

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 22-00595

PRESENT: BANNISTER, J.P., MONTOUR, SMITH, GREENWOOD, AND HANNAH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

SIR CHARLES MOSLEY IV, DEFENDANT-APPELLANT.

JULIE CIANCA, PUBLIC DEFENDER, ROCHESTER (AARON FRIEDMAN OF COUNSEL),
FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (GRAZINA HARPER OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Victoria M. Argento, J.), rendered March 24, 2022. The judgment convicted defendant upon a jury verdict of criminal possession of a controlled substance in the third degree and resisting arrest.

It is hereby ORDERED that the case is held, the decision is reserved and the matter is remitted to Supreme Court, Monroe County, for further proceedings in accordance with the following memorandum: On appeal from a judgment convicting him upon a jury verdict of criminal possession of a controlled substance in the third degree (Penal Law § 220.16 [1]) and resisting arrest (§ 205.30), defendant contends that Supreme Court erred in denying his motion to dismiss the indictment on statutory speedy trial grounds. In particular, defendant contends that, at the time the People filed their initial certificate of compliance (COC), they had not provided him with discoverable material and that the People's statement of readiness for trial thus could not be deemed valid. We conclude that the court failed to apply the correct standard in determining defendant's motion.

Where, as here, a defendant is charged with a felony, the People must announce readiness for trial within six months of the commencement of the action (see CPL 30.30 [1] [a]; *People v England*, 84 NY2d 1, 4 [1994], *rearg denied* 84 NY2d 846 [1994]). "A statement of 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" (*England*, 84 NY2d at 4) and will be deemed invalid (see CPL 30.30 [former (5)]).

As relevant here, "[a]ny statement of readiness must be accompanied or preceded by a certification of good faith compliance with the disclosure requirements of [CPL] 245.20" (CPL 30.30 [former

(5)]; see CPL former 245.50 [1]; *People v Cooperman*, 225 AD3d 1216, 1217 [4th Dept 2024]). A COC must 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" and must also "identify the items provided" (CPL former 245.50 [1]; see *People v Gaskin*, 214 AD3d 1353, 1354 [4th Dept 2023]). Notwithstanding the provisions of any other law, and absent an individualized finding of special circumstances by the court before which the charge is pending, the prosecution will not be deemed ready for trial for purposes of CPL 30.30 until it has filed a "proper" COC pursuant to CPL 245.50 (1) (CPL former 245.50 [3]; see *People v Bay*, 41 NY3d 200, 210 [2023]).

In evaluating the propriety of a COC, "the key question . . . is whether the prosecution has 'exercis[ed] due diligence and ma[de] reasonable inquiries to ascertain the existence of material and information subject to discovery' " (*Bay*, 41 NY3d at 211, quoting CPL former 245.50 [1]). "[W]hile good faith is required, it is not sufficient standing alone and cannot cure a lack of diligence" (*id.* at 212; see CPL former 245.20 [2]; former 245.50 [1], [3]).

On a CPL 30.30 motion to dismiss on the ground that the People failed to exercise due diligence and therefore improperly filed a COC, "the People bear the burden of establishing that they did, in fact, exercise due diligence and made reasonable inquiries prior to filing the initial COC despite a belated or missing disclosure" (*Bay*, 41 NY3d at 213). Where the People fail to meet their burden, "the COC should be deemed improper, the readiness statement stricken as illusory, and—so long as the time chargeable to the People exceeds the applicable CPL 30.30 period—the case dismissed" (*id.*).

Here, we agree with defendant that the court erred in concluding that the People's initial COC was proper solely on the basis that the People acted in good faith with respect to their discovery obligations. The court was required to determine whether the People satisfied their burden of establishing that they exercised due diligence and made reasonable efforts to satisfy their obligations under CPL article 245 at the time they filed their initial COC (see *People v Lawrence*, 231 AD3d 1497, 1499-1500 [4th Dept 2024], *lv denied* 43 NY3d 945 [2025]). In light of the court's failure to consider whether the People met that burden, we hold the case, reserve decision and remit the matter to Supreme Court to make that determination and, if appropriate, to determine whether the statement of readiness was valid and whether the People were ready within the requisite time period (see CPL 30.30 [1] [a]).