

People v Fox
2007 NY Slip Op 34519(U)
March 14, 2007
Supreme Court, Kings County
Docket Number: 8607/06
Judge: Jill Konviser
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM PART 20

----- X
THE PEOPLE OF THE STATE OF NEW YORK, :

-against- :

Ind. No. 8607/06

JOHN FOX, :

Defendant. :

----- X

JILL KONVISER, JUSTICE:

Defendant's motion to inspect the grand jury minutes is granted. "A court reviewing the legal sufficiency of an indictment 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 guilty verdict after a trial[.]" People v. Smaragdas, 27 A.D.3d 769 (2d Dept.), lv. denied, 7 N.Y.3d 363 (2006); see People v. Jensen, 86 N.Y.2d 248, 251-52 (1995). C.P.L. §70.10(1) defines legally sufficient evidence as "competent evidence which, if accepted as true, would establish every element of an offense charged[.]" See People v. Deegan, 69 N.Y.2d 976 (1987). Legally sufficient evidence, in the context of a grand jury presentation, "means proof of a prima facie case, not proof beyond a reasonable doubt." People v. Gordon, 88 N.Y.2d 92, 95-96 (1996). A court reviewing the legal sufficiency of the evidence may not consider the weight of the evidence or the credibility of the witnesses as these matters are in the exclusive province of the grand jury. People v. Jennings, 69 N.Y.2d 103, 115 (1986); People v. Haney, 30 N.Y.2d 328, 336 n.10 (1972).

This Court has inspected the transcript of the grand jury proceedings in camera. The evidence was legally sufficient to support the charges, including the hate crime components of counts one, three, five, seven and nine. Penal Law §485(1)(a) provides:

A person commits a hate crime when he or she commits a specified offense and . . . intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct[.]

The crimes alleged in counts one, three, five, seven and nine are "specified offense[s]" as that term is defined by Penal Law §485.05(3), and the legally sufficient evidence before the grand jury showed that the defendant, while acting in concert with others, intentionally selected the person against whom the offenses were allegedly committed (the decedent) "in whole or in substantial part because of a belief or perception regarding" the decedent's sexual orientation. The defendant's corroborated recorded statements provided legally sufficient evidence to support the intent requirement of the hate crimes statute. C.P.L. §60.50; see People v. Chico, 90 N.Y.2d 585, 589 (1997); People v. Lipsky, 57 N.Y.2d 560 (1982); People v. Davis, 46 N.Y.2d 780 (1978); People v. McCray, 198 A.D.2d 200 (1st Dept. 1993), lv. denied, 82 N.Y.2d 927 (1994); People v. Brown, 180 A.D.2d 480 (1st Dept. 1992); see also Ayers v. Maryland, 335 Md. 602, 638; 645 A.2d 22, 39-40 (Md. 1994), cert. denied, 513 U.S. 1130 (1995).

Testimony from a witness, an accomplice as a matter of law, see C.P.L. §60.22(2)(a), was admitted into evidence and was corroborated by other evidence "tending to connect the defendant" to the charged crimes. C.P.L. §60.22(1). As such, the testimony was proper. See People v. Besser, 96 N.Y.2d 136, 143-44 (2001) (to satisfy the accomplice corroboration rule "[i]ndependent evidence need not be offered to establish each element of the offense or even an element of the offense; the People's burden is merely to offer some nonaccomplice evidence tending to connect defendant to the crime charged."). Specifically, the corroborating evidence included nonaccomplice eyewitness testimony, evidence related to the recovery of the decedent's body, defendant's recorded statements, and the admissions defendant made to a nonaccomplice witness who testified before the grand jury.¹ See People v. Caban, 5 N.Y.3d 143, 154-55 (2005); People v. Steinberg, 79 N.Y.2d 673 (1992); People v. Burgin, 40 N.Y.2d 953 (1976); People v. Patterson, 194 A.D.2d 812 (2d Dept.), lv. denied, 82 N.Y.2d 724 (1993); People v. Hogan, 172 A.D.2d 690 (2d Dept.), lv. denied, 78 N.Y.2d 1077 (1991); People v. Holmes, 170 A.D.2d 534 (2d Dept.), lv. denied, 77 N.Y.2d 961 (1991); People v. Lewis, 90 A.D.2d 814 (2d Dept. 1982). While it would have been the better practice for the prosecutor to have instructed the grand jury that an accomplice's testimony requires corroboration, the absence of such a charge in this case did not impair the integrity of the grand jury proceedings as the evidence submitted more than satisfied the corroboration requirement. People v. Huston, 88 N.Y.2d 400, 409 (1996); see People v. Vincente, 183 A.D.2d 940 (3d Dept. 1992); People v. Lowery, 151 A.D.2d 1026 (4th Dept.), lv. denied, 75 N.Y.2d 772 (1989); People v. Philipp, 106 A.D.2d 681 (3d Dept. 1984); People

