

CRIMINAL COURT OF THE CITY OF NEW YORK
NEW YORK COUNTY, PART A

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THE PEOPLE OF THE STATE OF NEW YORK, DOCKET NUMBER CR-020803-20NY

-against-

DEAN PLACIDE,

DECISION AND ORDER

Defendant.

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JOHN ZHUO WANG, J.

On November 13, 2020, Defendant (along with an alleged accomplice, George Barnwell) was arraigned on charges of Assault in the Third Degree, Menacing in the Second Degree, Criminal Possession of a Weapon in the Fourth Degree, Menacing in the Third Degree, and Attempted Assault in the Third Degree. Defendant now moves for an order dismissing the charges, alleging that the People failed to be timely ready for trial pursuant to CPL 30.30.¹ The People oppose and D replies.

In determining whether the People met their obligation to be ready for trial under CPL 30.30, the court must calculate the time between the filing of the first accusatory instrument and the People's declaration of readiness, subtracting any statutorily excludable periods of delay and then adding any periods of post-readiness delay that are attributable to the People and ineligible for exclusion (*People v Cortes*, 80 NY2d 201, 208 [1992]).

It is undisputed that, as the most serious charge is an A misdemeanor, the People were required to be ready for trial within 90 days of the commencement of this action (CPLR 30.30[1][b]). Computation for speedy trial purposes commences on the day following the filing of the accusatory instrument (*People v Stiles*, 70 NY2d 765, 767 [1987]).

The relevant facts are largely undisputed. The People served and filed a Certificate of Compliance and Certificate of Readiness on January 28, 2021. The COR did not include the language required by CPL 30.30(5-a). Additionally, the "WITNESS AND RELATED INFORMATION" section of the Addendum to Automatic Discovery Form proffered at that time listed only the complaining witness, Anthony Rodney, in the subsection labelled "Witness Name and Contact (CPL § 245.20(1)(c))." The People specified therein that they were "disclosing the names and adequate contact information of persons, other than law enforcement personnel, known to have evidence or information relevant to an offense with which the defendant is

¹ By letter dated March 29, 2021, counsel also adopted the arguments advanced by Barnwell's counsel in her motion to dismiss.

charged or any potential defense thereto..." Thereafter, on February 17, 2021, Defendant's counsel requested the contact information for Rodney's wife, later identified as Emma Holmes, and their minor children who were present for the incident leading to Defendant's arrest. The People provided Holmes' email address that day and filed a supplemental COC and COR, but did not provide the names of the children present or any other information about them other than that there are two of them.

Defendant's counsel argues that the failure to disclose Holmes' name and contact information was a failure to comply with discovery obligations rendering the People unready and the first COR illusory. Documentary evidence in the possession of the People made it clear that she was a witness to the incident and the People were easily able to ascertain her email address by asking Rodney. Counsel further notes that the January 28th COR lacks the language required by CPL 30.30(5-a) rendering it ineffective. As the February COR was filed on the ninety-sixth day, counsel argues that the charges against his client must be dismissed.

The People argue that they were not in possession of Holmes' name and contact information at the time that the initial COC was filed and that Defendant's counsel could equally as easily reached out to Holmes (as it was clear from the record that Rodney's family was with him at the relevant time). Were that accurate, the 30.30 clock would have stopped running on January 28th, the 76th day. In the alternative, the People argue that the COC and COR were filed in good faith and that they promptly supplemented the discovery when Holmes' name and contact information were requested of them. As such, the People maintain that they should not be charged for the time between January 28th and February 17th, rendering their second COR timely. Finally, the People maintain that the conversion of the accusatory instrument to an information obviates the need for the language required by CPL 30.30(5-a).

"When the prosecution has provided the discovery required by subdivision one of section 245.20 of this article ... it shall serve upon the defendant and file with the court a certificate of compliance" (CPL 245.50[1]). Further, "the prosecution shall not be deemed ready for trial for purposes of section 30.30 of this chapter until it has filed a proper certificate pursuant to subdivision one of this section" (CPL 245.50[3]). However, "[a] court may deem the prosecution ready for trial pursuant to section 30.30 of this chapter where information that might be considered discoverable under this article cannot be disclosed because it has been lost, destroyed, or otherwise unavailable ... despite diligent and good faith efforts, reasonable under the circumstances" (*Id.*). As such, if the People failed to comply with their discovery obligations prior to the January 28th COC, it –and the accompanying COR – would be invalid absent the unavailability of the undisclosed information despite the exercise of reasonable, diligent attempts to secure it.

Pursuant to CPL 245.20[1][c], the People were required to disclose the "names and adequate contact information for all persons ... whom the prosecutor knows to have evidence or

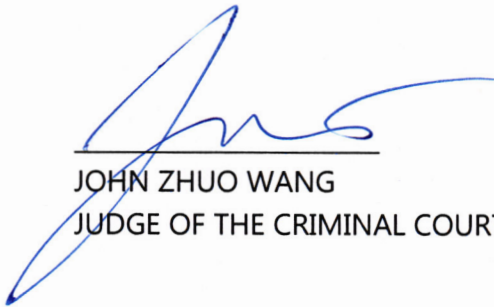
information relevant to any offense charged or to any potential defense thereto" to the extent that such information was in their possession, custody or control or that of anyone under their direction or control. Herein, it is undisputed that the People were aware of the presence of Rodney's wife (whose presence was mentioned in the "aided" report filed by one of the responding officers) and that, when pressed to do so, they easily secured Holmes' information. Even were the People correct that they did not need to seek out Holmes' information, they were certainly required to disclose her existence in the "witness" section of their ADF addendum. As such, the initial COC and COR were invalid and the People were not ready for trial on January 28, 2021.

Even were the Court to reach a contrary conclusion as to the sufficiency of the first COC, the accompanying COR was nonetheless invalid. CPL 30.30[5-a] provides that "a statement of readiness shall not be valid unless the prosecuting attorney certifies that all counts charged in the accusatory instrument meet the requirements of sections 100.15 and 100.40 of this chapter and those counts not meeting the requirements of sections 100.15 and 100.40 of this chapter have been dismissed." The COR filed by the People herein do not include such required language and are invalid, failing to stop the speedy trial clock (see, similarly, *People v Ramirez-Correa*, 2021 NY Slip Op 21040 [Crim Ct, Queens County 2021]; *People v Lopez*, Crim Ct, NY County, Jan. 25, 2021, Chu, J., docket No. CR-001527-19NY; *People v Ross*, Crim Ct, NY County, Aug 11, 2020, Gaffey, J., docket No. CR-025918-19NY). That the accusatory instrument had already been converted is irrelevant – the filing of a supporting deposition does not obviate the need to comply with CPL 30.30(5-a).

As 96 days are chargeable to the People, Defendant's motion to dismiss pursuant to CPL 30.30 is granted and the case is sealed.

This constitutes the decision and order of the Court.

Dated: May 24, 2021
New York, New York



JOHN ZHUO WANG
JUDGE OF THE CRIMINAL COURT