

People v Cuevas

2007 NY Slip Op 30026(U)

March 8, 2007

Supreme Court, Queens County

Docket Number: 0000002

Judge: Gregory L. Lasak

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SUPREME COURT OF THE STATE OF NEW YORK
CRIMINAL TERM: PART K-23

P R E S E N T: HON. GREGORY L. LASAK,
Justice.

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THE PEOPLE OF THE STATE OF NEW YORK

- against-

Indictment No.: 2-07

Motion: Omnibus

JOHNATHAN CUEVAS,

Defendant.

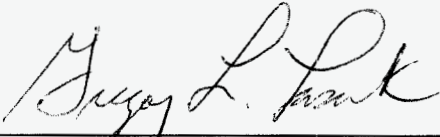
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PETER M. ANTIOCO, ESQ.
For the Defendant

RICHARD A. BROWN, D.A.
BY: RACHEL BUCHTER, D.A.
Opposed

Upon the foregoing papers, and due deliberation had, the motion to dismiss based upon insufficient evidence before the grand jury (CPL 210.30) is denied. The other issues raised by the motion are decided as per the attached memorandum this date.

Kew Gardens, New York
Dated: March 8, 2007



GREGORY L. LASAK
JUSTICE SUPREME COURT

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THE PEOPLE OF THE STATE OF NEW YORK

BY: GREGORY L LASAK, J.S.C.

- against -

Indictment No. 2-07

DECISION AND ORDER

JONATHAN CUEVAS,

Defendant.

-----X

An indictment has been filed against the defendant accusing him *inter alia* of the crime of Robbery in the First Degree (PL §160.15-2).

By omnibus motion, dated January 29, 2007, defendant seeks: (1) inspection of the grand jury minutes, dismissal of the indictment or reduction of charges; (2) release of the grand jury minutes and charge; (3) suppression of identification evidence; (4) suppression of physical evidence; (5) bill of particulars/discovery; (6) Sandoval; and (7) reservation of rights to make additional motions.

The People have filed an affirmation in opposition dated February 9, 2007.

The various branches of defendant's omnibus motion are decided as follows:

**MOTION TO INSPECT GRAND JURY MINUTES, DISMISS THE INDICTMENT OR,
IN THE ALTERNATIVE, REDUCE THE CHARGES**

The defendant's motion to inspect the grand jury minutes is granted. Inspection is mandatory absent a showing of good cause to deny the requested relief. The People have consented to an *in camera* inspection. The Court has conducted an *in camera* inspection of the grand jury minutes.

Defendant has moved pursuant to CPL 210.30 to dismiss the indictment on the ground of insufficiency of grand jury evidence to support the allegations therein. It is the Court's finding

that the indictment is based upon competent and admissible evidence and is legally sufficient to establish that defendant committed the offenses as set forth therein. See CPL 190.65; People v. Swamp, 84 N.Y.2d 725, 622 N.Y.S.2d 472 (1995); People v. Haney, 30 N.Y.2d 328, 333 N.Y.S.2d 403 (1972); see also People v. Jensen, 86 N.Y.2d 248, 630 N.Y.2d 248 (1995).

CPL 210.35 specifies five grounds under which an indictment may be dismissed due to defects in the Grand Jury Process. The Court notes that it has inspected the minutes with respect to the issues raised by defendant and finds no irregularities that would warrant any relief. Furthermore, there is no evidence that the prosecutor breached her duty of good faith and fair dealing.

MOTION FOR RELEASE OF THE GRAND JURY MINUTES AND CHARGE TO DEFENSE COUNSEL

The Court's authority to release grand jury testimony is set forth in CPL §210.30(3) which provides that "if the court, after examining the minutes, finds that the release of the minutes, or certain portions thereof, to the parties is necessary to assist the court in making its determination on the motion, it may release the minutes or such portions thereof, to the parties." The same section also provides that "such release shall be limited to that grand jury testimony which is relevant to support a charge or charges contained in such indictment."

Pursuant to CPL §210.35, the Court can make a determination as to whether the grand jury proceeding failed "to conform to the requirements of article one hundred ninety to such a degree that the integrity thereof is impaired and prejudice to the defendant may result." As noted, the Court has inspected the minutes with respect to this section and finds no errors that would warrant any relief.

Defendant's motion seeking release of the transcripts of the grand jury minutes and of the legal instructions provided by the prosecutor is denied. Grand jury proceedings are secret and should not be disclosed absent a compelling and particularized need for access. CPL §190.25(4); see People v. Robinson, 98 N.Y.2d 755, N.Y.S.2d 843(2002); Matter of the District Attorney of Suffolk County 58 N.Y.2d 436 (1983); Ruggiero v. Fahey, 103 A.D.2d 65, 478 N.Y.S.2d 336(2d Dept. 1984). The defendant has made no factual showing as to demonstrate a compelling and particularized need sufficient to overcome the presumption of confidentiality. The Court finds

that the release of the minutes is unnecessary to assist it in making its determination as to the sufficiency of the evidence and legal instructions, CPL §210.30(2) and (3).

MOTION TO SUPPRESS IDENTIFICATION

Defendant moves to suppress any identification evidence. The People consent to a Wade hearing. Accordingly, a Dunaway/Wade hearing is hereby ordered.

MOTION TO SUPPRESS PHYSICAL EVIDENCE

Defendant has moved to suppress physical evidence. The branch of the motion for suppression of physical evidence is granted to the extent that a Mapp hearing is hereby ordered.

MOTION FOR DISCOVERY

The People have provided a discovery response and a bill of particulars dated February 9, 2007. Thus, there is nothing for the Court to rule upon pursuant to CPL §240.80.


SANDOVAL

Defendant has moved pursuant to People v. Sandoval, 34 N.Y.2d 371, 357 N.Y.S.2d 849 (1974) to limit the People's cross examination, in the event that he elects to testify in his own defense, regarding prior convictions or bad acts. A decision with respect to this aspect of the motion is reserved and referred to the trial judge for decision.

RESERVATION OF RIGHTS TO MAKE FURTHER MOTIONS

The motion to reserve the right to make further motions is granted to the extent permitted by CPL §255.20.

Kew Gardens, New York
Dated: March 8, 2007



GREGORY L. LASAK
JUSTICE SUPREME COURT