

**People v Fuller**

2011 NY Slip Op 31350(U)

May 23, 2011

City Court of Rome

Docket Number: 49550

Judge: Daniel C. Wilson

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State of New York  
County of Oneida

Rome City Court

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People of the State of New York

vs.

MEMORANDUM DECISION

Christine A. Fuller,  
Defendant.

DOCKET NO. 49550

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Steven P. Feiner, Esq., Asst. District Attorney of Oneida County,  
for the People

A.J. Bosman, Esq., Attorney  
for the Defendant

PRESENT: Hon. Daniel C. Wilson, City Court Judge:

The defendant has moved this court by a motion which was filed with the court on February 14, 2011, and which was duly submitted to the court for decision on February 28, 2011 for an order seeking discovery and inspection of certain listed items, and for the filing of a bill of particulars herein, and for an order seeking dismissal of the accusatory instrument herein for being defective upon its face pursuant to §170.35(1)(a) of the Criminal Procedure Law, and for dismissal of the charges herein in the furtherance of justice pursuant to § 170.40 of the Criminal Procedure Law, and for disclosure of exculpatory material pursuant to federal and state case law, and for leave to submit any further motions necessitated by the relief obtained from this motion. The People have opposed said motion by an answering affirmation which was filed with the court and after due deliberation, the court determines the defendant's motion as follows:

The defendant's motion for discovery and inspection and for a bill of particulars will be

denied subject to any motion directed toward the People's discovery and bill of particulars response to the defendant's demands filed herein.

As to the motion to dismiss the information herein, an information to be valid upon its face within the provisions of CPL 100.40 would in addition to the requirements of the reasonable cause to believe that the defendant committed the offense charged in the accusatory instrument, also have to establish by, "nonhearsay allegations of the factual part of the information and/or of any supporting depositions" every element of the offense charged and the defendant's commission thereof.

An "information" (charging a misdemeanor or petty offense) must demonstrate "reasonable cause" and be legally sufficient for a prima facie case, a much more demanding standard than what is required for a felony complaint. *People vs. Alejandro*, 70 N.Y.2d 133 (1987).

§100.15 of the Criminal Procedure Law does require that, "The factual part of such instrument must contain a statement of the complainant alleging facts of an evidentiary nature supporting or tending to support the charges." The factual statement in the supporting deposition and upon the face of the information would satisfy the requirements of § 100.40 of the Criminal Procedure Law.

As to the accusatory instrument herein the defendant has raised the question as to the method of verification.

**§ 100.30 of the Criminal Procedure Law provides as follows:**

1. An information, a misdemeanor complaint, a felony complaint, a supporting deposition, and proof of service of a supporting deposition may be verified in any of the following manners:

(a) Such instrument may be sworn to before the court with which it is filed.

(b) Such instrument may be sworn to before a desk officer in charge at a police station or police headquarters or any of his superior officers.

(c) Where such instrument is filed by any public servant following the issuance and service of an appearance ticket, and where by express provision of law another designated public servant is authorized to administer the oath with respect to such instrument, it may be sworn to before such public servant.

(d) Such instrument may bear a form notice that false statements made therein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law, and such form notice together with the subscription of the deponent constitute a verification of the instrument.

(e) Such instrument may be sworn to before a notary public.

The accusatory instrument herein does bear the appropriate form warning followed by the investigator's signature so that it would be sufficient upon its face as to the method of verification.

Accordingly, the defendant's motion to dismiss for the papers being defective upon their face would be in all respects denied.

As to the defendant's motion to dismiss in the furtherance of justice, the court has considered the factors listed in § 170.40 both individually and collectively and has determined that the granting of such a motion would not be appropriate. Accordingly, said motion would be in all respects denied.

Upon the defendant's motion to dismiss for denial of a speedy trial, an announcement of readiness must be made within the statutory speedy trial time period of thirty days in order that an information charging a class A misdemeanor might proceed to trial. CPL §30.30(1)(d). The matter was commenced by the filing of the accusatory instrument on October 5, 2010 and the defendant was arraigned on another day. The defendant asserts that the People have not announced readiness upon the charge and that the time period has expired. The People have not

contested the issue as to announcement of readiness since no allegation has been made regarding that although the court file does indicate that the announcement was made in court upon the record on November 3, 2010 and the arraignment was on October 26, 2010. Furthermore, the People have not filed any affidavit to attest to adjournments agreed to by the defense. Accordingly, a hearing will be ordered to determine whether or not there was an announcement of readiness within the statutory time period. *People v. Dean*, 45 N.Y. 2<sup>nd</sup> 651; *People v. Gruden*, 42 N.Y. 2<sup>nd</sup> 214.

The hearing is scheduled upon this motion to be held on July 15, 2011 at 11:00 A.M.

Accordingly, the defendant's motion to dismiss for failure to grant a speedy trial will be granted insofar as the hearing is scheduled to determine said issues, but pending said hearing said motion would be in all other respects denied .

The defendant's motion for arrest records as listed in part V of defendant's moving papers would be granted as to any exculpatory material, but any other pre-trial discovery would be denied. The People will be reminded to comply with the procedure outlined in the Criminal Procedure Law for disclosure of such materials at the time of trial.

The defendant's motion for police reports and arrest reports as listed in part VII of defendant's moving papers and for prior statements of witnesses as listed in part VI of defendant's moving papers would be granted as to any exculpatory material, but any other pre-trial discovery would be denied. The People will be reminded to comply with the procedure outlined in the Criminal Procedure Law for disclosure of such materials at the time of trial.

The defendant's motion for a list of persons interviewed by law enforcement personnel as listed in part XI of defendant's moving papers would be granted as to any exculpatory material, but in all other respects will be denied.

Parts VII and VIII of defendant's moving papers requesting disclosure of exculpatory material will be in all respects granted with the consent of the People. The People have recognized their continuing duty to disclose any such exculpatory material to the defense.

The defendant's motion to reserve the right to submit any further motions necessitated by the relief obtained from this motion would be granted pursuant to the provisions of section 255.20 (3) of the Criminal Procedure Law, but in all other respects will be denied.

The defendant's motion is granted as above stated, but in all other respects will be denied.

This will constitute the Decision and the Order of the Court.

ENTER:

DANIEL C. WILSON

ROME CITY COURT JUDGE

DATED: May 23, 2011