¹ "[A]dmissions by a party of any fact material to the issue are always competent evidence against him, wherever, whenever, or to whomever made[.]" People v. Chico, 90 N.Y.2d 585, 589 (1997), quoting Prince, Richardson on Evidence 8-201 [Farrell 11th Ed], quoting Reed v. McCord, 160 N.Y. 330 (1899). See also People v. Patterson, 184 A.D.2d 916 (3d Dept.), lv. denied, 80 N.Y.2d 908 (1992); People v. Pelt, 161 A.D.2d 284 (1st Dept.), lv. denied, 76 N.Y.2d 862 (1990).

v. Victor Han, NYLJ. February 11, 2007 at 21, col. 1 (Sup. Ct. Rockland Co. February 22, 2007) (Kelly, J.); People v. Clarence Norman, 6 Misc.3d 1035 (A), 2004 WL 3235776 at *9 n.13 (Sup. Ct. Kings. Co. December 15, 2005 (Marcus, J.)).

The legal instructions provided to the grand jury were sufficient and do not form a basis to dismiss the indictment. C.P.L. §190.25(6).² The procedures before the grand jury were also proper. A quorum was present when testimony was taken and the prosecutor instructed the grand jury that only those grand jurors who heard all of the evidence could consider the proposed charges.

Defendant's motion for release of the grand jury minutes is denied as he failed to show a compelling and particularized need for abrogating the secrecy of the grand jury proceedings. C.P.L. §190.25(4).

The motion for a Huntley hearing is granted on consent.

The motion for a Wade hearing is granted on consent.

The motion for a Dunaway hearing is denied without prejudice to renew on sufficient factual allegations. People v. Jones, 95 N.Y.2d 721 (2001); People v. Mendoza, 82 N.Y.2d 415 (1993).

The motion for an order directing the People to furnish the defense with certain information requested in the defendant's demand for a bill of particulars and discovery is denied without prejudice to renew as the People have responded to the demands and requests. If the defense believes that a response provided by the People was improper, the defense must identify the particular response and state the specific legal reason why the response was not in accord with the discovery statutes.

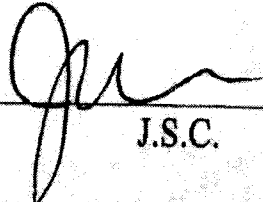
The People's motion for reciprocal discovery is granted as to material specified in C.P.L. §240.30.

The motions for a Sandoval hearing, a Ventimiglia hearing, and a hearing pursuant to C.P.L. §240.43 are granted. These hearings will be conducted immediately before jury selection.

²The grand jury was properly charged with respect to the elements of the crimes, including the hate crimes statute, acting-in-concert, and confessions or admissions. With respect to the latter, the grand jury was appropriately instructed that a confession or admission may only be used against the person who made the confession or admission and may not be considered unless corroborated by other evidence.

This constitutes the Decision and Order of the Court.

Dated: Brooklyn, New York
March 14, 2007



J.S.C.

ENTERED

MAR 19 2007

NANCY T. SUNSHINE
COUNTY CLERK