

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D21477
O/kmg

_____AD3d_____

Argued - November 17, 2008

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
ARIEL E. BELEN, JJ.

2007-02700
2007-02702

DECISION & ORDER

The People, etc., appellant,
v Issac Boampong, respondent.

(Ind. No. 8757/06)

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Anthea H. Bruffee of counsel), for appellant.

Gruvman, Giordano & Glaws, LLP, New York, N.Y. (Charles T. Glaws of counsel), for respondent.

Appeals by the People, as limited by their brief, (1) from so much of an order of the Supreme Court, Kings County (Walsh, J.), dated February 20, 2007, as, in effect, granted those branches of the defendant's motion which were to dismiss counts one, two, and three of the indictment charging rape in the third degree, incest, and sexual misconduct, respectively, on the ground that the evidence presented to the grand jury was legally insufficient to establish that the defendant committed any sexual act with the complainant on December 30, 2005, and (2) from so much of an order of the same court dated March 15, 2007, as, in effect, upon reargument, adhered to the original determination.

ORDERED that the appeal from the order dated February 20, 2007, is dismissed, as that order was superseded by the order dated March 15, 2007, made upon reargument, and it is further,

ORDERED that the order dated March 15, 2007, is reversed insofar as appealed from, on the law, so much of the order dated February 20, 2007, as, in effect, granted those branches of the

December 16, 2008

Page 1.

PEOPLE v BOAMPONG, ISSAC

defendant's motion which were to dismiss counts one, two, and three of the indictment charging rape in the third degree, incest, and sexual misconduct, respectively, is vacated, and upon reargument, those branches of the defendant's motion are denied.

A court reviewing the legal sufficiency of grand jury evidence must view the evidence in the light most favorable to the People and determine whether that evidence, if unexplained and uncontradicted, would be sufficient to support a verdict of guilt after a trial (*see People v Jensen*, 86 NY2d 248, 251; *People v Jennings*, 69 NY2d 103, 114). The reviewing court's inquiry is limited to whether the facts, if proven, and the inferences that logically flow from those facts supply proof of each element of the charged crimes and whether the grand jury could rationally have drawn the inference of guilt (*see People v Bello*, 92 NY2d 523, 526). The existence of inferences of innocence arising from the evidence has no bearing upon the legal sufficiency inquiry (*see People v Deegan*, 69 NY2d 976). Viewing the evidence in the light most favorable to the People, we find that the evidence presented to the Grand Jury was legally sufficient to support count one of the indictment charging the defendant with rape in the third degree (Penal Law § 130.25[1]), count two of the indictment charging the defendant with incest (Penal Law § 255.25), and count three of the indictment charging the defendant with sexual misconduct (Penal Law § 130.20[1]). Specifically, the testimony of the complainant, coupled with the testimony of the detective, was legally sufficient to establish the element of sexual intercourse required for each of the stated counts.

FISHER, J.P., ANGIOLILLO, DICKERSON and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court