People v Quinlan
2021 NY Slip Op 30322(U)
January 29, 2021
Criminal Court, Bronx County
Docket Number: 2019BX030013
Judge: Erik L. Gray

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX: PART AP5
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THE PEOPLE OF THE STATE OF NEW YORK, Docket No. 2019BX030013

-against-

DECISION AND ORDER

C QUINLAN,

Defendant.
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ERIK L. GRAY, J.

Law Firms and Attorneys:
The Bronx Defenders (Eli Northrup, Esq.) for Defendant
Bronx County District Attorney's Office (Sarah Silverhardt, Esq.) for the People

Recitation of Papers Considered:
Defendant's Omnibus Motion
The People's Opposition to Defendant's Omnibus Motion
Defendant's Reply to People's Opposition to Omnibus Motion
The People's Sur-Reply to Defendant's Omnibus Motion (with leave of Court)
Defendant's Reply to People's Surreply to Defense's Omnibus Motion (with leave of Court)

INTRODUCTION

Defendant moves, by motion filed on March 16, 2020, for an order, among other things, dismissing the information on speedy-trial ground pursuant to CPL 30.30 [1] [b]. Defendant was arrested on November 18, 2019, and subsequently charged in a misdemeanor complaint with Aggravated Driving While Intoxicated, an unclassified misdemeanor under Vehicle and Traffic Law § 1192 [2-a] [a], Driving While Intoxicated (Per Se), an unclassified misdemeanor under Vehicle and Traffic Law § 1192 [2], Driving While Intoxicated (Common Law), an unclassified misdemeanor under Vehicle and Traffic Law § 1192 [3], and Driving While Ability Impaired, a traffic infraction under Vehicle and Traffic Law § 1192 [1]. Upon reviewing the foregoing papers, the court file, and the court minutes from February 19, 2020, and after due deliberation, that part

of Defendant's motion to dismiss the information on speedy-trial ground is granted and the remainder of Defendant's motion is denied as moot.

LEGAL STANDARDS

Where, as here, the top count charged in the information, Aggravated Driving While Intoxicated, is an unclassified misdemeanor punishable by a sentence of imprisonment of more than three months, (*see* Vehicle and Traffic Law § 1193 [1] [b]), the People are required to be ready for trial within 90 days of the commencement of the criminal action, less any excludable time (*see* CPL 30.30 [1] [b]; [4]). In addition, "on January 1, 2020, an amended CPL 30.30 statute went into effect . . . and explicitly brought traffic infractions within its ambit" (*People v. Galindo*, 2020 NY Slip Op 20147, *2 [App Term, 2d Dept, 11th & 13th Jud Dists 2020]; *see also id.* 30.30 [1] [e]). Thus, "in a criminal case, such as this, where a defendant is charged with both a misdemeanor for which more than three months' incarceration is possible and a traffic infraction, the People are provided with a 90-day 'clock' within which they must be ready for trial" (*Galindo*, 2020 NY Slip Op 20147, *2-3).

A criminal action is commenced by the filing of an accusatory instrument against a defendant (*see* CPL 1.20 [17]). It is settled law that the date on which an accusatory instrument is filed is excluded from a 30.30 computation (*see People v. Stiles*, 70 NY2d 765, 767 [1987]). In the absence of a waiver, a defendant has the right to be prosecuted on an information, (*see* CPL 170.65 [1]), and the People, as of January 1, 2020, cannot be ready for trial unless all counts in the misdemeanor complaint have been converted to an information (*see id.* 30.30 [5-a]). An information is facially sufficient when, among other things, "non-hearsay allegations of the factual part . . . and/or of any supporting depositions establish, if true, every element of the offense charged and the defendant's commission thereof" (*id.* 100.40 [1] [c]; *see also* 100.40 [1] [a]-[b]; 100.15).

Historically, the People's trial readiness encompasses two necessary elements (*see People v. Kendzia*, 64 NY2d 331, 337 [1985]). First, the People must communicate their readiness, either by making a statement of readiness in open court or by serving on defendant and filing with the court a written notice of readiness (*see id.*). Second, the People must in fact be ready for trial at the time that they communicate readiness, as "[t]he statute contemplates an indication of present readiness, not a prediction or expectation of future readiness" *(id.).* Declaring "readiness at a time when the People are not actually ready is illusory and insufficient to stop the running of the speedy trial clock" (*People v. England*, 84 NY2d 1, 4 [1994]). Thus, "[t]he inquiry is whether the People have done all that is required of them to bring the case to a point where it may be tried" (*id.*). As the Court of Appeals has cautioned, "the statement 'ready for trial' contemplates more than merely mouthing those words" (*id.*; *see also People v. Brown*, 28 NY3d 392, 404 [2016]).

