

People v Francis

2018 NY Slip Op 34088(U)

May 15, 2018

Supreme Court, New York County

Docket Number: IND.# 4044/12

Judge: Melissa C. Jackson

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 62

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THE PEOPLE OF THE STATE OF NEW YORK

DECISION AND ORDER
IND. # 4044/12

- against -

GORDON FRANCIS,

Defendant.

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Melissa C. Jackson, J.:

In this cold-case homicide, the defendant now moves for dismissal of the action based upon violations of his right to a speedy trial. The People oppose the motion.

Procedural History

In September 2012, the defendant, Gordon Francis, was arraigned on the indictment charging his with murder. A suppression hearing was held from March 27 to April 4, 2014, after which this Court denied suppression of any evidence. In October 2014, jury selection commenced but was not completed. During the process, the People made an application to introduce newly discovered incriminating evidence for which the defendant had not been given proper notice. A mistrial was declared. Over the following three and one half years, the Court adjourned this matter multiple times for DNA testing at the request of both parties, extensive motion practice relating to additional suppression and preclusion issues and for consent adjournments involving the trial schedules of both parties. On March 22, 2018, the case was scheduled for defense counsel to appear and to select a trial date. The Court set a firm trial date of May 15, 2018. On April 5,

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2018, however, the defendant filed the instant motion to dismiss the indictment alleging statutory and constitutional violations of his right to a speedy trial. For the following reasons, the defendant's motion is denied in its entirety.

CPL Article 30.30

CPL Article 30.30 does not apply to murder prosecutions. CPL 30.30 (3)(a). Despite the inapplicability of this statutory relief, the defendant engages in a chronological listing of each adjournment since arraignment, calculating chargeable time with neither minutes nor any other documentation to support his computations. This Court has presided over this case since June 2014, and has extensive bench notes dating from that time, as well as the bench notes of the former presiding justice. Based upon a careful review of the Court's detailed notes, and without the benefit of any supporting documentation to the contrary, the Court can comfortably reach a conservative estimate of 232 days to be charged against the People over the course of more than five years. In light of the complexity of this case, the requested adjournments and other delays precipitated by both sides, this is not an exorbitant amount of time charged to the People.

Constitutional Analysis

A defendant's right to a speedy trial is guaranteed by both the United States Constitution (6th and 14th Amendments) and the New York State statute (CPL §§ 30.20 and 30.30). As discussed, statutory speedy trial concerns do not, however, apply to homicide prosecutions. To determine whether a Constitutional violation has occurred, the New York State Court of Appeals has identified five factors for the Court to consider in determining whether or not there has been a

violation of a defendant's right to a prompt prosecution. Those factors are: (1) the extent of the delay; (2) the reason for the delay; (3) the nature of the underlying charge; (4) whether or not there has been an extended period of pretrial incarceration; (5) whether or not there is any indication the defense has been impaired by reason of the delay. See, *People v. Taranovich*, 37 N.Y.2d 442, 445 (1975). The Court cautioned that, "[N]o one factor or combination of the factors ... is necessarily decisive or determinative of the speedy trial claim, but rather the particular case must be considered in light of all the factors as they apply to it." *Id.*, at 445. This Court makes the following findings in weighing the five factors.

Factor 1: The extent of delay. The mere quantity of time, five years, supports a finding in the defendant's favor. However, a lengthy period of time does not, by itself, support dismissal without weighing the additional factors listed by the Court of Appeals. It does, however, cause the Court to more carefully balance those remaining factors.

Factor 2: The reasons for the delay. As indicated in the statutory analysis above, the extensive delay was caused by multiple adjournments to accommodate defense counsel's busy trial schedule, for reassignment of prosecutors, for additional DNA testing to be performed at the request of both parties, for discovery and assessment relating to the belated yet inadvertent production of numerous telephone calls from the Department of Corrections, and, finally, for extensive supplemental motion practice. In particular, given the circumstances of this cold case homicide where the entire proof resides in DNA analysis, the extensive forensic testing which proceeded over the course of several years was necessary both to ensure the correct person had

been charged with the crime and to determine if any exculpatory DNA evidence existed. On each adjournment, the People informed the Court of their continued efforts to track and expedite the critical DNA testing and the defendant, albeit reluctantly, consented to the additional time.

Factor 3: The nature of the underlying charge. The defendant is charged with Murder in the Second Degree, inarguably a very serious offense. *People v. Decker*, 13 N.Y.3d 12 (2009). Such a charge requires the People to proceed cautiously and diligently since the consequences of a conviction are so severe. *See, People v. Wiggins*, 31 N.Y.3d 1 (2018); *People v. Taranovich*, 37 N.Y.2d at 446.

Factor 4: Pretrial incarceration. This factor clearly weighs in favor of the defendant. Although the People were ready for trial in October 2014, a mistrial was declared. Hence, the defendant incurred more than three and a half years' incarceration since his first trial and more than five years' incarceration since his arraignment on the indictment. This is an exceedingly long delay but considering all the relevant factors, dismissal is nonetheless not warranted.

Factor 5: Impairment of the defense by reason of the delay. The defendant concedes that the lengthy delay has not "resulted in any specific impairment to the defense" but asserts that a demonstration of specific prejudice is not necessary when a lengthy delay is proven. It is evident that although the *Taranovich* Court insists that its holding does not depart from the traditional view that where "... in the circumstances delay is great enough there need be neither proof nor fact of prejudice to the defendant" (*People v. Taranovich*, 37 N.Y.2d at 447), the Court also indicated that

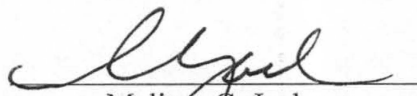
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“... a questionable period of delay may or may not be unreasonable depending upon whether or not the likelihood of the defendant’s acquittal has been effected thereby.” (*Id.*, at 446-447.) The Court then proceeded to list examples such as lost evidence, lost witnesses or failed memories. *Id.* In weighing this factor, this Court notes that much of the extensive delay in the case at bar was incurred by the defendant filing additional suppression and preclusion motions as well as a defense request for forensic testing – all reasonable and necessary steps to exclude inculpatory evidence and develop exculpatory evidence. It is apparent that these delays were required to enhance the defendant’s case, not to hinder it.

In sum, employing a Constitutional analysis of the facts and circumstances of the case at bar, this Court does not find a Constitutional violation of the defendant’s right to a speedy trial. Accordingly, dismissal of the indictment is not warranted. The defendant’s motion is, therefore, denied in its entirety.

The foregoing is the decision and order of the Court.

Dated: New York, New York
May 15, 2018


Melissa C. Jackson
Acting Justice of the Supreme Court