S T A T E O F N E W Y O R K

2240

2009-2010 Regular Sessions

I N S E N A T E

February 13, 2009

Introduced by Sens. VOLKER, O. JOHNSON, MAZIARZ, MORAHAN, RANZENHOFER, SALAND, WINNER, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to enact the "criminal procedure law reform act"; to amend the criminal procedure law, in relation to identification by means of previous identification in absence of present identification, stays of orders dismissing a count or counts of an indictment, defendant's presence at trial, preclusion of evidence and remedies for violation of discovery and preclusion of evidence

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Short title. This act shall be known and may be cited as the "criminal procedure law reform act".

S 2. Subparagraph (iii) of paragraph (a) of subdivision 1 of section 60.25 of the criminal procedure law is amended to read as follows:

(iii) [He is unable at] AT the proceeding [to state, on the basis of present recollection, whether or not the defendant is], HE OR SHE DOES NOT IDENTIFY THE DEFENDANT, IS UNCERTAIN ABOUT HIS OR HER IDENTIFICATION OF THE DEFENDANT OR IDENTIFIES A PERSON OTHER THAN THE DEFENDANT AS the person in question; and

S 3. The opening paragraph and paragraph (a) of subdivision 6 of section 210.20 of the criminal procedure law, as amended by chapter 1 of the laws of 1995, are amended to read as follows:

The effectiveness of an order reducing a count or counts of an indictment or dismissing an indictment and directing the filing of a prosecutor's information or dismissing a count or counts of an indictment [charging murder in the first degree] shall be stayed for thirty days following the entry of such order unless such stay is otherwise waived by the people. On or before the conclusion of such thirty-day period, the people shall exercise one of the following options:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD01514-01-9

(a) Accept the court's order by filing a reduced indictment, by dismissing the indictment and filing a prosecutor's information, or by filing an indictment containing any REMAINING count or counts [remaining after dismissal of the count or counts charging murder in the first degree], as appropriate;

S 4. Subdivision 2 of section 460.40 of the criminal procedure law, as amended by chapter 1 of the laws of 1995, is amended to read as follows:

2. The taking of an appeal by the people to an intermediate appellate court pursuant to subdivision one-a of section 450.20, from an order reducing a count or counts of an indictment or dismissing an indictment and directing the filing of a prosecutor's information, stays the effect of such order. In addition, the taking of an appeal by the people to an intermediate appellate court pursuant to subdivision one of section 450.20, from an order dismissing a count or counts of an indictment [charging murder in the first degree], stays the effect of such order.

S 5. Section 260.20 of the criminal procedure law, as amended by chapter 789 of the laws of 1971, is amended to read as follows:

S 260.20[.] Jury trial; defendant's presence at trial.

1. A defendant must be personally present during the trial of an indictment; provided, however, that a defendant who conducts himself OR HERSELF in so disorderly and disruptive a manner that his OR HER trial cannot be carried on with him OR HER in the courtroom may be removed from the courtroom if, after he OR SHE has been warned by the court that he OR SHE will be removed if he OR SHE continues such conduct, he OR SHE continues to engage in such conduct.

2. NO QUESTION OF LAW IS PRESENTED FOR PURPOSES OF APPEAL WITH RESPECT TO A CLAIMED VIOLATION OF SUBDIVISION ONE OF THIS SECTION IN THE ABSENCE OF A TIMELY PROTEST IN ACCORDANCE WITH SUBDIVISION TWO OF SECTION 470.05 OF THIS CHAPTER; NOR SHALL A CONVICTION BE REVERSED OR OTHER RELIEF GRANTED ON ACCOUNT OF ANY SUCH VIOLATION IN THE ABSENCE OF A SHOWING BY THE DEFENDANT THAT THERE IS A REASONABLE PROBABILITY THAT BUT FOR THE VIOLATION THE RESULT OF THE TRIAL WOULD HAVE BEEN DIFFERENT.

S 6. Subdivision 8 of section 450.20 of the criminal procedure law is amended to read as follows:

8. An order [suppressing evidence,] entered before trial SUPPRESSING EVIDENCE pursuant to section 710.20 AND AN ORDER PRECLUDING EVIDENCE; provided that the people file a statement in the appellate court pursuant to section 450.50.

S 7. Section 450.50 of the criminal procedure law is amended to read as follows:

S 450.50 Appeal by people from order suppressing evidence; filing of statement in appellate court.

1. In taking an appeal, pursuant to subdivision eight of section 450.20, to an intermediate appellate court from an order of a criminal court suppressing OR PRECLUDING evidence, the people must file, in addition to a notice of appeal or, as the case may be, an affidavit of errors, a statement asserting that the deprivation of the use of the evidence ordered suppressed OR PRECLUDED has rendered the sum of the proof available to the people with respect to a criminal charge which has been filed in the court either (a) insufficient as a matter of law, or (b) so weak in its entirety that any reasonable possibility of prosecuting such charge to a conviction has been effectively destroyed.

2. The taking of an appeal by the people, pursuant to subdivision eight of section 450.20, from an order suppressing OR PRECLUDING evidence constitutes a bar to the prosecution of the accusatory instru-

ment involving the evidence ordered suppressed OR PRECLUDED, unless and until such [suppression] order is reversed upon appeal and vacated.

S 8. The criminal procedure law is amended by adding a new section 240.46 to read as follows:

S 240.46 DISCOVERY; REMEDY FOR VIOLATION.

A VIOLATION OF SECTION 240.44 OR 240.45 OF THIS ARTICLE ENTITLES A PARTY TO A CORRECTIVE REMEDY UNDER SUBDIVISION ONE OF SECTION 240.70 OF THIS ARTICLE ONLY UPON A SHOWING THAT THE PARTY'S SUBSTANTIAL RIGHTS WERE AFFECTED, AND THEN ONLY TO THE EXTENT REQUIRED TO CURE THE PREJUDICE TO THOSE RIGHTS. A COURT SHALL NOT SET ASIDE A CONVICTION, REVERSE OR MODIFY A JUDGMENT OR OTHERWISE GRANT RELIEF ON ACCOUNT OF A VIOLATION OF SECTION 240.44 OR 240.45 OF THIS ARTICLE IN THE ABSENCE OF A SHOWING BY THE DEFENDANT THAT THERE IS A REASONABLE PROBABILITY THAT BUT FOR THE VIOLATION THE RESULT OF THE TRIAL OR OTHER PROCEEDING WOULD HAVE BEEN DIFFERENT.

S 9. Subdivision 2 of section 710.30 of the criminal procedure law, as separately amended by chapters 8 and 194 of the laws of 1976, is amended to read as follows:

2. Such notice must be served within fifteen days after arraignment and before trial, and upon such service the defendant must be accorded reasonable opportunity to move before trial, pursuant to subdivision one of section 710.40, to suppress the specified evidence. [For good cause shown, however, the court may permit the people to serve such notice, thereafter and in such case it must accord the defendant reasonable opportunity thereafter to make a suppression motion] IN THE EVENT THE PEOPLE DO NOT GIVE SUCH NOTICE WITHIN FIFTEEN DAYS AFTER ARRAIGNMENT THE COURT MUST, UPON REQUEST OF THE DEFENDANT, GRANT AN ADJOURNMENT TO THE EXTENT REASONABLY NECESSARY TO DEFEND AGAINST THE SPECIFIED EVIDENCE, BUT THE COURT SHALL NOT IN ANY EVENT PRECLUDE THE SPECIFIED EVIDENCE.

S 10. This act shall take effect immediately, and shall apply to all cases or proceedings on or after the date it shall have become a law.