

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 42

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THE PEOPLE OF THE STATE OF NEW YORK,

DECISION AND ORDER
INDICTMENT No. 3349/10 -

against-

EDWARD "Reese" HOPKINS,

DEFENDANT

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MAXWELL WILEY, J.:

Defendant moves to dismiss the indictment against him on the grounds that his rights pursuant to CPL 190.50, to request that witnesses be called before the grand jury, were violated. The People have filed papers in opposition.

The People admit to receiving defendant's request to call certain witnesses, but assert that "after hearing the request, it was well within the discretion of the People to determine that the scope of the witnesses' testimonies would not be material." The People cite no authority in support of this proposition. The People have a duty to communicate to the Grand Jury the defendant's request to call witnesses. It is then within the Grand Jury's discretion to hear them or not. People v. Ali, 19 Misc.3d 672 (Sup. Ct. Qns Co 2008); People v. Andino, 183 Misc.2d 290 (Sup. Ct. Bronx Co. 2004); People v. Freeman, 24 Misc.3d 1212A (Sup. Ct. NY Co. 2009). Because the People failed to communicate to the Grand Jury defendant's request for witnesses, the defendant's rights under CPL 190.50 were violated. The question then remains whether this violation of defendant's rights warrants dismissal of the indictment pursuant to CPL 210.35(5). That section provides that for an indictment to be dismissed, it must appear that the Grand Jury proceeding failed to conform to the requirements of CPL article 190 "to such degree that the integrity thereof is impaired and prejudice to the defendant may result."

Based on the nature of the witnesses and the evidence that the defense wanted the Grand Jury to hear, this Court finds that the prosecution's failure to notify the Grand Jury of the witnesses did not rise to the level that it impaired the integrity of the Grand Jury proceedings nor prejudice the defendant.

The defense asked that three witnesses be called before the Grand Jury: 1) an unnamed police officer assigned to the 19th Precinct in 2005; 2) Detective Arbuiso of the Manhattan Special Victims Squad; and 3) [REDACTED] the mother of one of the complainants in the case. As part of these requests, the defense specified that these witnesses should be asked about certain statements made to each of them by the complainants in this case that were inconsistent with other statements made by the complainants and with the allegations in this case. The defense specifically requested that the 19th Precinct officer testify that [REDACTED] a juvenile complainant in the case, stated in February 2005 that the defendant had not "perform[ed] any sexual acts on her." Similarly, Detective Arbuiso was to testify that another juvenile complainant, [REDACTED] told the detective in April 2008 that her alleged rape at the hands of the defendant happened in September 2004, a date that is different by a matter of months from the allegations in the current indictment. Finally, Ms. [REDACTED] mother, Ms. [REDACTED] was to testify that Ms. [REDACTED] denied being raped after Ms. [REDACTED] discovered a letter written by Ms. [REDACTED] about the incident in 2007.

These requests were made during a series of telephone calls between defense counsel and the assistant district attorney assigned to the case in the days preceding the Grand Jury's vote, and, finally, in a letter faxed to the assistant on July 13, 2010, the day of the vote. In this letter the defendant's requests for specific witnesses were presented only as alternatives to the primary demands that the prosecutor present "evidence" or "information" before the Grand Jury

concerning prior inconsistent statements made by each of the two juvenile complainants over the years. In addition to the statements to the witnesses described above, the defense asked the assistant district attorney to present evidence concerning the victim's statements to: the New York State Office of Children and Family Services; the New Jersey Department of Children and Families; a previous Grand Jury; and the District Attorney's Office itself.

The defense requested that the prosecution notify the Grand Jury of the defendant's request for the three witnesses only if the prosecution refused the primary defense request to present the "evidence" of the complainants' prior inconsistencies and denials, presumably through the testimony of the complainants. The July 13 letter, then, represented not so much a request for specific witnesses to be heard by the Grand Jury, but an effort by the defendant to put in front of the Grand Jury, by whatever means, evidence which he regarded as exculpatory.

The People were not required to accede to the defendant's request to introduce evidence of prior inconsistent statements by the victims. First, under New York law, the People generally are not obliged to "present all of their evidence tending to exculpate the accused." *People v. Mitchell*, 82 N.Y.2d 509, 515 (1993). An exception to this rule occurs when the evidence in question "is so essential to a complete understanding of the case that the prosecution's failure to disclose it can actually prevent the Grand Jury from functioning as an intelligent and informed decision-making body." *Id.*, at 517. The evidence cited by the defense in this case does not fit this exception. Rather, the evidence in question might arguably call into question the victims' credibility, and is therefore—even in the light most favorable to the defense—collateral, and not essential to the Grand Jury's determination. *See, People v. Dillard*, 214 A.D.2d 1028 (4th Dept. 1994). It should be noted, further, that the prosecution in this case did in fact question one of the complaining witnesses, Ms. [REDACTED] about her previous denials of sexual contact with the

defendant. The prosecution was not legally required to present this evidence, and they were certainly not required to present any additional impeachment evidence as requested by the defense.

The People's failure to notify the Grand Jury that the defendant requested certain witnesses to be called, therefore, created no possibility of prejudice to the defendant. *See, People v. Butterfield*, 267 A.D.2d 870, 874 (3d Dept. 1999). The substance of the testimony sought from these witnesses was collateral. Indeed, at trial the testimony of each of the requested witnesses—without first confronting the complaining witnesses—would be inadmissible in violation of the rule against admission of collateral evidence to prove a prior inconsistent statement. *See, People v. Concepcion*, 175 A.D.2d 324 (3d Dept. 1991); and, Prince, Richardson on Evidence, 11th Edition §6-411. Had the People notified the Grand Jury of the defense requests, and had the Grand Jury elected to call the witnesses, the People would have been entitled to not elicit any of the information sought by the defense.

For the foregoing reasons, the defendant motion to dismiss the indictment based on the prosecution's failure to notify the Grand Jury of defense witnesses is denied.

Additionally, the Court finds that the evidence presented was sufficient to support the charges herein and that the legal instructions were both proper and adequate. Defendant's motion for release of the Grand Jury minutes is denied.

This shall constitute the decision and order of the court.

New York, New York
January, 2011

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MAXWELL WILEY, J.S.C.