

New Discovery Law Applicable to Pending Cases - legal arguments & recent decision

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CPL Article 245 is fully applicable to all cases that are pending on January 1, 2020. The statutory bill text provided for this effective date. New procedural laws apply to all pending cases, unless the Legislature provides otherwise. *See* McKinney's Statutes § 55 ("Generally procedural statutes constitute an exception to the general rule that statutes will not be retroactively construed, and such statutes will be applied to pending cases except where their effect is to create a remedy where none previously existed"). This result also is required by the state and federal constitutional rights to Equal Protection and Due Process. *See* U.S. Const., Amend. IV; N.Y. Const., Art. I, §§6, 11; *see also Matter of Albert B.*, 79 A.D.2d 251 (2d Dept. 1981); *Matter of Steven B.*, 30 A.D.2d 442 (1st Dept. 1968).

It is also part of the Legislative intent with respect to Article 245. For example, when the Legislature last repealed CPL Article 240 and replaced it with a new version of CPL Article 240 in 1979, it specifically directed as part of the legislation that the statute would be effective on January 1, 1980, "except that the court may limit the application of any provision or provisions in actions which commenced prior thereto where such application would not be feasible or would work injustice." *See* L 1979, ch 412, § 4; *see also People v. Copicotto*, 50 N.Y.2d 222, fn. 1 (1980). But CPL Article 245 does not include any such caveat allowing courts to deem individual provisions inapplicable to pending cases due to perceived "feasibility" or "injustice." Thus, it must be deemed that the Legislature intended it to apply to all cases that are pending. *See generally People v. Tychanski*, 78 N.Y.2d 909 (1991)("The failure of the Legislature to include a matter within a particular statute is an indication that its exclusion was intended").

Appellate decisions also recognize that newly enacted statutes that are "procedural and remedial" are applied to pending cases. *See, e.g., People v. Sullivan*, 18 A.D.2d 1066 (1st Dept. 1963)("These provisions being remedial and procedural in nature and there being nothing in or accompanying the enactment indicating that the provisions were intended to be limited in their application to future convictions, they are to be applied to this appeal which was taken after the effective date of the statute"); *People v. Rosen*, 24 A.D.2d 1009 (2d Dept. 1965).

Furthermore, CPL Article 240 was repealed and is no longer in existence. Some of its provisions governed events during an ongoing trial. *See, e.g., Former CPL 240.45(1)&(2), 240.60, 240.75, etc.* Those provisions can no longer be applied

because they no longer exist. They have been replaced by provisions in CPL 245 that apply during an ongoing trial. See, e.g., CPL 245.20(4)(b), 245.60, 245.80, etc. This further reinforces that CPL Article 245 is applicable to pending cases even if the trial has commenced.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: TAP 2

-----X
THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION/ORDER
IND NO.: [REDACTED]

[REDACTED]

Defendants.

-----X
MATTHEW A. SCIARRINO, JR., J.

The defendant is charged with Criminal Possession of a Weapon in the Second Degree and other related charges stemming from an incident occurring on September 3, 2019. The People have moved, pursuant to CPL § 245.70[2], for modification of the timing provisions of CPL § 245.10 as they relate to this case and requested an additional 30 days to complete discovery.

As a preliminary matter, this court finds that the discovery mandates of CPL § 245 are retroactive to cases arraigned before January 1, 2020. The statute does not distinguish between cases arraigned before and after that date. Further, doing so would result in similarly situated individuals being treated differently under the law and thus would violate the Equal Protection Clauses of both the United States Constitution and the New York State Constitution (US Const Amend XIV; NY Const, art I, § 11).

CPL § 245.10 provides that the prosecution shall perform its initial discovery obligations no later than 15 days after the defendant's arraignment. When discovery materials "are exceptionally voluminous or despite diligent, good faith efforts, are otherwise not in the actual possession of the prosecution", the prosecution is entitled to another 30 days without need for motion under CPL § 245.70[2]. However, the People do not allege that the discovery in this case is especially voluminous or not in their actual possession. Instead, the People seek an additional 30 days and allege good cause for delay largely due to the limited ability of their office to comply with the mandates of CPL 245 due to manpower deficiencies, technology upgrades and their dependence on the cooperation of other governmental agencies.

This court will not accept such *pro forma* excuses for delay without reference to the particulars of the referenced case. In any such application pursuant to CPL § 245.70[2], the People should enumerate what discovery is missing, what efforts have been made to make that discovery available, the good cause reason for their failure to obtain the discovery and when they expect to obtain the discovery.

Accordingly, it is hereby:

ORDERED, that the People's motion for a protective order pursuant to CPL § 245.70[2], delaying discovery by an additional 30 days is denied.

Dated: January 6, 2020



Matthew A. Sciarrino, Jr.
Acting Justice, Supreme Court