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

835

2009-2010 Regular Sessions

I N S E N A T E

January 18, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to substituting use immunity for transactional immunity

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

Section 1. Subdivision 1 of section 50.10 of the criminal procedure law is amended to read as follows:

1. ["Immunity." A person who has been a witness in a legal proceeding, and who cannot, except as otherwise provided in this subdivision, be convicted of any offense or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he gave evidence therein, possesses "immunity" from any such conviction,] "IMMUNITY", WHEN CONFERRED ON A WITNESS IN A PROCEEDING, MEANS THAT NEITHER THE EVIDENCE GIVEN BY THAT WITNESS NOR ANY EVIDENCE DERIVED DIRECTLY OR INDIRECTLY FROM IT MAY BE USED AGAINST HIM IN THE SAME OR ANY OTHER CRIMINAL PROCEEDING OR IN THE IMPOSITION OF ANY penalty or forfeiture. A person who possesses such immunity may nevertheless be convicted of perjury as a result of having given false testimony in such legal proceeding, and may be convicted of or adjudged in contempt as a result of having contumaciously refused to give evidence therein.

S 2. Subdivision 1 of section 170.30 of the criminal procedure law, the opening paragraph as amended by chapter 661 of the laws of 1972, is amended to read as follows:

1. After arraignment upon an information, a simplified information, a prosecutor's information or a misdemeanor complaint, the local criminal court may, upon motion of the defendant, dismiss such instrument or any count thereof upon the ground that:

(a) It is defective, within the meaning of section 170.35; or

(b) [The defendant has received immunity from prosecution for the offense charged, pursuant to sections 50.20 or 190.40; or

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

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(c)] The prosecution is barred by reason of a previous prosecution, pursuant to section 40.20; or

[(d)] (C) The prosecution is untimely, pursuant to section 30.10; or

[(e)] (D) The defendant has been denied the right to a speedy trial; or

[(f)] (E) There exists some other jurisdictional or legal impediment to conviction of the defendant for the offense charged; or

[(g)] (F) Dismissal is required in furtherance of justice, within the meaning of section 170.40.

S 3. Section 190.40 of the criminal procedure law is amended by adding a new subdivision 3 to read as follows:

3. A WITNESS WHO GIVES EVIDENCE IN A GRAND JURY, AND WHO THEREBY RECEIVES IMMUNITY PURSUANT TO SUBDIVISION TWO OF THIS SECTION, MAY NOT THEREAFTER BE INDICTED BY THAT SAME GRAND JURY FOR ANY OFFENSE, EXCEPT (A) WHERE THAT OFFENSE IS PERJURY OR CONTEMPT, AS TO WHICH PROSECUTION IS PERMITTED BY SECTION 50.10 OF THIS CHAPTER; OR (B) WHERE THE EVIDENCE GIVEN BY THE WITNESS CONSISTS ONLY OF BOOKS, PAPERS, RECORDS OR OTHER PHYSICAL EVIDENCE OF AN ENTERPRISE, AS DEFINED IN SUBDIVISION ONE OF SECTION 175.00 OF THE PENAL LAW, AND ANY IMMUNITY THE WITNESS RECEIVES RESULTS SOLELY FROM HIS POSSESSION OF A PRIVILEGE AGAINST SELF-INCRIMINATION WITH RESPECT TO THE ACT OF PRODUCING SUCH EVIDENCE. NOTHING IN THIS SUBDIVISION SHALL PRECLUDE ANOTHER GRAND JURY PANEL IN THE SAME OR ANY OTHER COUNTY FROM CHARGING THE WITNESS WITH ANY OFFENSE BASED UPON OTHER EVIDENCE WHOSE USE AGAINST THE WITNESS IS NOT BARRED BY THE IMMUNITY HE HAS RECEIVED BY GIVING EVIDENCE BEFORE THE FIRST GRAND JURY.

