SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION AND ORDER
MOTION TO DISMISS
CPL 30.30
Indictment No. 22-9105
Index No. DA 206-19

MICHAEL SNYDER,
Defendant.

APPEARANCES:

OF COUNSEL:

FOR THE PEOPLE:

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THOMAS A. BRESLIN, J.S.C.

On April 26, 2019, defendant, an Albany County Corrections Officer, was arraigned on an indictment charging him with three counts of rape in the third degree, class E felonies (Penal Law § 130.25 [1]), two counts of criminal sexual act in the third degree, class E felonies (Penal Law § 130.40 [1]) and eight counts of sexual abuse in the second degree, class A misdemeanors (Penal Law § 130.60 [1]).[1]

On the morning of January 6, 2020, defendant's second scheduled trial date, the prosecutor informed the Court that she was unable to file a certificate of compliance and was not ready for trial (see CPL 245.50; 30.30 [5]). Also, that morning, by order to

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[1] Defendant was initially arraigned on felony complaints on March 26, 2019.

show cause, defendant moved to dismiss the remaining five (5) counts of the indictment on the ground that his right to a speedy trial had been violated.[2] By the signed order to show cause, the People were directed to file a response to defendant's CPL 30.30 motion on January 7, 2020 by 9:00 A.M. The People did not meet the court-ordered filing deadline. When informed of this fact by chamber's staff at approximately 11:23 A.M., the prosecutor promptly requested an adjournment until the end of the day to file her response. By letter dated January 7, 2020, defendant opposed the People's requested adjournment and asked the Court to enter an order dismissing the indictment based on the People's failure to submit a timely response to his CPL 30.30 motion. Despite the Court's denial of the People's adjournment request, in the late afternoon of January 7, 2020, the prosecutor filed her response to the motion with the court clerk. The clerk was directed by the Court to inform the prosecutor that the late filing would not be accepted.

As defendant sought a default dismissal based on the People's failure to controvert his allegations within the court's filing deadline, by letter dated January 9, 2020, the Court requested factual and legal argument from the parties addressing whether summary default dismissal was warranted, considering defendant's repeated claims of the prosecutor's laxity and general dilatory conduct through the course of the litigation (see People v Lora, 177 AD3d 518 [2019], lv denied 34 NY3d 1164 [2020]). The Court set a singular deadline of January 15, 2020 for memoranda of law which were timely filed by the parties. Effective January 15, 2020, this matter was assigned to the undersigned Hon. Thomas A. Breslin, JSC (see 22 NYCRR 200.14).

On January 27, 2020, twelve days after the case reassignment, without seeking the court's permission, the People filed a 31-page supplemental affirmation (including 99 pages of exhibits). By letter dated February 18, 2020, the Court informed the parties that it would reach the merits of defendant's CPL 30.30 motion and provided defendant the opportunity to file a reply to the People's affirmation in opposition.

CPL 30.30

Criminal Procedure Law 30.30(1)(a) requires the People to be ready for trial within six months of the filing of an accusatory instrument charging at least one felony (see People v Brown, 28 NY3d 392, 403 [2016]). Prosecutorial readiness comprises two elements: first, there must be a properly recorded statement of readiness and, second, the People must in fact be ready to proceed to trial at the time they declare readiness (id.; see People v Kendzia, 64 NY2d 331, 337 [1985]). "'[CPL 30.30] contemplates an indication of present readiness, not a prediction or expectation of future readiness'" (People v Brown, supra at 404, quoting People v Kendzia, supra at 337) and the relevant 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" (People v Miller, 113 AD3d 885, 886–87 [3 Dept 2014].

[2] By decision and order issued on December 20, 2019, this Court granted defendant's motion to dismiss counts 6-13.

quoting People v Van Hoesen, 12 AD3d 5, 6 [3 Dept 2004], lv denied 4 NY3d 804 [2005]).

A statement of trial readiness made "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]). The People's statement of readiness is presumed valid, and where, as here, a defendant claims an illusory declaration, he has the burden of demonstrating that the People were not actually ready for trial at the time of their declaration (see People v Rice, 172 AD3d 1616, 1618 [3 Dept 2019]; People v Brown, supra at 407).

