

**People v George**

2007 NY Slip Op 31205(U)

May 14, 2007

Supreme Court, Queens County

Docket Number: 0000167/2007

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

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THE PEOPLE OF THE STATE OF NEW YORK	:	BY: STEPHEN A. KNOFF
	:	
	:	DATED: MAY 14, 2007
-against-	:	
	:	INDICTMENT NO. 167/07
	:	
ANTHONY GEORGE	:	
	:	
Defendant	:	

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The defendant, Anthony George, in an omnibus motion, seeks the following relief: dismissal of the indictment for failure to provide the defendant with a meaningful opportunity to exercise his right to appear and testify before a Grand Jury, dismissal of the indictment for failure of the People to elicit facts with sufficient clarity so that the defendant may adequately prepare for trial, dismissal or reduction of the counts in the indictment for failure of the People to elicit sufficient evidence to sustain the counts in the

indictment; dismissal of the indictment due to defective Grand Jury proceedings, release of the Grand Jury minutes and charge to defense counsel, discovery, suppression of statements, or in the alternative, a *Huntley/Dunaway hearing*, suppression of identification testimony, or in the alternative, a *Wade/Dunaway hearing*, court-appointed investigator pursuant to 18B of the County Law, a *Sandoval hearing*, a *Ventimiglia hearing*, *Rosario and Consolazio material*, a reservation of rights and further relief.

The motion is decided as follows:

The branch of the defendant's motion seeking dismissal of the indictment for failure to provide the defendant with a meaningful opportunity to exercise his right to appear and testify before the Grand Jury is denied. In this branch, the defendant asserts that questioning by the People of the defendant about his parole status and prior felony convictions was improper. In addition, the defendant challenges the right of the Grand Jury assistant to

question him about his disability benefits and his ability to afford the purchase of an automobile. Also, the defendant challenges the propriety of being questioned about: whether incarceration was unpleasant, and what the names he called his girlfriend were. The defendant also challenged hearsay elicited by the Grand Jury assistant.

This Court notes that there is no Sandoval ruling in the Grand Jury. It is the district attorney who makes rulings on the admissibility of prior convictions, to impeach a defendant's credibility. This is allowed so that a Grand Jury may evaluate the credibility of a witness. (*See, People v Pavao, 59 NY2d 283 [1985] ; People v Spulka, 226 AD2d 321 (1<sup>st</sup> Dept) [1996]*).

As to the defendant's complaint that his cross-examination was adversarial, confrontational and sarcastic, this Court reminds the defendant that cross-examination is an adversarial proceeding. Taken as a whole, there was no misconduct in the cross-examination of the

defendant in this Grand Jury procedure (*see, Pavao, supra*). The defendant was offered a meaningful opportunity to testify before the Grand Jury.

The branch of the defendant's motion seeking to dismiss the indictment for failure of the People to provide clarity so that the defendant may properly prepare a defense is denied. This Court has reviewed the indictment and determines that the counts are charged with sufficient specificity.

The branch of defendant's motion seeking to inspect the Grand Jury minutes and dismiss or reduce the counts in the indictment is granted to the extent that the Court has inspected the Grand Jury minutes and finds that there is sufficient legal evidence adduced to sustain the charges in the indictment.

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 seeking discovery is deemed a demand for discovery pursuant to CPL 240.20.

The branch of the defendant's motion seeking to suppress the defendant's statement is granted, with the consent of the People, to the extent that a *Huntley/Dunaway* hearing shall be held prior to trial.

The branch of the defendant's motion seeking to suppress identification testimony is denied insofar as there was no police initiated identification procedure utilized in this case. The representative of Major World contacted the police after the defendant returned to the location. The representative of Major World and the defendant were known to each other; after spending many hours with each other on the day of the incident.

The defendant's application to this Court for a Court-appointed investigator is denied at this time. The defendant is invited to revisit the issue with a separate order and affidavit setting forth the specific reasons why the defendant is entitled to an investigator, without fee, other than for the reason he has been assigned a lawyer without cost.

The branch of defendant's motion seeking a *Sandoval* hearing is granted to the extent that such hearing will be held prior to trial. At or prior to the hearing, the People are to discharge their duty under CPL § 240.43.

The branches of defendant's motion seeking *Ventimiglia* relief is granted to the extent that the People shall be mindful of their obligations pursuant to *People v Ventimiglia*, 52 NY2d 350 (1981).

The branch of defendant's motion seeking *Rosario* material is granted to the extent that the People are directed to comply with the requirements of *People v. Rosario*, 9 NY2d 286 [1961].

The branch of the defendant's motion seeking *Consolazio* material is granted to the extent that the People are directed to comply with the requirements of *People v. Consolazio*, 40 NY2d 446 [1976].

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.

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STEPHEN A. KNOPF, J.S.C.