

People v Strong

2007 NY Slip Op 31525(U)

June 7, 2007

Supreme Court, Queens County

Docket Number: 0000192/2006

Judge: Stephen A. Knopf

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS: CRIMINAL TERM: PART K-19

THE PEOPLE OF THE STATE OF NEW YORK	:	BY: STEPHEN A. KNOFF
	:	
-against-	:	DATED: June 7, 2006
	:	
	:	INDICTMENT NO. 192/06
	:	
STEVEN STRONG,	:	MOTION TO DISMISS
Defendant	:	
-----	:	

The defendant, Steven Strong, moves this Court for an order dismissing the above-captioned indictment. The defendant asserts that this indictment should be dismissed because he has been denied his constitutional right to a speedy trial, pursuant to CPL §30.20. The People disagree.

This indictment arose out of an incident that took place on January 17, 2006. On that date, at about 6:57 pm the defendant and his co-defendant Shawn Forde, and unapprehended others, entered a car dealership located at 181-30 Hillside Avenue, in Queens. At that time, the defendant allegedly pointed a loaded handgun at complainant Mohammed Ishaque, struck him in the face with that gun, and forcibly stole his wallet and other property. The defendant also allegedly forcibly stole the wallet of another complainant, Mubbsher Ali. Complainant Ishaque recognized the defendant; having seen him

several times before. (In fact, this complainant sold defendant a car.) The defendants and unapprehended others fled, driving off. Defendant Strong was ultimately apprehended on foot. A jacket previously worn by defendant Strong, was found on the ground with a loaded gun, the complainants' wallets and a camera belonging to one of complainants wrapped inside it. Other clothing items were recovered from the defendant's vehicle.

On January 18, 2006 many of these items, as well as other clothing found along the defendant's escape route, were sent to the Office of the Chief Medical Examiner, for DNA analysis. Profiles were ultimately generated on DNA taken from these items, in January of 2007. On March 13, 2007, defendant Strong finally consented to providing a DNA sample for comparison. An order was signed as to the co-defendant for DNA sampling. On March 14, 2007, the defendant and co-defendant provided DNA samples. While preliminary results of the analysis was available on as of May 24, 2007, no final determination from the Office of the Medical Examiner is yet available.

Defendant Strong was ultimately indicted for robbery in the first degree and other counts.

Criminal Procedure Law §30.20 specifically provides that (1) "After a criminal action is commenced, the defendant is entitled to a speedy trial". This statute applies to defendant's constitution right to a speedy trial.

It is well settled that in balancing whether a defendant has been denied his constitutional right to a speedy trial, this Court must consider the following factors: the extent of the delay, the reason for the delay, the nature of the underlying charge, whether there has been an extended period of pre-trial incarceration of the defendant, and whether there is any indication that the defendant has been impaired by the delay. *See, People v Taranovich*. 37 NY2d 442 (1975).

In reviewing the extent of the delay, this Court notes that the incident occurred on January 17, 2006. A DNA profile of the items recovered at the scene was completed in January of 2007. Thereafter, efforts were made to secure a DNA sample from this defendant, and the co-defendant. Ultimate consent by the defendant was accomplished by an Order To Show Cause, filed on February 27, 2007. The defendant's DNA sample was taken on March 14, 2007. Preliminary results of the comparison are only now available. However, this Court also notes that more than 18 months has passed since the defendant's arrest.

It appears that much of the reason for the delay was to obtain the DNA samples from the defendants, to compare them with the samples taken from the items recovered at the scene. After reviewing the motion papers submitted by the parties, the court file and the relevant case law, it is clear that most of this delay occurred to accomplish the DNA comparisons.

In considering the nature of the underlying charge, this Court notes that the top count in this indictment is robbery in the first degree; a class B violent felony. A cursory review of the defendant's criminal history reflects that the defendant, if convicted of these charges, may be facing sentencing consideration as a discretionary persistent felony offender. If sentenced accordingly, the defendant faces a minimum period of incarceration of 15 years to life and a maximum of 25 years to life. Yet, standing alone, this indictment contains serious offenses.

Another factor for the Court's consideration is whether there has been an extended period of pre-trial incarceration. The period of this defendant's incarceration, under these circumstances, is not considered excessive. *See, People v Jones, 267 AD2d 250 (2nd Dept 1999)* (7 year delay); *see, also People v Rossi, 210 AD2d 511 (2d Dept 1994)* (17 month delay). *People v Singleton, 195 AD2d 339 (1st Dept 1993)*. (31 month delay).

Finally, of great importance to this Court, is the consideration of whether the defendant has been impaired or prejudiced by the extent of this delay. *See, Taranovich. Supra.* This Court notes that the defendant's motion papers do not delineate any prejudice to the defendant. Indeed, the defendant did not even set forth a routine claim of prejudice. *See People v Quiroz, 192 AD2d 730 (2d Dept 1990)*. This, minimally, the defendant is required to do. *See, Jones, supra.*

In sum, the defendant has not demonstrated that his pre-trial delay has resulted in a violation of defendant's constitutional right to a speedy trial, as mandated by CPL §30.20. As such, the defendant's motion to dismiss the above-captioned indictment is denied.

The foregoing constitutes the order opinion and decision of this Court.

STEPHEN A. KNOPF, J.S.C.