

SUPREME COURT-STATE OF NEW YORK
CRIMINAL TERM, SUFFOLK COUNTY

P R E S E N T:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE: 6-21-07
RELIEF: OMNIBUS

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

THOMAS J. SPOTA, SUFFOLK COUNTY DISTRICT ATTORNEY
By: Leonard Lato, Esq.
200 Center Drive
Riverhead, New York 11901

ELMER JACINTO, JULIET ANILAO, HARRIET AVILA, MARK DELA CRUZ, CLAUDINE GAMIAO, JENNIFER LAMPA, RIZZA MAULION, JAMES MILLENA, MA THERESA RAMOS and RANIER SICHON,
Defendants.

DEFENDANTS' ATTY:
JAMES O. DRUKER, ESQ.
Kase & Druker, Esqs.
1325 Franklin Avenue
Garden City, New York 11530

X
Defendants, charged with one count of Conspiracy in the Sixth Degree, five counts of Endangering the Welfare of a Child, and six counts of Endangering the Welfare of a Physically Disabled Person, have moved for omnibus pre trial relief. The People have submitted a memorandum in opposition to the motion and provided the Court with a copy of the minutes of the Grand Jury proceedings that resulted in this indictment.

Defendants move for inspection of the minutes of the Grand Jury proceedings that resulted in this indictment and for dismissal of the charges against them. This aspect of defendants' motion is granted solely to the extent that the Court has inspected the minutes of the Grand Jury proceedings and finds the evidence legally sufficient to support the charges contained in the indictment (People v. Jennings, 69 NY2d 103, 512 NYS2d 652). The Court finds that each count of the indictment properly charges these defendants with a crime and that the counts are not void for "vagueness". The Court further finds that the instructions to the Grand Jury were complete and proper and that the Grand Jury proceedings were in full compliance with CPL Article 190.

In considering a motion to dismiss an indictment on the basis of insufficient evidence before a Grand Jury, the Court must consider "whether the evidence viewed in the light most favorable to the People, if unexplained and uncontradicted, would warrant conviction by a petit jury" (People v. Jennings, *supra* at p 114; People v. Swamp, 84 NY2d 725, 730, 622 NYS2d 472). Legally sufficient evidence is defined in CPL 70.10(1) as "competent evidence which, if accepted as true, would establish every element of an offense charged." In the context of a Grand Jury proceeding,

legal sufficiency means prima facie proof of the crimes charged, not proof beyond a reasonable doubt (People v. Gordon, 88 NY2d 92, 643 NYS2d 498; People v. Mayo, 36 NY2d 1002, 374 NYS2d 609, 337 NE2d 124; People v. Swamp, *supra*). Under these standards of review, there was ample evidence before the Grand Jury to support all counts of the indictment against these defendants. Consequently, the motion by defendants seeking dismissal of the indictment based upon their claim that there was insufficient evidence before the Grand Jury is in all respects denied.¹

Defendants raise an argument which appears to claim that this prosecution of defendants somehow violates the Thirteenth Amendment to the United States Constitution prohibiting slavery. Defendants argue that since the abolition of slavery in this country, "it has been illegal to convict a person of a crime based upon quitting his or her job." Based upon this premise, defendants ask that the indictment be dismissed.

The Court discerns no basis for the relief defendants seek. Under no view of the facts of this case could it be said that the People were seeking to compel defendants continued employment by any particular entity. Rather, the Grand Jury found sufficient evidence with which to conclude that these defendants should be charged with specific crimes for the actions taken by them, *en masse*, at a time when they were entrusted with the care of certain physically disabled children. There is absolutely no evidence to suggest that this prosecution in any way violates the rights of any of these defendants under the Thirteenth Amendment to the United States Constitution.

With respect to defendants' application to dismiss the indictment in the interests of justice, that application is denied. The Court has examined the argument made by defendants as well as the factors enumerated in CPL 210.40 and does not find that there exists a compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendants would constitute or result in injustice.

With regard to defendants' request for suppression of statements made by them to law enforcement personnel, a hearing pursuant to People v. Huntley (15 NY2d 72, 255 NYS2d 838) shall be held immediately prior to trial to determine the voluntariness of any statements within the meaning of CPL 60.45.

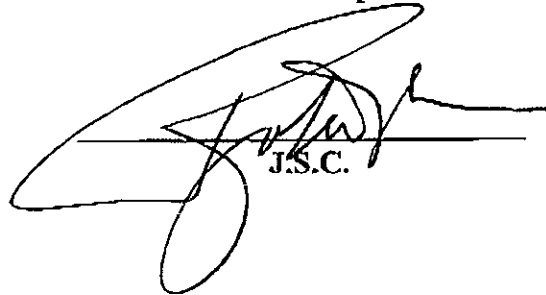
To the extent that these defendants seek to join in the motion by co-defendant Felix Vinluan for omnibus relief, that application is granted to the extent that the decision rendered in connection with defendant Vinluan's motion shall apply, to the extent applicable, to these defendants as well.

Finally, it should be noted that in their memorandum of law in opposition to this motion by defendants, the People request that the Court conduct a Gomberg inquiry of these defendants at

¹ With respect to defendant's claim that the People failed to present exculpatory evidence to the Grand Jury and that this failure requires dismissal of the indictment, the Court must note that a prosecutor has no obligation to present evidence favorable to the defendant to the Grand Jury (People v. Lancaster, 69 NY2d 20, 511 NYS2d 559).

the next date scheduled for a conference. In People v. Gomberg (38 NY2d 307, 379 NYS2d 769), the Court of Appeals held that where one attorney represents more than one defendant in a criminal trial, the Court should conduct an inquiry of defendants to insure that each is aware of the potential risks of joint representation and the right of each defendant to separate counsel. In light of the fact that each of the defendants who have joined in this application are represented by one attorney, the Court will grant the People's request and conduct a Gomberg inquiry of defendants at the next scheduled court date. Each defendant shall be present at that time so that a proper inquiry may be made.

Dated: SEPTEMBER 28, 2007



J.S.C.