

People v Dorvilier

2010 NY Slip Op 34003(U)

November 8, 2010

Supreme Court, Queens County

Docket Number: 1709/10

Judge: Joseph Anthony Grosso

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SUPREME COURT - STATE OF NEW YORK
CRIMINAL TERM PART K-12 QUEENS COUNTY
125-01 QUEENS BOULEVARD
KEW GARDENS, NY 11415

P R E S E N T :

HONORABLE JOSEPH ANTHONY GROSSO
ACTING JUSTICE

THE PEOPLE OF THE STATE OF NEW YORK Ind. No. 1709/10

- against -

Omnibus Motion

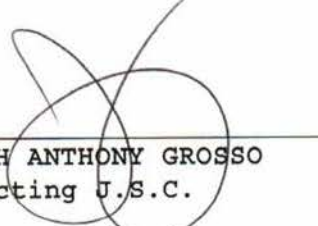
HARRY DORVILIER and
HARRY'S NURSES REGISTRY, INC.
Defendants.

Robert Schirtzer, Esq.
For the Motion

Hon. Richard A. Brown
District Attorney, Queens
County, by:

Rosemary Buccheri, Esq
Opposed

Upon the foregoing papers and in the opinion of the Court herein, the defendant's omnibus motion is granted to the extent indicated in the accompanying memorandum of this date.



JOSEPH ANTHONY GROSSO
Acting J.S.C.

Date: November 8, 2010

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM : PART K-12

THE PEOPLE OF THE STATE OF NEW YORK

BY: GROSSO, J.

-against-

DATE: November 8, 2010

Ind. No. 1709/10

HARRY DORVILIER and,
HARRY'S NURSES REGISTRY, INC.
Defendant.

Defendant, in an omnibus motion, seeks the following relief:
The application is determined as follows:

The branch of the motion seeking the inspection of the Grand Jury minutes and dismissal or reduction of the indictment is granted to the extent that the court has inspected the minutes of the Grand Jury and finds that sufficient legal evidence was adduced to sustain each and every count of the indictment. Hence, the motion to dismiss or reduce is denied.

The branch of the motion seeking dismissal or reduction of the indictment in that it fails to state the counts of the indictment with sufficient precision, is denied. The Court has examined the wording of the indictment and finds that there are sufficient facts to support every element of the offense charged

and clearly acquaint the defendant with the charges. People v. Iannone, 45 N.Y. 2d 589.

The branch of the motion seeking dismissal of the indictment for the failure of the District Attorney to properly instruct the Grand Jury on the applicable law, is denied. The Court has inspected the minutes and finds that the instructions given to the Grand Jury were sufficient and not "so incomplete or misleading" so as to substantially undermine the function of the Grand Jury. People v. Calbud, Inc., 49 N.Y.2d 389.

The branch of the motion seeking the release of the Grand Jury minutes is denied. Grand Jury proceedings are secret and should not be disclosed absent a compelling and particularized need for access. C.P.L. 190(25(4)); Matter of District Attorney of Suffolk County, 58 N.Y.2d 436 Ruggerio v. Fahey, 103 A.D.2d 65. The defendant has failed to demonstrate such a compelling need.

The branch of the motion, seeking a Bill of Particulars is granted to the extent that the District Attorney is to comply with defendant's demand as set forth in CPL 200.95.

The branch of the motion seeking Discovery is granted to the extent to the extent indicated in the affirmation in opposition of the District Attorney.

The branch of the motion requesting an extension of time to make further motions is denied as premature with leave to renew

upon a proper showing of necessity.

The branch of the motion seeking discovery of the defendant's prior uncharged criminal, vicious or immoral conduct which the prosecutor intends to use at trial is granted to the extent that the People are to give the defendant this information prior to jury selection.

The branch of the motion requesting Sandoval relief, is denied at this time as premature with leave to renew before the trial Court who will consider such application on its merits at the time of trial.

That branch of defendant's motion to dismiss the indictment pursuant to CPL 30.30 is denied. I have reviewed the court file, defense contentions and the People's response. I find that only 112 days of chargeable time have elapsed since the commencement of the criminal action.

That branch of the defendant's motion to dismiss the indictment in the furtherance of justice is denied.

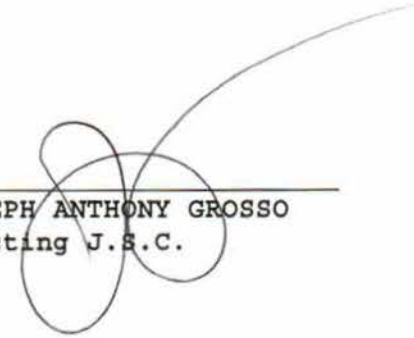
"Clayton" relief is in the nature of "confession and avoidance", that is, assume the facts in the indictment are true, that some factor or factors are present that would make the continued prosecution unjust.

I have inspected the grand jury minutes, the 10 factors for judicial consideration in CPL 210.40, and the assertions of the

defense.

I conclude that there is no single fact or factors present to warrant the extraordinary relief of a dismissal of the indictment.

Order entered accordingly.



JOSEPH ANTHONY GROSSO
Acting J.E.C.