

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:

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

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

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

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

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

24 (b) [The defendant has received immunity from prosecution for the
25 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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1 (c)] The prosecution is barred by reason of a previous prosecution,
2 pursuant to section 40.20; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 Upon motion of a defendant who (a) is aggrieved by unlawful or improv-
56 er acquisition of evidence and has reasonable cause to believe that such

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

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

10 2. Consists of a record or potential testimony reciting or describing
11 declarations, conversations, or other communications overheard, inter-
12 cepted, accessed, or recorded by means of eavesdropping, or observations
13 made by means of video surveillance, obtained under circumstances
14 precluding admissibility thereof in a criminal action against such
15 defendant; or

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

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

21 5. Consists of a chemical test of the defendant's blood administered
22 in violation of the provisions of subdivision three of section eleven
23 hundred ninety-four of the vehicle and traffic law, subdivision eight of
24 section forty-nine-a of the navigation law, subdivision seven of section
25 25.24 of the parks, recreation and historic preservation law, or any
26 other applicable law; or

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

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

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

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