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publication in the New York Reports.

No. 8
The People &c.,
Respondent,
v.
Michelle Rouse,
Appellant.

Peter Theis, for appellant.
Jennifer Marinaccio, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed
and the indictment dismissed.

When a defendant is accused of a felony offense, CPL
30.30 requires the People to be ready for trial within six months
of the commencement of the criminal action (CPL 30.30 [1] [a]).

CPL 30.30(4)(f) excludes from the readiness time "the period during which the defendant is without counsel through no fault of the court; except when the defendant is proceeding as his own attorney with the permission of the court."

The People contend that the 30-day time period from October 5, 2004 to November 4, 2004 was properly chargeable to defendant because his co-defendant was "without counsel." We disagree. Substitute counsel was appointed to co-defendant at the conclusion of the October 5, 2004 calendar call, and thus co-defendant had counsel during the adjournment period requested by the People. Nor does CPL 30.30 (4) (f) require the court to determine whether counsel was sufficiently familiar with the case in order for a defendant to be considered with legal representation for purposes of the statute.

Accordingly, because the People did not satisfy their statutory readiness obligation, the motion to dismiss the indictment pursuant to CPL 30.30 should have been granted.

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Order reversed and indictment dismissed, in a memorandum. Acting Chief Judge Ciparick and Judges Graffeo, Read, Smith, Pigott and Jones concur.

Decided February 11, 2009