

People v Brown-Brooks
2007 NY Slip Op 31086(U)
May 8, 2007
Supreme Court, Queens County
Docket Number: 0000079/2007
Judge: Stephen A. Knopf
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MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM: PART K-19

THE PEOPLE OF THE STATE OF NEW YORK	:	BY: STEPHEN A. KNOPF
	:	
-against-	:	DATED: MAY 8, 2007
	:	
	:	INDICTMENT NO. 79/07
	:	
LARRY BROWN-BROOKS	:	
Defendant	:	

The defendant, Larry Brown-Brooks, in an omnibus motion, seeks the following relief: a Bill of Particulars, discovery, inspection of the Grand Jury minutes and dismissal or reduction of the charges in the indictment, release of the Grand Jury minutes to defense counsel, dismissal of the indictment due to the impaired integrity of the Grand Jury presentation, *Sandoval hearing*, and the reservation of rights to make additional motions.

The motion is decided as follows:

The branch of the defendant's motion seeking a Bill of

Particulars is deemed a request for a Bill of Particulars pursuant to CPL §200.95.

The branch of the defendant's motion seeking discovery is deemed a demand for discovery pursuant to CPL 240.20.

The branch of the defendant's motion seeking inspection of the Grand Jury minutes and dismissal or reduction of the charges in the indictment is granted in part and denied in part. The Court has inspected the Grand Jury minutes and finds that there is legally sufficient evidence to support count one: criminal sexual act in the second degree (PL §130.45-1), count two: course of sexual conduct against a child in the second degree (PL §130.80 (1)(B) and count eight: incest (PL §255.25). Counts three, four, five, six and seven: sexual abuse in the second degree (PL § 130.60-2) are dismissed as legally insufficient. Each of these counts specifies that certain unlawful acts took place during a specific month. However, the People failed to elicit specific testimony from the complainant

connecting these incidents to the specific time periods charged in these counts of the indictment. Rather, the complainant described a course of sexual conduct that occurred throughout the overall time period of October 6, 2003 through February 28, 2004. Such counts are the product of illusory specificity - an attempt to charge specific month-long time periods without specific supporting evidence presented to the Grand Jury.

Accordingly, counts three, four five, six and seven are dismissed with leave to re-present them pending a decision by the People as to whether or not to resubmit these charges to this or another Grand Jury. (See, CPL §210.20[6]). The effectiveness of this order dismissing these counts shall be stayed for thirty days from the date of this order.

This branch of the defendant's motion is denied in all other respects.

The branch of the defendant's motion seeking release of the

Grand Jury minutes and charge to defense counsel is denied. Counsel has failed to demonstrate any compelling need for such relief (see, CPL § 210.30[3]).

The branch of the defendant's motion to dismiss the indictment because of impaired integrity in the grand jury proceedings is denied. In this presentation, the questions of the assistant district attorney were fair and appropriate under the circumstances.

The branch of defendant's motion seeking a *Sandoval* hearing is granted to the extent that such hearing will be held prior to trial.

The branch of the defendant's motion reserving the right to make further motions is granted to the extent that any additional motions are to be filed in accordance with CPL § 255.20.

The foregoing constitutes the order, opinion and decision of this court.

STEPHEN A. KNOFF, J.S.C.