

<b>People v Adamson</b>
2011 NY Slip Op 34217(U)
February 9, 2011
Supreme Court, Kings County
Docket Number: 7951/10
Judge: Elizabeth A. Foley
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SUPREME COURT OF THE STATE OF NEW YORK  
KINGS COUNTY: CRIMINAL TERM: PART 30

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

INDICTMENT  
NO: 7951/10

ALTY ADAMSON,

Defendant.

DECISION AND  
ORDER

-----X  
FOLEY, ELIZABETH, J:

Defendant moves pursuant to CPL §210.35 and §190.50, to dismiss the indictment, claiming he was deprived of his right to a fair and impartial proceeding as he was not given the opportunity to fully present his testimony to the Grand Jury. In addition, the defendant argues that a ruling should have been made by a Justice of the Supreme Court as to the admissibility of the defendant's prior convictions to the Grand Jury, prior to his testimony. After a review of the moving papers, the People's opposition, the Court file, the relevant case and statutory law, as well as the Grand Jury testimony, the defendant's motion is denied.

On August 17, 2010, the defendant was arraigned in the miscellaneous motions part in King's County and charged with Burglary in the First Degree and other related charges for an incident that occurred on August 7, 2009. The case was originally indicted under number 5670/10 which was later voluntarily re-

presented after the People learned the defendant had served cross-notice of his wish to testify.

On October 15, 2010, the People presented the matter to the Grand Jury under Indictment number 7951/10. On October 19, 2010, the People received a Waiver of Immunity from the defendant. The defendant testified later that same day.

During the presentation, the defendant was given the opportunity to tell his story. He was only interrupted by the People when he veered off the day of the alleged crime into other dates and incidents. During his testimony, he voluntarily stated that he was on parole and discussed at length, several of his prior convictions without prompting or interruption from the People. Once his statement was completed, the People then cross-examined the defendant as to his prior convictions.

The Court holds that the People had the right to cross-examine the defendant after the completion of his Grand Jury testimony, as the cross-examination properly included questions which bore on the defendant's credibility. See, 190.50(5)(b), *People v. Burton*, 79 N.Y.2d 464 (1992), *People v. Thompson*, 116 A.D.2d 377 (1996). Where a defendant's criminal record clearly demonstrates his willingness to place his own interest above those of society, that record is the proper subject for cross-examination. See, *People v. Karp*, 76 N.Y.2d 1006 (1994).

Here, the excursion into the defendant's prior convictions was appropriate because the defendant had "opened the door" during his testimony and the People read a limiting instruction as part of the charge. Accordingly, that branch of the defendant's motion is denied.

The Court now turns to the question as to the Sandoval ruling. In *People v. Sandoval*, 34 N.Y.2d 371, (1974), the Court of Appeals held that a defendant is entitled to a pretrial ruling on the scope of permissible cross-examination as to such prior misconduct ( see also, CPL 240.43). The purpose of a trial is to determine, in a full adversarial setting, whether the guilt of the defendant has been proven beyond a reasonable doubt. See, *People v. Goetz*, 68 N.Y.3d 96 (1996). In contrast, the purpose of a Grand Jury proceeding is solely to determine whether there is sufficient evidence to justify further criminal proceedings against the defendant. See, *People v. Calbud*, 49 N.Y.2d 389, 394. Hence, there is a "crucial distinction" between a Grand Jury proceeding and a trial. And the defendant's testimony before a Grand Jury is of lesser importance than it would be at trial. For that reason, he is not entitled to a Sandoval hearing prior to testifying before the Grand Jury. See, *People v. Thomas*, 213 A.D.2d 73, 78 affd. 88 N.Y.2d 821(1995). Accordingly, the defendant's motion is denied.

The Court has reviewed the defendant's remaining arguments and finds them to be without merit.

The foregoing constitutes the Decision and Order of the Court.



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ELIZABETH FOLEY, J.S.C.

**Dated: February 9, 2011**