

People v Holmes
2015 NY Slip Op 32894(U)
September 8, 2015
Supreme Court, Kings County
Docket Number: 08968/2013
Judge: Joseph E. Gubbay
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: CRIMINAL TERM PART TAP

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THE PEOPLE OF THE STATE OF NEW YORK

Decision

-against-

Ind. No. 08968/2013

TREMAINE HOLMES,

Defendant

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Joseph E. Gubbay, J.S.C.:

Defendant stands indicted of Murder in the Second Degree, PL § 125.25[1], and other related charges. Defendant moves to dismiss the indictment pursuant to CPL §§ 30.30 and 30.20. In addition defendant moves to dismiss the indictment pursuant to CPL § 210.20(1)(I) on the ground that the People have committed prosecutorial misconduct by failing to turn over potentially exculpatory evidence to defense counsel, in violation of their obligation to do so, pursuant to *People v. Brady*, 373 US 83 (1963).

SPEEDY TRIAL:

CPL § 30.30(1)(a) provides, in pertinent part, that the People must be ready within,

“six months of the commencement of a criminal action wherein defendant is accused of one or more offenses, at least one of which is a felony;”

CPL § 30.30(3)(a) provides, in pertinent part,

“[s]ubdivisions one and two do not apply to a criminal action wherein the defendant is accused of an offense defined in section...125.25...of the penal law”

Defendant is charged with one count of Murder in the Second Degree (PL § 125.25[1]), therefore the six month statutory speedy trial time limitation contained in CPL § 30.30 (1)(a) is inapplicable in the instant case.

However, defendant may challenge the alleged delay in the prosecution of his case, and any alleged due process violation stemming from such delay, under the constitutional speedy trial provisions of CPL § 30.20. “As a matter of policy, New York cases make no distinction in interpretation of the state’s due process guarantee and interpretation of the speedy trial guarantee embodied in [CPL § 30.20]” (Peter Preiser, Practice Commentaries, McKinney’s Cons Laws of NY, Book 11A, CPL 30.20).

CPL § 30.20(1) provides,

“[a]fter a criminal action is commenced, the defendant is entitled to a speedy trial”

Where CPL § 30.30 “requires only that the People be ready and announce readiness for trial within a prescribed time frame” CPL § 30.20 “deals with the progress of the criminal action after its commencement...to ensure that the defendant actually be afforded a speedy trial.

“Moreover, ...unlike the “ready rule” in CPL § 30.30, the speedy trial right applies to all offenses, without exception” (Peter Preiser, Practice Commentaries, McKinney’s Cons Laws of NY, Book 11A, CPL 30.20).

What amounts to undue delay is not fixed by a specific time frame, but rather depends upon the circumstances of each particular case (*People v. Prosser*, 309 NY 353 [1955]).

Evaluating when, and if, a defendant’s right to a speedy trial has been violated depends upon the consideration of five factors articulated by the Court of Appeals in *People v. Taranovich*, 37 NY2d 442, at 445 (1975):

(1) the extent of the delay; (2) the reason for the delay; (3) the nature of the underlying charge; (4) whether or not there has been an extended delay of pre-trial incarceration; and (5) whether or not there is any indication that the defendant has been impaired by reason of the delay.

As noted by the Court in *Taranovich* applying these factors is a “balancing process” and “no one factor is determinative” (*Id.*, at 445). Additionally, under the New York Constitution periods of pre and post-accusation delay are viewed in the aggregate in determining whether a speedy trial violation has occurred. Therefore, any delay from the date of the commission of the offense will be considered. (*People v. Singer*, 44 NY2d 241 [1978]; and *People v. Staley*, 41 NY2d 789 [1977]).¹ Applying these factors to the underlying case, the court finds that neither defendant’s constitutional speedy trial rights, nor his due process rights, have been violated.

It is alleged that on August 15, 2013, in the vicinity of 30 Avenue V, Marlboro Houses, Brooklyn, the defendant repeatedly shot Perice Brown causing his death. It is alleged that the defendant also shot another individual in the arm. The decedent, Perice Brown, was transported to Coney Island Hospital with numerous gun shot wounds to his chest, but did not survive those injuries. The second victim was treated at Lutheran Medical Center and released. On August 16, 2013, the defendant was identified from a photo array as the shooter of both the decedent and the surviving victim. On August 16, 2013, a Wanted Investigation Card was issued for the defendant and wanted posters were also circulated. From August 2013 through October 2013 police continued to search for the defendant making visits to his mother’s home, father’s home, mother of his child’s home, and girlfriend’s home. All of the individuals residing at these locations were made aware that the defendant was wanted by the NYPD. On October 5, 2013, the defendant was apprehended by the Fugitive Task Force in Binghamton, New York. On October 21, 2013, the defendant was indicted for Murder in the Second Degree, and on October 24, 2013, defendant was indicted for the additional counts of Attempted Murder in the Second Degree, Criminal

¹ “The federal constitutional right to a speedy trial applies only from the commencement of the action to the commencement of the trial, while the New York due process right covers the entire spectrum from crime through appeal” (Peter Preiser, 2009 Supp Practice Commentaries, McKinney’s Cons Laws of NY, Book 11A, CPL 30.20, 2014 Supp Pamph at 112).