On January 1, 2020, substantial changes to New York's criminal justice system took effect. Chief among them is the requirement that the People cannot be ready for trial unless they have first served on defendant and filed with the court a certificate of compliance certifying that they have complied with their discovery obligations pursuant to CPL 245.20 (*see* CPL 30.30 [5]). CPL 245.50 [3] states, in relevant part, that "[t]he prosecution shall not be deemed ready for trial for purposes of section 30.30 . . . until it has filed a proper certificate pursuant to subdivision one of this section." Once the People communicate their readiness for trial, the Court is now required to "make inquiry on the record as to their actual readiness," (*id.* 30.30 [5]), and if the Court determines that the People are not actually ready for trial, the People's "statement or notice of readiness shall not be valid for [speedy-trial purposes]" (*id.*).

On a motion to dismiss on speedy-trial ground, "the defendant bears the initial burden of demonstrating that the People were not ready within 90 days" (*People v. Sibblies*, 22 NY3d 1174,

1177 [2014]). "The burden then shifts to the People to establish that a period should be excluded in computing the time within which they were required to be prepared for trial" *(id.)*. When a delay is not attributable solely to the People, time may be excluded for numerous reasons, including "a reasonable period of delay resulting from . . . pre-trial motions" (CPL 30.30 [4]; *see also People v. Dean*, 45 NY2d 651, 656-657 [1978]).

COMPUTATION OF TIME

November 19, 2019 to January 6, 2020

In this action, the People filed an accusatory instrument, specifically, a misdemeanor complaint, with the Court on November 19, 2019, and Defendant was arraigned on the complaint on the same date. At Defendant's arraignment, the Court determined that the People needed a supporting deposition to convert the misdemeanor complaint to an information, since the complaint clearly contained hearsay allegations, and adjourned the action to January 7, 2020, for conversion. The People did not file a supporting deposition off calendar prior to the January 7, 2020, court date. Thus, as the misdemeanor complaint was not converted to an information during the time period of November 20, 2019 (the date that the speedy-trial clock began), to January 6, 2020, this entire period, a total of 48 days, is chargeable to the People.

Days Charged to the People During This Time Period:	48
Total Days Charged to the People:	48

January 7, 2020 to February 18, 2020

At the January 7, 2020, court appearance, the Court determined that the People still needed a supporting deposition to convert the misdemeanor complaint to an information and adjourned the action to February 19, 2020, for conversion. On January 22, 2020, the People filed a superseding information and supporting deposition off calendar. The speedy-trial clock, however, continued to run since the People did not file a certificate of compliance and notice of readiness

off calendar until February 10, 2020. Thus, as the misdemeanor complaint was not converted to an information during the time period of January 7, 2020, to February 9, 2020, this period, a total of 34 days, is chargeable to the People.

With regard to the time period of January 1, 2020, to January 15, 2020, the People argue that this 15-day period[1] is excludable from a 30.30 computation as a reasonable amount of time to comply with their initial, automatic discovery obligations under CPL 245.10 [1] [a]. As previously stated, the People did not communicate readiness for trial prior to January 15, 2020, and the People could not have because they were still unconverted. While lower courts have split on the issue of whether the time period of January 1, 2020, when the criminal justice revisions took effect, to January 15, 2020, is chargeable to the People, this Court agrees with other lower courts that have held that this period is indeed chargeable to the People, (*see People v. Sherrills*, Crim Ct, Bronx County, Oct. 16, 2020, Stone, J., docket No. 2018BX034586 at 6; *People v. Rambally*, 68 Misc 3d 1212[A], 2020 NY Slip Op 50921[U], *5 [Nassau Dist Ct 2020]; *People v. Lobato*, 66 Misc 3d 1230[A], 2020 NY Slip Op 50322[U], *4 [Crim Ct, Kings County 2020]), and hereby rejects the People's argument. Neither CPL 30.30 nor Article 245 provide a grace period that tolls the speedy-trial clock for 15 days for the People to comply with their initial, automatic discovery obligations. Furthermore, this Court is convinced that if it was the intention of the legislature to do so, it would have. Clearly, the People's trial readiness is now directly tied to meeting their discovery obligations, "such that discovery compliance is a condition precedent to a valid announcement of readiness for trial" (*Lobato*, 2020 NY Slip Op 50322[U], *3).

