

People v Marmolejos
2019 NY Slip Op 33888(U)
November 22, 2019
City Court of White Plains
Docket Number: 1TI09MVXC2
Judge: Eric P. Press
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Present: HON. ERIC PRESS
CITY COURT JUDGE

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

DECISION ON MOTION

DOCKET NO(S): 1T109MVXC2
1T109MVXH9
MOTION DATE: 11/14/19

-against-

KELVIN MARMOLEJOS,

Defendant.

-----X

The following papers numbered 1 to 6 read on this motion by defendant.

- Notice of Motion 1
- Affirmation of Zev Goldstein 2
- Exhibits A - C 3
- Affirmation of Patrick Macarchuk 4
- Memorandum of Law 5
- Reply Affirmation of Zev Goldstein 6
- Filed Papers: All papers on file.

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Upon the foregoing papers, the Court finds and decides as follows:

That branch of the motion to dismiss pursuant to CPL § 170.40 is denied.

It is well established that the discretionary power of a court to dismiss an accusatory instrument in the interests of justice is to be exercised sparingly and only in that rare and unusual case when it cries out for fundamental justice beyond confines of conventional considerations (*People v. Bebee*, 175 A.D.2d 250 [2nd Dept. 1991]; *People v. Harmon*, 181 A.D.2d 34 [1st Dept. 1992]). Moreover, while the granting of relief pursuant to CPL §170.40 is committed to the sound discretion of the trial court, that discretion is not absolute (*People v. Ortiz*, 152 A.D.2d 755 [2nd Dept. 1989]). In rendering its determination, the court must engage in a “sensitive balancing” of the interests of the individual and the People (*People v. Rickett*, 58 N.Y.2d 122 [1983]; *People v. Clayton*, 41 A.D.2d 204 [2nd Dept. 1973]).

Without commenting upon each of the relevant factors enumerated in CPL § 170.40, the Court finds no compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon the accusatory instrument(s) would constitute or result in injustice (*see People v. Macy*, 100 A.D.2d 557 [2nd Dept. 1984][a trial court may deny a motion to dismiss an accusatory instrument in the interest of justice without a detailed enumeration of the various statutory factors and without a hearing]; *see also People v. Shedrick*, 104 A.D.2d 263 [4th Dept. 1984]).¹

That branch of the motion to dismiss pursuant to CPL § 150.40 is denied.

The unauthorized filing of the superseding information(s) was a legal nullity (*see People v. Donnelly*, 30 Misc.3d 136[A][App. Term 9 & 10 Jud. Dists. 2010]), thus having no effect upon the original simplified traffic information(s). As such, the prosecution was under no duty to re-serve the original simplified traffic information(s).

That branch of the motion pursuant to CPL § 240.70 is denied in its entirety.

With respect to the simplified traffic information charging a violation of VTL § 1129 (A), defendant is not entitled to discovery (*see People v. Scott*, 10 Misc.3d 137[A][App. Term 9 & 10 Jud. Dists. 2005][a defendant is not entitled to discovery when prosecuted by a simplified traffic information charging a traffic infraction]; *People v. Palu*, 22 Misc.3d 139[A][App. Term 9 & 10 Jud. Dists. 2009]).

Next, in view of the District Attorney's policy of open file discovery, the balance of defendant's motion for court-ordered discovery is denied (*see People v. Clark*, 115 AD2d 860 [3d Dept. 1985][the district attorney's policy of open file discovery obviates the need for a discovery motion]; *People v. Hackett*, 2 Misc.3d 1010[A][City Ct. Mt. Vernon 2004][motion for discovery denied in view of district attorney's policy of open file discovery]; *People v. Davis*, 184 Misc.2d 680 [Sup. Ct. Kings Co. 2000][where open file discovery is provided, court need not entertain motion for discovery]; *People v. Falkoff*, NYLJ, 6/9/06, at 30, col. 1 [Sup. Ct. Kings Co.][open file discovery conducted in lieu of motions]). To the extent that defense counsel requests a court order directing the District Attorney to disclose material which is beyond the requirements of Article 240 of the Criminal Procedure Law, same is denied.

¹ The cases relied upon by defendant are factually/procedurally dissimilar.

In the absence of opposition, that branch of the motion pursuant CPL § 340.50 (2) for an order waiving defendant's appearance at trial is granted. ²

THIS DECISION CONSTITUTES THE ORDER OF THE COURT

Dated: White Plains, New York
November 22, 2019



HON. ERIC PRESS
CITY COURT JUDGE

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² To the extent defendant has raised new arguments in the reply papers, same have not been considered.