Here, defendant argues what the procedural history of this case amply demonstrates -- that the People's announcement of trial readiness at defendant's April 26, 2019 arraignment on the indictment "did not reflect an actual present state of readiness" and was thus, illusory (People v McCarthy, 146 AD3d 983, 984 [2 Dept 2017]; see People v Brown, supra at 406). The People have effectively conceded this point by failing to acknowledge, let alone refute, defendant's contention that their initial declaration of trial readiness was illusory (see People's Aff in Opp at Para ¶ 5 [factually omitting the People's initial declaration of readiness from the procedural history of the case]). Rather than defending the validity of their April 26, 2019 trial readiness declaration, or conceding it was illusory and establishing a valid reason for unreadiness at that time (see People v Brown, supra), the People choose to factually ignore their April 26, 2019 declaration of readiness and presently claim that defendant's CPL 30.30 motion should be denied "because [they] were ready for trial on December 9, 2019, and arguably became unready on January 1, 2020...".[3]

An analysis of whether the People were actually ready to proceed to trial on December 9, 2019, as they claim, is futile where, as here, the People have provided no proof of their contemporaneous communication of trial readiness on that date (see People v Clark, 152 AD3d 618, 620 [2 Dept 2017], lv denied 30 NY3d 979 [2017]). It is well established that the People cannot validly declare, in response to a motion to dismiss pursuant to CPL 30.30, "that they had been ready to proceed on a prior date" (People v Chavis, 91 NY2d 500, 506 [1998]; see People v Kendzia, supra at 336–337; People v Brothers, 50 NY2d 413, 416 [1980][People's oral assurance of trial readiness in CPL 30.30 motion is insufficient]). To be sure, the People must affirmatively communicate readiness for trial to the court on the record at a time when they are actually ready to proceed. It has long been held that, "[i]t is insufficient, as a matter of law, to inform the court of such a claim for the first time in an affidavit submitted in

[3] On December 20, 2019, after addressing the impact of the then forthcoming CPL Article 245 to this case, the Court informed the parties that it interpreted the new law to retroactively apply to this long outstanding matter as of January 1, 2020 (see Statutes § 55; see People v Appling, Kings Supreme Ct. Sciarrino, J. [Jan. 6, 2020]). As of December 20, 2019, that became the law of this case -- a fact the People ignored in its January 6, 2020 trial adjournment request letter and again, in response to the present motion. At no time have the People filed a motion to reargue or sought leave in any manner to revisit this legal issue.

response to a motion to dismiss the indictment" (People v Hamilton, 46 NY2d 932, 933 [1979]).

In any event, here, the People have provided no facts or legal argument to substantiate their claimed readiness for trial on defendant's first scheduled trial date of December 9, 2019. Inexplicably, the People fail to establish that they were able to proceed to trial on December 9, or any other date, with the presentation of a prima facie case (see People v Zale, 137 AD3d 634, 635 [1 Dept 2016], lv denied 27 NY3d 1141 [2016]). At the close of the December 9 appearance, the Court noted that the People were not ready for trial and that the prosecutor's outstanding responses (bill of particulars, amended Molineux proffer, pre-trial submission responses, discovery and potential attendant Civil Rights § 50-a litigation), made scheduling a new trial date impossible at that time. Thus, the facts unquestionably demonstrate that the People were not ready for trial on December 9, 2019. Moreover, the People do not assert, and the facts of this case do not suggest the presence of any "exceptional circumstances" (see former CPL 30.30[4][g]) that would render any time period at issue excludable.

As the illusory nature of the People's initial statement of readiness has been effectively conceded, the Court must now calculate any delay chargeable to the People as required by statute as if the illusory statement of readiness was never made (see People v Brown, supra at 406). In so doing, the Court is mindful that "once a defendant sufficiently alleges that the People were not ready within the statutory period, "the People [have] the burden of showing their entitlement to a statutory exclusion" (People v Brown, supra at 403, quoting People v Luperon, 85 NY2d 71, 81 [1995]; see People v Chavis, 91 NY2d 500, 504-505 [1998]; accord People v Matos, 62 Misc3d 128(A) [App Term 2018]). "In all events []the People must establish a valid reason for their unreadiness in response to a defendant's CPL 30.30 motion" (People v Brown, supra at 406).

Here, the six-month time period applicable to felonies (see CPL 30.30 [1][a]) began to accrue on March 27, 2019, the day after defendant's March 26, 2019 arraignment on the felony complaint (see People v Stiles, 70 NY2d 765, 767 [1987]; General Construction Law § 20). Thus, the People had six months, or 184 days, less periods of statutory exclusions, in which to validly declare trial readiness. The only additional statement of trial readiness was made by the People on January 13, 2020, in conjunction with their filing of a certificate of compliance (see CPL 245.50 and 30.30 [5]). As January 13, 2020 is the earliest possible date that the People could be deemed ready for trial, 292 days have passed since defendant's March 26, 2019 arraignment on the felony complaint.

