

People v Lawrence
2013 NY Slip Op 34251(U)
July 16, 2013
Supreme Court, New York County
Docket Number: Indictment 1470-12
Judge: Charles H. Solomon
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 82

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THE PEOPLE OF THE STATE OF NEW YORK, :

**DECISION AND ORDER
INDICTMENT 1470-12**

-against- :

CURTIS LAWRENCE, DEFENDANT :

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CHARLES H. SOLOMON, J.:

In a motion filed May 21, 2013, defendant moves to dismiss the indictment pursuant to CPL 30.30(1)(a), claiming that he has been denied his right to a speedy trial. The People oppose defendant's motion in a response filed June 26, 2013. Based upon the papers submitted by counsel and the court records, the Court makes the following findings of fact and conclusions of law with regard to the adjournments in this matter.

The People are required to announce their readiness for trial within six months of the commencement of a criminal action in which the defendant is charged with a felony, which in this case is 183 days. Once the defendant has alleged a delay of more than this permissible time, the People have the burden of demonstrating sufficient excludable time. People v. Santos, 68 NY2d 859 (1986); People v. Berkowitz, 50 NY2d 333 (1980).

Defendant was arrested and the felony complaint was filed on April 3, 2012. Defendant was arraigned in criminal court on April 4, 2012, and bail was set in the amount of \$50,000 bond or cash. The case was adjourned for grand jury action to April 9, 2013. On April 9, 2012, a certificate of affirmative grand jury action was filed with the court and the case was adjourned to May 1, 2012, for Supreme Court arraignment on the indictment. The period from April 3, 2012 to May 1, 2012 is properly charged to the People. Accordingly, twenty-eight days are chargeable to the People. (28 days)

On May 1, 2012, defendant was arraigned in Supreme Court and pleaded not guilty.

Defendant also made a bail application. The Court reserved decision until after the video surveillance and grand jury minutes were received and reviewed by the Court. Also on this date, the Court signed a DNA swab order which the defense did not oppose. The case was adjourned for defense motions to June 12, 2012. Defense motion were served off-calendar on May 2, 2012. On June 12, 2012, the case was adjourned for the People's response to July 3, 2012. On July 3, 2012, the People timely served and filed their response as directed. The case was adjourned to July 13, 2012 for the Court to render a decision on defendant's bail application as well as on his omnibus motion. The Court filed a decision on defendant's omnibus motion on July 13, 2012. On July 13, 2012, the case was adjourned to July 20, 2012 for decision on defendant's bail application as well as for a report on the status of the DNA analysis. On July 20, 2012, the Court rendered a decision on defendant's bail application. The case was adjourned to August 3, 2012 for discovery to be completed. The entire period from May 1, 2012, to July 20, 2012, is excludable. CPL 30.30(4)(a); People v. Worley, 66 NY2d 523 (1985); People v. Reed, 19 AD3d 312 (1st Dept 2005), *lv denied* 5 NY3d 832; People v. Cain, 291 AD2d 326 (1st Dept 2002) *lv denied* 98 NY2d 673; People v. David, 253 AD2d 642 (1st Dept 1998), *lv denied* 92 NY2d 948; People v. Driver, 248 AD2d 172 (1st Dept 1998), *lv denied* 92 NY2d 851; People v. Williams, 213 AD2d 350 (1st Dept 1995), *lv denied* 87 NY2d 852. (0 days)

On August 3, 2012, the Court was informed that OCME had completed a second review of the DNA results and the People stated that the certified results from OCME would be available in two weeks. The case was adjourned to September 7, 2012 for the certified DNA results to be provided to defense counsel. On that date, defense counsel did not appear and sent another attorney to appear on his behalf. The People stated that the DNA testing was complete and the reports would be given to defense counsel the following week. The case was adjourned to

September 28, 2012 for counsel to appear and to advise the Court how he wanted to proceed. On September 28, 2012, counsel was provided with certified copies of the DNA report and the case was adjourned to October 12, 2012 for defense counsel to review the report and determine whether he wanted to retain a DNA expert. On October 12, 2012, defense counsel stated that there were no outstanding issues with respect to the DNA report and that he was ready to set a trial date. The case was adjourned for trial to November 14, 2012. The entire period from August 3, 2012 to November 14, 2012, is excludable. CPL 30.30(4)(a), (b) and (g). Delays in bringing a defendant to trial caused by DNA testing have been held to be excludable under CPL 30.30(4)(g) as an exceptional circumstance. People v. Robinson, 47 AD3d 847 (2^d Dept 2008), *lv denied* 10 NY3d 869; People v. Williams, 244 AD2d 587 (2^d Dept 1997), *lv denied* 91 NY2d 899. (0 days)

On November 14, 2012, the People were not ready for trial and asked that the case be adjourned to November 27, 2012. The case was adjourned for trial to November 27, 2012 at the People's request. This thirteen day period is chargeable to the People. (13 days)

On November 27, 2012, defense counsel filed an affirmation stating that he was on trial in Part 22 and asked that the case be adjourned to December 11, 2012 or thereafter. The case was adjourned for trial to December 10, 2012. This period is excludable under CPL 30.30(4)(b) and (f). (0 days)

On December 10, 2012, defense counsel filed an affirmation stating that he was engaged in Supreme Court, Kings County - Part 11, and requested an adjournment until January 3, 2013 or later. The case was adjourned to January 15, 2013 for trial. This period is excludable under CPL 30.30(4)(b) and (f). (0 days)

On January 15, 2013, the People were not ready for trial and requested an adjournment to February 15, 2013. The Court adjourned the case to February 19, 2013. Because the People had never answered ready, they are properly charged with this entire thirty-five day period. (35 days)

On February 19, 2013, the People were not ready to proceed to trial and requested an adjournment to February 27, 2013. The case was adjourned to that date at their request. The People are properly charged with this eight day period. (8 days)

On February 27, 2013, the People were not ready for trial and asked that the case be adjourned to March 8, 2013. The Court adjourned the case for trial to March 11, 2013. The entire twelve day pre-readiness adjournment is chargeable to the People. (12 days)

On March 11, 2013, the People were not ready for trial and asked that the case be adjourned to April 2, 2013 or later. The case was adjourned to April 4, 2013. This twenty-four day period is chargeable to the People. (24 days)

On April 4, 2013, defense counsel filed an affirmation stating that he was on trial in Supreme Court, Kings County. The People announced that they were ready for trial. The case was adjourned to April 30, 2013 for counsel to appear and to set a trial date. This period is excludable under CPL 30.30(4)(b) and (f). (0 days)

On April 30, 2013, defense counsel appeared and a trial date of May 23, 2013 was selected. The case was adjourned to that date. The period from April 30, 2013 to May 23, 2013 is excludable as the case was on for counsel to appear and to set a trial date. CPL 30.30(b) and (f). (0 days)

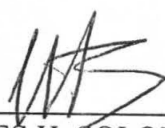
On May 23, 2013 when the case was next on calendar, the Court was in receipt of defendant's motion to dismiss, which was filed two days earlier. The case was then adjourned to

July 16, 2013 for decision on defendant's motion. The period from the filing of defendant's motion to the date the Court renders a decision is excludable under CPL 30.30(4)(a). Accordingly, the period from May 21, 2013 to July 16, 2013 is excludable. (0 days)

As the People are properly charged with one hundred and twenty days, defendant's motion to dismiss under CPL 30.30(1) is denied. (120 days)

This opinion constitutes the decision and order of the Court.

Dated: July 16, 2013
New York, New York



CHARLES H. SOLOMON, J.S.C.