

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: 6-13-07
RELIEF: OMNIBUS

X
THE PEOPLE OF THE STATE OF NEW
YORK,

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

-against-

FELIX VINLUAN,

DEFENDANT'S ATTY:
SANDBACK, BIRNBAUM &
MICHELEN
200 Old Country Road, Suite 2S
Mineola, New York 11501

Defendant.

X

Defendant, charged with one count of Conspiracy in the Sixth Degree, one count of Criminal Solicitation in the Fifth Degree, five counts of Endangering the Welfare of a Child, and six counts of Endangering the Welfare of a Physically Disabled Person, has 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.

Initially, defendant seeks to compel compliance with his demand for discovery, including his demand for any and all exculpatory material, and for a bill of particulars. The People respond that while they are not in possession of any exculpatory material, "defendants are free to inspect and copy all material in the People's possession including all Rosario material." Based upon the People's representations, it appears to the Court that discovery should proceed without the need for any supervision. However, should an issue arise with respect thereto, defendant may move for any relief he deems appropriate (see, CPL 240.40). It should also be noted that both sides are under a continuing duty to disclose any additional material which is subject to discovery and of which they become aware either before or during trial (CPL 240.60).

With respect to defendant's request for a bill of particulars, the Court is not convinced that defendant has established that the requested particulars are necessary to assist him in adequately preparing his defense (see, People v. Iannone, 45 NY2d 589, 412 NYS2d 110; CPL 200.95 subd 5). The detailed indictment in this case provides defendant with sufficient factual information to understand the substance of defendant's conduct encompassed by the charges which the People intend to prove at trial.

Defendant also moves for inspection of the minutes of the Grand Jury proceedings that resulted in this indictment and for dismissal of the charges against him. This aspect of defendant's

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 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. Insofar as defendant seeks to have a copy of the minutes of the Grand Jury proceedings provided to him, the Court finds no basis for the release of those minutes to defendant. The Court does not need the assistance of defendant in making its determination as to the adequacy of the evidence before the Grand Jury (CPL 210.30 [3]).

In moving to dismiss the indictment upon the ground that there was insufficient evidence before the Grand Jury, defendant argues that his only goal and the only goal of the co-defendant nurses in taking the actions that they did, was to obtain alternative employment for the nurses and release from their three year commitment to their employer. As to the count of the indictment charging Conspiracy in the Sixth Degree, defendant argues that in order to establish a conspiracy, there must be "a corrupt agreement between two or more individuals to do an unlawful act, unlawful as a means or as an end" (*citing People v. Flack*, 125 NY 324). Defendant asserts that if the claim is that defendants' "unlawful acts" were endangering the welfare of a child or a disabled person, then there must be proof before the Grand Jury that this was the agreement of the parties - to endanger someone's welfare.

In this instance, there was ample evidence before the Grand Jury of the existence of a plan, on the part of defendants, to resign, *en masse*, from their employment as nurses at the Avalon Gardens pediatric unit. There was also substantial evidence before the Grand Jury that the pediatric unit at Avalon Gardens provided care for chronically ill children, many of whom were on ventilators or who needed continual nursing care. The evidence before the Grand Jury further established the critical role played by these nurses in caring for their patients and in ensuring that these ventilators, without which many of the pediatric patients would not be able to breathe, were functioning properly at all times. The Grand Jury had ample evidence before it from which it could conclude that defendants were well aware of the fact that their mass resignation from their critical roles as care givers to these disabled children, without sufficient advance notice or warning to their employer, would likely be injurious to the physical welfare of their patients. The Grand Jury concluded that there was sufficient evidence to establish the existence of an agreement to engage in conduct that would constitute the crimes of Endangering the Welfare of a Child and Endangering the Welfare of a Disabled Person, and that there was an overt act in furtherance of that agreement. The fact that defendants may have had the further objective that their resignations would somehow enhance their bargaining positions in a labor dispute with their employer, does not absolve them from criminal liability for the consequences of their actions. While a nurse may, often times, have a right to unilaterally resign from his or her position of employment, the actions of these defendants, acting together with forethought and planning, was not a simple resignation from a nursing position. The consequences of their mass resignation could have had disastrous consequences for the very patients with whose care they were entrusted.

Individuals have a right to take action in the exercise of the freedoms guaranteed by the Constitutions and laws of our state and country. However, the freedom to exercise those rights is not absolute. As Justice Oliver Wendell Holmes noted in pointing out the limits of the constitutionally guaranteed right to freedom of speech, "(t)he character of every act is dependent

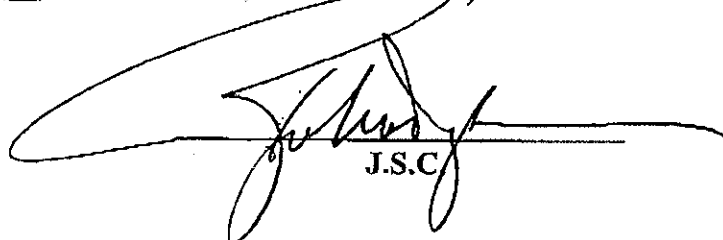
upon the circumstances in which it is done” (Schenck v. U.S., 249 US 47, 51, 39 SCt 247). As Mr. Justice Holmes went on to note, “(t)he most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.” In this case, the actions of the defendants cannot be judged in a vacuum but must be judged in light of the circumstances under which their actions were taken. The Grand Jury found sufficient evidence to conclude that this defendant entered into an agreement to perform an act which would endanger the welfare of children and disabled persons and that an overt act was committed in furtherance of that agreement. The Court finds no basis to disturb that conclusion.

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 this defendant. Consequently, the motion by defendant seeking dismissal of the indictment based upon his claim that there was insufficient evidence before the Grand Jury is in all respects denied. ¹

With regard to defendant’s request for a hearing pursuant to People v. Huntley (15 NY2d 72, 255 NYS2d 838) to determine the voluntariness of any statements made by defendant to law enforcement personnel, that application is granted to the extent that a hearing shall be held prior to trial to determine whether statements given by defendant were voluntary within the meaning of CPL 60.45.

Finally, defendant’s request for leave to make further motions is denied at this time. Pursuant to CPL 255.20 subd 1, defendant may make application to the Court for permission to make a pre-trial motion at any time prior to the entry of judgment. However, defendant should be aware that such applications are granted only in instances where good cause is shown for the delay in seeking relief (*see*, People v. Broome, 187 AD2d 949, 590 NYS2d 349).

Dated: SEPTEMBER 28, 2007



J.S.C.

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).