Possession of a Weapon in the Second Degree, Attempted Assault in the First Degree, and Assault in the Second Degree. The defendant was arraigned on the indictment on November 21, 2013.

In considering whether a protracted period of time has elapsed in bringing the defendant to trial, the first two factors the court must consider, as enumerated in *Taranovich*, is the extent of the delay and the reason for the delay. It has been just over two years since the alleged commission of the aforementioned murder by this defendant. While two years is not a short period of time, in reviewing the court file and the reasons for the associated adjournments, the court does not find the delay in this case to be exceptional for a crime of this caliber. As has previously been indicated, the defendant was a fugitive for approximately two months following the alleged commission of the crime. The People have provided the court with sufficient information to conclude that the police were making good faith efforts to locate the defendant. The associated court adjournments following the defendant's indictment included: grand jury review, discovery, motion practice (including a motion to subpoena civilian complaint reports, and case findings, concerning the lead detective), an administrative adjournment due to a snow storm, actual engagement by defense counsel on another matter, and consent adjournments for possible disposition and conference. None of these adjournments is out of the ordinary for a case such as this, and nothing in the file indicates that the People were not moving forward to the best of their ability to bring this case to a quick resolution.

The next two factors the court must consider is the nature of the charge and whether or not there has been an extended delay of pre-trial incarceration. The defendant is standing trial for allegedly murdering one victim and shooting and injuring another. The defendant has been incarcerated since the date of his arrest on October 15, 2013. Defendant was remanded at his arraignment due to the seriousness of the charges against him, the fact that he had been a fugitive

from justice for almost two months prior to his arrest, and due to the fact that he was already on parole at the time of the alleged murder. While the court is aware that the defendant has been incarcerated for approximately 22 months, the court finds such incarceration is warranted under the present circumstances.

The final factor the court must consider is whether or not the defendant has been impaired by reason of the delay. In support of this factor, defense counsel claims that there was an eyewitness who was interviewed by the police whose identity has not been made available to her. Defense counsel was made aware of this witness during discovery, and given a redacted police report indicating the sum and substance of what this witness saw. The name of the witness was excluded. According to the defense, the witness' physical description of the perpetrator is significantly different than the defendant. The People have agreed to make this witness available to defense counsel to interview. Given the seriousness of the charges facing this defendant, and the necessary investigation by the NYPD to both locate the defendant, and to solve the underlying crimes while protecting the civilian witnesses involved, the court does not find that the defendant has been impaired by the fact that this case has not yet gone to trial.

In conclusion, after examining all of the *Taranovich* factors in the context of the facts of this case, the court does not find that defendant's constitutional speedy trial, or due process rights, have been violated. Therefore, defendant's motion for dismissal pursuant to CPL § 30.20 is denied.

BRADY VIOLATION

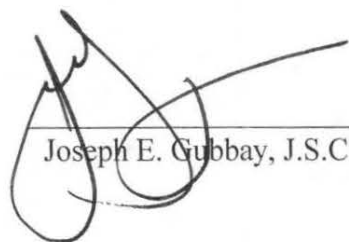
As previously indicated, defense counsel claims that the People have committed prosecutorial misconduct by not revealing the identity of an eyewitness whose statements defense counsel claims are potentially exculpatory. These statements were contained in paragraphs 10 and 11 of a UF61 police report which was served on defense counsel during open file discovery

by the People. Specifically, the statements at issue refer to the color of the shooter's skin as that of a "light skinned male black, or Hispanic". Defense counsel contends that the defendant does not match this physical description, and therefore the witness can provide exculpatory evidence. As such the identity of the eyewitness should be revealed to her.

The court does not find that a *Brady* violation has occurred, nor does the court find that the People have engaged in any prosecutorial misconduct. The redacted police report containing the relevant information was timely served on defense counsel during discovery. Furthermore, in ongoing compliance with their obligations under *People v. Brady*, 373 US 83 (1963), the People have agreed to make the witness available to defense counsel to be interviewed.

This constitutes the decision and order of the court.

Dated: September 8, 2015



Joseph E. Gubbay, J.S.C.