Whether the time period of February 10, 2020, to February 18, 2020, is chargeable to the People hinges on whether the People filed a valid certificate of compliance on February 10, 2020.

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[1] Pursuant to CPL 245.10 [1] [a], effective January 1, 2020. Although the statute was amended effective May 3, 2020, the amendments are inapplicable to the 30.30 computation in this action.

The parties do not dispute that the following items of discovery, which the Court holds "relate to the subject matter of the case," (CPL 245.20 [1]), had not been disclosed prior to the People filing their certificate of compliance: "the arrest log; the patrol/roll call log and Memobook of Police Officer Candela" (People's Cert. of Comp. at 3). While the patrol/roll call log and Officer Candela's memo book were *subsequently* disclosed (the People determined that the arrest log did not exist), the Court notes that they were not even done so with an accompanying supplemental certificate of compliance pursuant to CPL 245.60, although such a supplemental certificate would not have, as will be seen, remedied the People's belated disclosure.

CPL 245 [50] [1] states, in relevant part, that the People's "certificate of compliance shall state that, after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery, the prosecutor has disclosed and made available all known material and information subject to discovery." Hence, "[c]ompliance requires disclosing 'all known' materials, as well as affirming that due diligence has been exercised to ascertain the existence of any other materials" (*People v. Adrovic*, 69 Misc 3d 563, 572 [Crim Ct, Kings County 2020]; *see also* CPL 245 [50] [1]). Article 245 envisions two situations in which nondisclosure may arise: (1) when the "prosecution . . . subsequently learns of additional material or information which it would have been under a duty to disclose . . . had it known of it at the time of a previous discovery obligation or discovery order," (*id.* 245.60), and (2) "when, despite the People's diligent and reasonable inquiries to obtain material subject to required disclosure, they . . . identify some particular items they have not yet acquired" (*Adrovic*, 69 Misc 3d at 572). Both of these scenarios require the People to affirmatively take specific action. In the former, the People are required to "expeditiously notify the other party and disclose the additional material and information," (CPL 245.60), as well as serve and file a supplemental certificate of compliance

pursuant to CPL 245.50 [1]. In the latter scenario, the People are required to move, upon good cause shown, for an extension of time to comply with their discovery obligations (*id.* 245.70 [2]). However, "[w]hat the People may not do is file a certificate of compliance in which they claim to have exercised due diligence and turned over 'all known material and information,' while at the same time not actually turning over all known material and information" (*Adrovic*, 69 Misc 3d at 574) (citation omitted).

Moreover, CPL 245.20 [2] states, in pertinent part, that "[f]or purposes of subdivision one of this section all items and information related to the prosecution of a charge in the possession of any New York state or local police or law enforcement agency shall be deemed to be in the possession of the prosecution."[2] This language is clear and unambiguous: regardless of whether the People have *actual* possession of discoverable material and information from law enforcement, such material and information is statutorily *deemed* to be in the People's possession. The importance of this legislative mandate is belied by CPL 245.55 [1], which charges the People with "ensur[ing] that a flow of information is maintained between [them and] the police and other investigative personnel" (CPL 245.55 [1]). In addition, CPL 245.55 [2] requires that "each New York state and local law enforcement agency shall make available to the prosecution a complete copy of its complete records and files related to the investigation of the case or the prosecution of the defendant for compliance with [Article 245]." It was, therefore, improper for the People to file a certificate of compliance while acknowledging that some discoverable law enforcement materials and information had not been disclosed because they were not in their "actual possession" (People's Cert. of Comp. at 3). And the People cannot cure this incongruity by arguing, notwithstanding the truth of such argument, that they "made diligent efforts to obtain outstanding

[2] While CPL 245.20 was amended effective May 3, 2020, subdivision [2] remained unchanged.

items" (People's Opp. To Def.'s Omni. Mot. at 13). It follows, then, that the People's certificate of compliance filed on February 10, 2020, was invalid and, therefore, did not stop the speedy-trial clock. Moreover, the provisions of CPL 245.50 [1] do not change this result. CPL 245.50 [1] states, in relevant part, that "[n]o adverse consequence to the prosecution or the prosecutor shall result from the filing of a certificate of compliance in good faith; but, the court may grant a remedy or sanction for a discovery violation as provided in section 245.80 of this article." However, this Court holds that deeming the People's certificate of compliance to be invalid, even one filed in good faith, and charging the People with any related 30.30 time is not an "adverse consequence" as contemplated by CPL 245.80, as the statute clearly applies only when discoverable material and information is "disclosed belatedly" and the party entitled to the disclosure "shows that it was prejudiced" (CPL 245.80 [1]).

