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| People v Lawrence |
| 2014 NY Slip Op 34052(U) |
| April 8, 2014 |
| 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 : | |
| -----X | | |
| CHARLES H. SOLOMON, J.: | | |

In a motion filed March 3, 2014, defendant moves to dismiss the indictment pursuant to CPL 30.30(1)(a) and CPL 30.20, claiming that he has been denied his right to a speedy trial. The People oppose defendant's motion in a response filed April 1, 2014. 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).

On July 16, 2013 the Court issued a decision on defendant's prior motion to dismiss pursuant to CPL 30.30 which was filed on May 21, 2013. In that decision, the Court found one hundred and twenty days chargeable to the People. In light of the previous ruling, the Court will address only the adjournments from that day on. (120 days)

On July 16, 2013, after the Court issued its decision, the case was adjourned for trial to September 10, 2013. Although the People asked for a shorter period, the case was adjourned until September 10, 2013 to accommodate defense counsel's vacation schedule. As defendant

concedes, the period from July 16, 2014 is excludable. CPL 30.30(4)(a). (0 days)

On September 10, 2013, defense counsel appeared and stated that he was not ready for trial because he was starting another trial in Part 62 later in the week. The case was adjourned at his request to September 16, 2013. The case was repeatedly adjourned from September 16, 2013 to December 5, 2013 because defense counsel was unavailable either because he was on trial in another matter or because he was sick. Defendant properly concedes that the period from September 10, 2013 to December 5, 2013 is excludable. CPL 30.30(4)(b). (0 days)

On December 5, 2013, the case was on for trial and the People were not ready to proceed. They asked that the case be adjourned for trial to December 9, 2013. The People concede that they are properly charged for this four day adjournment. (4 days)

On December 9, 2013, the People stated that they were not ready for trial because one of their witnesses, a criminalist, was preparing a chart for trial and had not completed it. Therefore, the People requested an adjournment to December 16, 2013. The Court adjourned the case to January 6, 2014 for trial. The People are charged only for the seven day period that they requested, since this is a post-readiness adjournment. The People announced their readiness on the record on April 4, 2013 and again on October 2, 2013. People v. Warwick, 239 AD2d 124 (1st Dept 1997); *lv denied* 90 NY2d 865 (1997); People v. Urrea, 214 AD2d 378 (1st Dept 1995). (7 days)

On January 6, 2014, the People were not ready to proceed to trial because the complainant was on vacation in Senegal. The People stated that the complainant would be back from his vacation on January 14, 2014 and accordingly asked for an adjournment to January 16, 2014. The People argue that the entire period is excludable citing to People v. Williams, 293 AD2d 557 (2^d Dept 2002). In support of their contention, the People submitted the

complainant's travel itinerary. That document, which is dated November 5, 2013, shows that the complainant was scheduled to depart for Dakar on December 14, 2013 out of JFK and to return on March 13, 2014. The People's reliance on *Williams* is misplaced. In *Williams*, a material prosecution witness was unavailable because the witness had been deployed to Kosovo for military service. The court held that the delay caused by the witness' absence was excludable under CPL 30.30(4)(g) as an exception circumstance. This case is different. Here, the complainant was unavailable due to a vacation. Delay occasioned because of a witness' vacation is not excludable under CPL 30.30(4)(g) as an exceptional circumstance. People v. Boyd, 189 AD2d 433, 437-438 (1st Dept 1993), *lv denied* 82 NY2d 714; People v. Thomas, 210 AD2d 736 (3^d Dept 1994); People v. Apodoca, 156 Misc2d 133, 138 (NY Co, Sup Ct 1992); People v. Mims, 155 Misc2d 163 (NY Co, Sup Ct 1992). Accordingly, the People are properly charged with the period from January 6, 2014 to January 16, 2014.

On January 16, 2014, the People were not ready for trial because the complainant was still in Senegal. The People requested an adjournment to February 15, 2014. However, February 15, 2014 was a Saturday and Monday, February 17, 2014 was a court holiday. Because the first available court date was Tuesday, February 18, 2014, the People's request for an adjournment will be deemed to be February 18, 2014. Defense counsel requested a lengthier adjournment and the case was adjourned to February 24, 2014. On January 30, 2014, the People requested that the case be advanced. The People advised the Court that the defendant had been indicted the day before on a weapons charge and had been remanded on that case. This case was accordingly advanced and a bench warrant was issued for defendant's arrest. On February 11, 2014, the People had the defendant produced on the warrant. Defense counsel was present. When asked


about the next adjourned date, the Court suggested February 25, 2014 and defense counsel requested a lengthier adjournment due to his trial schedule. The Court suggested March 4, 2014, to which counsel agreed. The Court exonerated bail, remanded the defendant and adjourned the case to March 4, 2014 at defense counsel's request. Defendant filed the instant motion on March 3, 2014.

The People argue that the period from the defendant's return on the warrant is excludable under People v. Muhanimac, 181 AD2d 464 (1st Dept 1992). The Court disagrees. In *Muhanimac*, the court found that the People were entitled to a reasonable period to prepare for trial after a defendant's involuntary return to court after absconding and a bench warrant being issued for his arrest. The court reasoned that the People could not be expected to be ready upon defendant's return since they were unaware of when defendant would be returned to court. Here, defendant never absconded from court. Instead, the warrant was issued at a time when defendant was already remanded on the new indictment. The People were well aware of defendant's whereabouts. Further, defendant was produced before the Court on an order to produce prepared by the People and the same assistant district attorney handling defendant's new case is handling this case. The People cannot now claim that the period after defendant's return on February 11, 2014 should be excluded under *Muhanimac*. The People are properly charged with the thirty-three day period from January 16, 2014 to February 18, 2014. The period from February 18, 2014 to March 4, 2014 is excludable under CPL 30.30(4)(b). (33 days)

On March 3, 2014, defendant filed the instant motion. The period from the filing of defendant's motion to the rendering of the Court's decision is excludable under CPL 30.30(4)(a). As such, the period from March 3, 2014 to today is excludable. (0 days)

As the People are properly charged with one hundred and seventy-four days, defendant's motion to dismiss under CPL 30.30(1) is denied. (174 days)

Dated: April 8, 2014
New York, New York



CHARLES H. SOLOMON, J.S.C.