Defendant argues that as a result of the People's general laxity and dilatory conduct through the course of this litigation, the entire time from his March 26, 2019 arraignment on the felony complaint through the People's January 13, 2020 filing of a notice of readiness, less the following statutorily prescribed time periods, should be charged to the People:

Date	Event	Days Chargeable to the People
March 26, 2019	Arraignment on felony complaint	--
April 26, 2019	Arraignment on indictment (illusory declaration of trial readiness)	31
May 3, 2019	Discovery demands and request for a bill of particulars filed	7
May 18, 2019	15-day statutory period for the People to serve discovery and bill of particulars (see former CPL 240.80 [3], 200.95).	--
July 10, 2019	Omnibus motion filed	23[4]
August 7, 2019	Omnibus decision and order issued	--
January 13, 2020	Certificate of compliance; readiness asserted	159
		Total: 220 days

As defendant sufficiently alleges that the People were not ready within the applicable 184 days, the burden now shifts to the People to show their entitlement to statutory exclusions (see People v Brown, supra at 403; People v Luperon, supra at 81 [1995]; People v Chavis, supra at 504-505 [1998]).

The People fail to identify any statutory sections or even legal theories upon which they rely, to justify excludable time periods. Instead, they respond to defendant's motion in a running narrative that, respectfully, is hard to follow and while it contains some mathematical calculations, it does not account for all days between defendant's arraignment on the felony complaint and People's January 13, 2020 declaration of trial readiness. Moreover, the People's clear mischaracterization of defendant's motion as one alleging post-readiness delay, as opposed to an illusory declaration, has resulted in associated legal arguments that are inapplicable to this case.[5] Here, the 184 days in which the People had to declare readiness expired in 2019, well before the People's announcement of trial readiness on January 13, 2020. Inasmuch as the People have failed to establish a valid reason for their unreadiness in response to defendant's CPL 30.30 motion (see People v Brown, supra at 406), and as there remains unexcused delay

[4] The Court notes that there are 53 days between May 18, 2019 and July 10, 2019.

[5] Adding to the confusion, at ¶ 34, the People refer to an entirely different prosecution by referencing a perceived error of a non-existent lower court.

exceeding 184 days, pursuant to CPL 30.30 (1)(a), defendant's motion to dismiss the indictment on the ground of denial of a speedy trial must be granted.

In addition, the Court also finds merit in defendant's argument that periods of delay should be charged to the People due to their dilatory conduct throughout this litigation. For the reasons summarized below, the Court finds that the People's dilatory conduct associated with the service of a bill of particulars; Molineux proffers; law enforcement witness impeachment materials; and suppression hearings – each of which affected a delay to defendant's two trial dates -- justifies charging additional time to the People (see People v McKenna, 76 NY2d 59 [1990]; People v Daley, 265 AD2d 566 [2 Dept 1999]; People v Reid, 245 AD2d at 44 [1 Dept 1997]; People v Commack, 194 AD2d 619 [2 Dept 1993]; People v Conley, 24 Misc3d 1203(A) [Sup Ct 2009]).

Prosecutorial Delay: Bill of Particulars

Despite being statutorily required to serve a bill of particulars by May 19, 2019 (see CPL 200.95 [4]), it took the People in excess of seven (7) months and a court order to compile and serve said particulars. Moreover, despite repeatedly claiming that all facts necessary to particularize counts 6-13 of the indictment could be found within previously served discovery, the People's December 13, 2019 court-ordered bill of particulars relied exclusively on previously undisclosed discovery to narrow the alleged times associated with these counts. The People's actions substantially delayed defendant's ability to file his motion to dismiss counts 6-13.

Prosecutorial Delay: Molineux Proffers

As defendant's personnel records were extensive, counsel explains he wished to respond to the People's Molineux proffer in writing. Shortly after the December 6, 2019 Molineux hearing was scheduled, counsel requested that the People serve their proffer with enough time for him to file a written response prior to the hearing. Despite the People's assurances to defendant's requests (made on Oct 31, 2019, Nov 8, 2019, Nov 12, 2019 and Dec 3, 2019), the People emailed their Molineux proffer to defense counsel on December 5, 2019, at 11:23 P.M., absent attachments. According to defendant, immediately before the hearing, he was served with over 1000 pages of attachments with the People's proffer, effectively forcing him to seek an adjournment of the Molineux hearing, which was granted. Moreover, the People's amended Molineux proffer, filed after the December 20, 2019 dismissal of counts 6-13 of the indictment, was based on a new interview with a previously undisclosed witness.

