant's remaining contentions.

Nicolai, P.J., Tanenbaum and LaCava, JJ., concur.

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