

DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT CRIMINAL PART

4

THE PEOPLE OF THE STATE OF NEW YORK, X

INDEX NO. [REDACTED]

against

Present:

[REDACTED]

Hon. SHARON M.J. GIANELLI

Defendant(s)

X
The following named papers numbered 1 to 3
submitted on this motion on May 4, 2009

	papers numbered
Notice of Motion and Affidavits Annexed	1-2
Order to Show Cause and Affidavits Annexed	
Answer Affidavits	3
Reply Affidavits	

Defendant's omnibus motion is determined as follows:

Defendant's motion to dismiss, pursuant to CPL §170.30[1][c], based upon multiplicity under CPL §40.20, is granted.

In the instant motion, defendant's attorney contends that the People may not proceed on both a simplified traffic information and information for the same offense, to wit, Vehicle and Traffic Law ("V&TL") §600(1) at the same time under the same index number. Although defendant's attorney contends that dismissal is warranted as to the information on a theory of improper and illegal superceding of a simplified traffic information, the court is not confronted with an improper superceding under CPL §100.50(1). Instead, the court is confronted with a form of multiplicity under CPL §40.20(2). More specifically, the court notes that the criminal procedure law does not contemplate the People proceeding on two separate accusatory instruments in the same action with different pleading requirements and different procedural tracts in law (see CPL §§100.10[1] and [2], 100.40[1] and [2] and 170.10) for the same exact offense (see also CPL §100.15[3]). Given the above, CPL §40.20(2) is applicable herein and reads in pertinent as follows: "2. A person may not be separately prosecuted for two offenses based upon the same act or criminal transaction ..." (emphasis supplied). Further, in *People v. Senisi*, 196 AD2d 376, 610 NYS2d 542 [2nd Dept 1994] the court stated:

Both count one and count two of the present indictment were premised on the same subdivision of the same statute (see, Penal Law §125.15[1]) and, insofar as they applied to Senisi, they differed only in that they were each supported by a different specification of recklessness. They both related to the same mental state, the same act, the same course of conduct, and the same victim. As to the defendant Senisi, then, the second count is multiplicitous and subject to dismissal for this reason alone (citations omitted) (*Id* at 546).

Applying the law to the facts, CPL §40.20(2) and *People v. Senisi*, 196 AD2d 376, 610 NYS2d 542, *supra* provide an analogous situation to the case at bar where the People have filed a simplified traffic information and information for the same exact offense - V&TL §600(1) - in the same action and under the same index number. A review of the two accusatory instruments reveals that the information was subscribed on January 28, 2009, and the simplified traffic information was affirmed on January 29, 2009. Therefore, the simplified traffic information as the later in time accusatory instrument is dismissed as multiplicitous and in accordance with CPL §40.20(2) and *People v. Senisi*, 196 AD2d 376, 611 NYS2d 542, *supra*.

Defendant's motion for an order, pursuant to CPL §170.30(1)(a), dismissing the within information for alleged facial insufficiency is granted.

Here, defendant's attorney contends that the element of damage to the personal property of another is not established in the factual part of the information as well as the supporting depositions. "Absent damage to the property of another of which a person knows or has reason to know, no violation [of V&TL §600(1)] is committed by the mere departure from an accident scene" (*People v. Marotti*, 20 Misc 3d 16, 862 NYS2d 712, 714 [App Term, 9th and 10th Judgment Dists 2008]). A review of the factual part of the information, along with the supporting depositions does not evidence any mention of damage to the victim's vehicle. The defendant is correct in asserting that Detective O'Brien's claim, upon information and belief, that the victim's vehicle had noticeable damage, without any non-hearsay support is inadequate (*see People v. Marotti*, 20 Misc 3d 16, 862 NYS2d 712 *supra* ("... there must be an assertion of evidentiary facts with respect to the damage upon which an inference of knowledge may be based.")). As such, there is no non-hearsay allegations of the factual part of the information and/or of any supporting depositions which establish, if true, every element of the offense charged and the defendant's commission thereof (*see CPL §100.40[1][c]*). Therefore, the herein information is dismissed.

The remainder of defendant's omnibus motion is rendered moot and academic given the grant of dismissal of both accusatory instruments in this case.

This shall constitute the decision and order of this court.

SO ORDERED:


DISTRICT COURT JUDGE

Dated: May 15, 2009

CC: Hon. Kathleen M. Rice, District Attorney
Sharifov & Russell, LLP

SMJG:ju