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Criminal Law—Grand Jury

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CRIMINAL LAW

Grand Jury

The New York Code of Criminal Procedure[1] provides that a Grand Jury may indict if acting upon evidence that would be sufficient if unexplained or uncontradicted to warrant a conviction.[2] In *People v. Donahue*[3] the Court held that the evidence contained in the Grand Jury minutes, to the effect that defendant's accomplice actually effected an entry into the burglarized premises after all its doors and windows had been locked and that he handed stolen merchandise through the door to the defendant, was sufficient to sustain a charge of Burglary.[4] Defendant's claim that he did not intend to commit a theft would therefore have to wait the decision of a jury.

Attorney-Client Privilege

In a prosecution for robbery in the first degree, defendant after taking the stand in his own behalf was cross-examined about his conversations with his attorney concerning the whereabouts of a girl involved in his defense. The questions were admitted by the trial court over objection, on the ground that the defendant, by taking the stand in his own behalf, had waived the right to avoid these questions. The conviction was reversed and a new trial was granted.[5]

Defendant, accused of being the "get-away" man for a group of men arrested in the course of a robbery, contended that he was at the scene of the crime for the purpose of keeping a date with a girl known only as "Doris." Doris' whereabouts was not known to the prosecution and she had not been called as a witness by the defense prior to the defendant's appearance on the stand. In the course of cross-examination of the defendant, the prosecutor asked if the defendant had told his attorney where Doris could be located, or whether his attorney had ever told him not to contact her. Defense counsel objected, but the objection was overruled.[6] He then solicited the aid of the court in securing Doris Davis, the young lady in question. This action was taken because the defense was, in the words of

1. N. Y. CODE CRIM. PROC. §258.
2. *People v. Galbo,* 218 N. Y. 283, 112 N. E. 1041 (1916); *People v. Toland,* 217 N. Y. 187, 111 N. E. 760 (1916).
3. 309 N. Y. 6, 127 N. E. 2d 725 (1955).
4. N. Y. PENAL LAW §404, subd. 1.
5. *People v. Shapiro,* 308 N. Y. 453, 126 N. E. 2d 559 (1955).
6. The exact wording of the trial court's ruling was: "Let me inform you that when you take the witness stand to testify, you are the same as any other witness. If you didn't want to take the witness stand, nobody could have compelled you to take the stand, but when you take the witness stand, then you answer all questions that are put to you; is that clear to you?"[2] 308 N. Y. at 457, 126 N. E. 2d at 561.