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Criminal Law—Sufficiency of Indictment—Motion to Inspect

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in no way prejudiced the substantial rights of the defendant. The decision is sound and in accord with the weight of authority.

Sufficiency of Indictment — Motion to Inspect

An indictment may be found only on evidence which would "if unexplained or uncontradicted, warrant a conviction by the trial jury."⁸⁴ A motion to dismiss an indictment for insufficiency of evidence before the grand jury is granted only upon a clear showing to that effect and must rebut the presumption that the indictment is based on legal and sufficient evidence.⁸⁵

In *People v. Howell*,⁸⁶ the most damaging testimony given against the defendant was by one Sanders who upon cross-examination revealed that he had not testified before the grand jury. The balance of the proof against the defendant was circumstantial and not sufficient for a conviction. Before the trial the defendant had moved unsuccessfully to inspect the grand jury minutes. At the end of the People's evidence he moved to dismiss the indictment on the ground that the evidence presented to the grand jury was insufficient as a matter of law to support the allegation of the indictment. This motion was also denied. On appeal the question before the Court was whether the absence of Sanders' testimony before the grand jury was sufficient to rebut the presumption that the indictment was based on legally sufficient evidence. The Court held that it was not.

The Court reasoned that there is no presumption that the evidence before the grand jury was the same as that used at the trial and that there was no clear showing at the trial that the evidence before the grand jury was legally insufficient without Sanders' testimony. The Court further held that since the motion to inspect the grand jury minutes was denied the minutes should not be considered as having been before the trial court on the motion to dismiss the indictment. In a dissent, Judge Desmond took the position that since the courts have an inherent right and duty to dismiss an indictment based on insufficient evidence the trial court should be required to examine the grand jury minutes. This position is contrary to the well settled rule requiring the defendant clearly to establish by extrinsic evidence that there was insufficient proof before the grand jury.⁸⁷

In a separate dissent, Judge Fuld argued that since the minutes were actually submitted to the trial judge on the motion to inspect, the Court of Appeals should be allowed to examine the minutes. Such a rule would force the trial judge, knowing that the minutes of the grand jury would be inspected by the

84. N. Y. CODE CRIM. PROC. §251.

85. *People v. Glen*, 173 N.Y. 395, 66 N.E. 112 (1903); *People v. Sweeney*, 213 N.Y. 37, 106 N.E. 913 (1914).

86. 3 N.Y.2d 672, 171 N.Y.S.2d 801 (1958).

87. *People v. Sexton*, 187 N.Y. 495, 80 N.E. 396 (1907).

appellate court, to take them into consideration. Thus, a defendant, by the device of a preliminary motion to inspect, could require the trial court to determine the sufficiency of the evidence before the grand jury without the necessary independent showing of insufficiency.

Sufficiency of Indictment Based upon Coerced Confession

The grand jury is required to find an indictment when all the evidence before it would, if unexplained or uncontradicted, warrant a conviction by the trial jury.⁸⁸ In *People v. Caminito*,⁸⁹ the evidence presented to the grand jury consisted of confessions by the defendant and proof of the corpus delicti. After conviction and unsuccessful appeals the defendant sought redress in the federal courts by way of habeas corpus. The United States Court of Appeals sustained the writ on the ground that the defendant's confessions had been coerced and remanded the case to the county court for further proceedings.⁹⁰ The defendant then moved to set aside the indictment on the ground that it was based on insufficient evidence.

The question before the Court was whether the indictment could stand after the confessions upon which it was based were found by a federal court to have been coerced. Relying upon *People v. Donahue*⁹¹ the Court held that any taint a defendant may be able to show with respect to evidence adduced, not apparent in the grand jury minutes, must be offered at the trial for the appraisal and decision of the trial jury. The evidence which was before the grand jury, if unexplained or uncontradicted, would warrant a conviction. Therefore, the Court reasoned, the indictment must stand.

The Court refused to consider developments subsequent to the grand jury's presentment of the indictment, but considered the evidence only in the light of what had been then known to the grand jury. This approach appears rather rigid since the evidence having been conclusively held to be inadmissible,⁹² could no longer warrant a conviction if unexplained or uncontradicted. The *Donahue* case can be easily distinguished. The objection to the indictment in that case was a contention that the defendant had no criminal intent. In the present case the objection was not a mere contention by the defendant but a conclusive holding of a federal court rendering the confession inadmissible as evidence. The purpose of the rule in the *Donahue* case was to leave questions arising from conflicting evidence to be determined at the trial. But here the federal court's holding barred

88. N. Y. CODE CRIM. PROC. §251.

89. 3 N.Y.2d 596, 170 N.Y.S.2d 799 (1958).

90. 222 F.2d 698 (2d Cir. 1955).

91. 309 N.Y. 6, 127 N.E.2d 275 (1955).

92. *People v. Bonino*, 1 N.Y.2d 752, 152 N.Y.S.2d 298 (1956).