Thus, as the People's certificate of compliance was not and could not have been valid when it was filed on February 10, 2020, the time period of February 10, 2020, to February 18, 2020, a total of nine days, is chargeable to the People. As previously stated, the time period of January 7, 2020, to February 9, 2020, a total of 34 days, is chargeable to the People. Thus, a total of 43 days for the entire time period of January 7, 2020, to February 18, 2020, is chargeable to the People.

Days Charged to the People During This Time Period:	43
Total Days Charged to the People:	91

<u>February 19, 2020 to April 6, 2020</u>

At the February 19, 2020, court appearance, defense counsel requested a motion schedule that resulted in the instant motion being filed off calendar. The Court granted defense counsel's request, set a motion schedule, and adjourned the action to April 7, 2020, for a decision. Since the time period during which pretrial motions are pending are excludable from a 30.30 computation, (*see id.* 30.30 [4] [a]; *Dean*, 45 NY2d at 656-657), the entire period of February 19, 2020, to April

6, 2020, is excludable. The Court takes judicial notice that as a result of the COVID-19 pandemic, 30.30 was suspended on March 20, 2020, by Executive Order 202.8 issued by the Governor of New York.

Days Charged to the People During This Time Period: 0
Total Days Charged to the People: 91

April 7, 2020 to October 6, 2020

As a result of the COVID-19 pandemic, the action was administratively adjourned from April 7, 2020, to October 7, 2020. Since the time period during which pretrial motions are pending are excludable from a 30.30 computation, (*see id.* 30.30 [4] [a]; *Dean*, 45 NY2d at 656-657), the entire period of April 7, 2020, to October 6, 2020, is excludable. While the Court takes judicial notice that 30.30 was largely reinstated on October 4, 2020, by Executive Order 202.67 issued by the Governor of New York, Defendant's motion was still pending on that date and, therefore, the Governor's COVID-19 pandemic executive orders as they relate to 30.30 do not affect the time computation in this action.

Days Charged to the People During This Time Period: 0
Total Days Charged to the People: 91

October 7, 2020 to December 8, 2020

At the October 7, 2020, court appearance, the Court granted the People's request for leave to file a sur reply to the People's opposition to Defendant's motion, as well as granted Defendant's request for leave to file a reply to the People's sur reply. Since the time period during which pretrial motions are pending are excludable from a 30.30 computation, (*see id.* 30.30 [4] [a]; *Dean*, 45 NY2d at 656-657), the entire period of October 7, 2020, to December 8, 2020, is excludable.

Days Charged to the People During This Time Period: 0
Total Days Charged to the People: 91

December 9, 2020 to January 10, 2021

A court appearance was not held on December 9, 2020, as the Court administratively adjourned the action to January 11, 2021, in order to afford it additional time to render a decision on Defendant's motion. Since the time period during which pretrial motions are pending are excludable from a 30.30 computation, (*see* CPL 30.30 [4] [a]; *Dean*, 45 NY2d at 656-657), the entire period of December 9, 2020, to January 11, 2021, is excludable.

Days Charged to the People During This Time Period: 0
Total Days Charged to the People: 91

January 11, 2021 to January 29, 2021

At the court appearance on January 11, 2021, the Court adjourned the action to January 29, 2021, in order to afford it additional time to render a decision on Defendant's motion. Since the time period during which pretrial motions are pending are excludable from a 30.30 computation, (*see id.* 30.30 [4] [a]; *Dean*, 45 NY2d at 656-657), the entire period of January 11, 2021, to January 29, 2021, is excludable.

Days Charged to the People During This Time Period: 0
Total Days Charged to the People: 91

CONCLUSION

Defendant, as the movant on this speedy-trial motion pursuant to CPL 30.30, has met his initial burden of demonstrating that the People were not ready for trial within 90 days of the commencement of the criminal action. Specifically, Defendant has shown that 91 days are chargeable to the People (not, as Defendant argues, 92 days, since he appears to have counted January 7, 2020, twice). The burden then shifted to the People to establish that certain time should be excluded from the 30.30 computation. This the People failed to do, and, therefore, that part of

Defendant's motion to dismiss the information on speedy-trial ground is granted and the remainder of Defendant's motion is denied as moot.

This constitutes the Decision and Order of the Court.

Dated: January 29, 2021
Bronx, New York

Erik L. Gray, JCC