S 4. Subdivision 1 of section 210.20 of the criminal procedure law is amended to read as follows:

1. After arraignment upon an indictment, the superior court may, upon motion of the defendant, dismiss such indictment or any count thereof upon the ground that:

(a) Such indictment or count is defective, within the meaning of section 210.25; or

(b) The evidence before the grand jury was not legally sufficient to establish the offense charged or any lesser included offense; or

(c) The grand jury proceeding was defective, within the meaning of section 210.35; or

(d) [The defendant has immunity with respect to the offense charged, pursuant to section 50.20 or 190.40; or

(e)] The prosecution is barred by reason of a previous prosecution, pursuant to section 40.20; or

[(f)] (E) The prosecution is untimely, pursuant to section 30.10; or

[(g)] (F) The defendant has been denied the right to a speedy trial; or

[(h)] (G) There exists some other jurisdictional or legal impediment to conviction of the defendant for the offense charged; or

[(i)] (H) Dismissal is required in the interest of justice, pursuant to section 210.40.

S 5. Section 710.20 of the criminal procedure law, as amended by chapter 8 of the laws of 1976, subdivision 2 as amended and subdivision 7 as added by chapter 744 of the laws of 1988, subdivision 3 as amended by chapter 214 of the laws of 1982, subdivision 5 as amended by chapter 629 of the laws of 1998, subdivision 6 as renumbered by chapter 481 of the laws of 1983, is amended to read as follows:

S 710.20 Motion to suppress evidence; in general; grounds for.

Upon motion of a defendant who (a) is aggrieved by unlawful or improper acquisition of evidence and has reasonable cause to believe that such

may be offered against him in a criminal action, or (b) claims that improper identification testimony may be offered against him in a criminal action, OR (C) CLAIMS THAT EVIDENCE AS TO THE USE OF WHICH HE POSSESSES IMMUNITY MAY BE OFFERED AGAINST HIM IN A CRIMINAL ACTION, a court may, under circumstances prescribed in this article, order that such evidence be suppressed or excluded upon the ground that it:

1. Consists of tangible property obtained by means of an unlawful search and seizure under circumstances precluding admissibility thereof in a criminal action against such defendant; or

2. Consists of a record or potential testimony reciting or describing declarations, conversations, or other communications overheard, intercepted, accessed, or recorded by means of eavesdropping, or observations made by means of video surveillance, obtained under circumstances precluding admissibility thereof in a criminal action against such defendant; or

3. Consists of a record or potential testimony reciting or describing a statement of such defendant involuntarily made, within the meaning of section 60.45; or

4. Was obtained as a result of other evidence obtained in a manner described in subdivisions one, two and three; or

5. Consists of a chemical test of the defendant's blood administered in violation of the provisions of subdivision three of section eleven hundred ninety-four of the vehicle and traffic law, subdivision eight of section forty-nine-a of the navigation law, subdivision seven of section 25.24 of the parks, recreation and historic preservation law, or any other applicable law; or

6. Consists of potential testimony regarding an observation of the defendant either at the time or place of the commission of the offense or upon some other occasion relevant to the case, which potential testimony would not be admissible upon the prospective trial of such charge owing to an improperly made previous identification of the defendant by the prospective witness[.]; OR

7. Consists of information obtained by means of a pen register or trap and trace device installed or used in violation of the provisions of article seven hundred five of this chapter; OR

8. CONSISTS OF POTENTIAL EVIDENCE AS TO THE USE OF WHICH THE DEFENDANT POSSESSES IMMUNITY. WHERE THE DEFENDANT ESTABLISHES THAT IMMUNITY HAD BEEN CONFERRED UPON HIM, THE PEOPLE MUST THEN ESTABLISH, BEYOND A REASONABLE DOUBT, THAT NONE OF THE EVIDENCE WHICH THEY PROPOSE TO USE IN THE INSTANT ACTION CONSISTS OF OR WAS DERIVED DIRECTLY OR INDIRECTLY FROM THE EVIDENCE AS TO WHICH SUCH IMMUNITY HAD BEEN CONFERRED.

S 6. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.