

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

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Argued - November 18, 2008

REINALDO E. RIVERA, J.P.  
ROBERT A. SPOLZINO  
EDWARD D. CARNI  
JOHN M. LEVENTHAL, JJ.

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2007-03357

DECISION & ORDER

The People, etc., appellant,  
v Sheryl Lewis, respondent.

(Ind. No. 1280/06)

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Andrew M. Cuomo, Attorney General, New York, N.Y. (Barbara D. Underwood,  
Robin L. Baker, and Roseann B. MacKechnie of counsel), for appellant.

Appeal by the People from an order of the Supreme Court, Kings County (Walsh, J.), dated March 12, 2007, which granted the defendant's motion pursuant to CPL 210.40 to dismiss the indictment in furtherance of justice.

ORDERED that the order is affirmed.

The discretionary power to dismiss an indictment in the interest of justice is to be exercised sparingly. This case, however, presents one of those rare instances in which dismissal in the interest of justice was warranted (*see People v Martinez*, 304 AD2d 675, 676; *People v Vecchio*, 144 AD2d 710). After engaging in a "sensitive balancing process" (*People v Martinez*, 304 AD2d at 676 [internal quotation marks omitted]), and examining the statutory criteria set forth in CPL 210.40, the Supreme Court providently concluded that compelling factors justified dismissal of the indictment (*see People v Martinez*, 304 AD2d at 676; *People v Vecchio*, 144 AD2d at 710). Accordingly, the Supreme Court properly granted the defendant's motion pursuant to CPL 210.40 to dismiss the indictment in furtherance of justice.

RIVERA, J.P., SPOLZINO, CARNI and LEVENTHAL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

December 16, 2008

PEOPLE v LEWIS, SHERYL