Prosecutorial Delay: Correction Officer Witness Impeachment Material

In a prosecution of a correction officer for sexual crimes allegedly perpetrated upon two incarcerated inmates, the People waited over eight (8) months, or until five (5) days before the first scheduled trial date, to request a judicial subpoena for the personnel records of their sixteen (16) correction officer witnesses to review for potential impeachment material. Moreover, the People chose to make the subpoena returnable January 9, 2020 – defendant's first scheduled trial date. The People have

not successfully explained or sought to reconcile how these actions accord with their present claim of December 9, 2020 trial readiness. Moreover, the People admit they completed their witnesses' impeachment review and made Giglio disclosures by December 31, 2019. Thus, it took the People twenty-one (21) days or six (6) days longer than the fifteen (15) days now afforded the People to serve all automatic discovery (see CPL 245.10 [1][a]) to review and disclose this impeachment material. All relevant events concerning the People's obligation to examine their law enforcement witnesses' personnel records – request, review and disclosure – occurred in 2019. Thus, the People's actions belie their current attempt to minimize their legal obligations based on the passage of 2020 Criminal Justice Reform legislation.

At the December 9, 2019 appearance, the Court expressed its concern regarding the People's delay in obtaining and reviewing potential impeachment materials for their law enforcement/correction officers' personnel records. Specifically, the Court informed the People that:

> "There was a trial date. I know you needed a date for the subpoena. It didn't have to be the trial date. This was your case from the moment that it started and you knew you were going to have correction officers testifying. Like in other places and other offices where its standard practice to get that material as soon as you are putting your case together, so you know whether there are issues with your officers, that's something you don't do. Your office does not do it. I understand what you are saying but it's really, really not that simple. It's not as simple as turning over things as soon as you get them. It's making the effort to get them and get them in the shortest amount of time that you can to keep things moving. I understand what you said and I know that is what you believe, but, you know, I really just don't agree with that. I haven't and thankfully come January I won't have to, but, but, end of the day ... I'm going to have to give you a date in January."

At a December 20, 2019 court conference, defense counsel informed the Court that the People still had not turned over any impeachment materials for her law enforcement and corrections officer witnesses. Thus, in the eleven (11) days between the delivery of these records to the People, they still had not provided any Brady/Giglio impeachment materials to defendant. At that time, the prosecutor stated that she was still reviewing the materials. The People did not serve defendant with Giglio materials for their law enforcement/correction officer witnesses until December 31, 2019.

Prosecutorial Delay: Combined Suppression Hearing

Lastly, the People were also dilatory by informing defense counsel and the Court, at the last moment, that the issue of suppression was moot. By decision and order issued on August 7, 2019, the Court granted defendant's motions for Huntley and Mapp hearings and a combined suppression hearing was scheduled for September 27, 2019.

At 1:42 A.M. on the morning of hearing, the prosecutor emailed counsel informing that, despite her notices to the contrary filed five (5) months prior, she no longer sought to admit defendant's statements, or any tangible evidence recovered from him at trial. At the September 27 court appearance, in response to defense counsel's visible annoyance over the manner and method he was notified, the prosecutor responded, in relevant part, "[t]hat's kind of how I roll."

Throughout the pendency of this litigation, the Court and defense counsel repeatedly expressed concerns over the People's ability to proceed to trial and openly questioned their trial readiness on the record. The People have not claimed the existence of exceptional circumstances to account for their unreadiness, pursuant to either the former CPL 30.30 (3)(b) or the present CPL 30.30 (5). It is also noteworthy, that in 2020, the People did not rely upon CPL 245.10 (1)(a) for their continued delay in turning over discoverable materials. Lastly, the prosecutor's professed ignorance of her 9:00 A.M. court-ordered CPL 30.30 motion response deadline was far from an isolated incident (see People v Lora, 177 AD3d 518 [1 Dept 2019], lv granted 34 NY3d 1164 [2020]), but merely the latest illustration in a prosecution fraught with dilatory conduct. Motion granted.

This memorandum shall constitute the decision and order of the Court.

Dated: May 14, 2020
Albany, New York

/s/ THOMAS A. BRESLIN, JSC