

**People v Johnson**

2020 NY Slip Op 33154(U)

March 11, 2020

Supreme Court, Albany County

Docket Number: DA 421-19

Judge: Thomas A. Breslin

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

**ORIGINAL**

THE PEOPLE OF THE STATE OF NEW YORK,

**FILE**

-against-

DECISION AND ORDER  
MOTION TO DISMISS  
Indictment No. 10-9218  
Index No. DA 421-19

CHRISTOPHER JOHNSON,  
  
Defendant.

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APPEARANCES:

OF COUNSEL:

FOR THE PEOPLE:

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CAROLINE E. MURRAY, ESQ.  
Assistant District Attorney

FOR THE DEFENDANT:

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Albany, New York 12207

DONALD L. PARTYKA, ESQ.  
Assistant Public Defender

**THOMAS A. BRESLIN, JSC**

On August 30, 2019, the defendant was charged by indictment with burglary in the first degree, a class B felony (Penal Law § 140.30 [2]), strangulation in the first degree, a class C felony (Penal Law § 121.13), strangulation in the second degree, a class D felony (Penal Law § 121.12), assault in the second degree (Penal Law § 120.05 [1]), attempted assault in the second degree, a class D felony (Penal Law §§ 110/120.05 [1]), rape in the first degree, a class B felony (Penal Law § 130.35 [1]), and criminal sexual act in the first degree, a class B felony (Penal Law § 130.50 [1]). The defendant moves to dismiss the indictment and for an order finding the People's announcement of trial readiness as contained in its February 20, 2020 supplemental certificate of discovery compliance illusory. The People oppose.

## 1. MOTION TO DISMISS: MITIGATING DEFENSE BEFORE GRAND JURY

While the better practice would have been for the prosecutor to have played the police body camera recording of the complainant denying she had been raped or sexually assaulted for the grand jury and instructing them on this mitigating defense (see People v Valles, 62 NY2d 36 [1986]), under the particular facts of this case, the Court finds it was unnecessary.

As has long been held, “[t]he People have broad discretion in presenting a case to the grand jury and need not ‘present all of their evidence tending to exculpate the accused’” (People v Radesi, 11 AD3d 1007 [4 Dept 2004], lv denied 3 NY3d 760 [2004], quoting People v Mitchell, 82 NY2d 509, 515 [1993]; see People v Smith, 289 AD2d 1056, 1057 [2001], lv denied 98 NY2d 641 [2002]). Before the grand jury, the People played the 911 call wherein the complainant failed to report she was raped or sexually assaulted. Additionally, the complainant testified that initially she did not tell the police of the sexual assault because she was ashamed. However, before she was discharged from the hospital and after speaking with her mother, the complainant testified that she told hospital staff that she was raped and sexually assaulted.

The Court of Appeals has since clarified that “[People v Valles] does not require that every complete defense suggested by the evidence be charged to the Grand Jury; rather ‘whether a particular defense need be charged depends upon its potential for eliminating a needless or unfounded prosecution’” (People v Mitchell, 82 NY2d 509, 514–15 [1993], quoting People v Lancaster, supra at 27). This is not a situation where the defendant’s conduct could no longer be considered criminal had the grand jurors been shown the body camera video where complaint denies being sexually assaulted upon initial questioning (see People v Lancaster, supra at 27-28). Certainly, this was not the exclusive evidence of complainant’s initial denial, as a grand juror question clarified that the complainant also did not inform the 911 operator that she was sexually assaulted.

As the grand jury was made aware that the complainant initially denied being sexually assaulted -- albeit from different evidence than the body camera video -- and the rationale for it, and as the defendant will have “a meaningful opportunity to use the allegedly exculpatory material during his case, his right to a fair trial was not violated” (People v Radesi, supra at 1007, citing People v Cortijo, 70 NY2d 868, 870 [1987]). Accordingly, the defendant’s motion to dismiss the indictment is denied. Motion denied.

## 2. CHALLENGE TO THE PEOPLE’S CERTIFICATE OF COMPLIANCE AND CERTIFICATE OF TRIAL READINESS

The defendant challenges the People’s certificate of compliance and announcement of trial readiness. The People oppose. Initially, the People incorrectly allege that because “[t]here has been a certification of good faith compliance, [t]he People are ready for trial.” CPL 245.50 (3) provides that, “absent an individualized finding of exceptional circumstances by the court before which the charge is pending, the prosecution shall not be deemed ready for trial for purposes of section 30.30 of this chapter until it has filed a *proper* certificate [of discovery compliance]” ([emphasis added]; see also CPL 245.20 [3]; 30.30 [5]). In this regard, CPL 30.30 (5) expressly states:

*“Whenever pursuant to this section a prosecutor states or otherwise provides notice that the people are ready for trial, the court shall make inquiry on the record as to their actual readiness. If, after conducting its inquiry, the court determines that the people are not ready to proceed to trial, the prosecutor’s statement or notice of readiness shall not be valid for purposes of this section.”*

By the express terms of CPL 30.30 (5), the People’s announcement of trial readiness, standing alone, does not stop the speedy trial clock. The Court has not yet found, through judicial inquiry, that the People have filed a “proper” (see CPL 245.50 [3]) certificate of compliance and thus, no valid announcement of trial readiness has been made in this case (see CPL 30.30 [5]). The prosecutor’s “Third Supplemental” certificate of compliance was filed contemporaneously with her response to the instant motion and as a significant amount of CPL 245.20 discovery remains outstanding (see *infra*), the People are not ready for trial.

The defendant also contends that the People have failed to exercise due diligence in ascertaining the existence of impeachment materials for their law enforcement witnesses, pursuant to CPL 245.20 (1)(k)(iv). Initially, it is noted that CPL 245.20 (5) provides, in relevant part, that subdivision (1) of CPL 245.20 has the force and effect of a court order and, “failure to provide discovery pursuant to [CPL 245.20 (1)] may result in application of any remedies or sanctions permitted for non-compliance with a court order under [CPL 245.80].”

Article 245 of the CPL provides, in relevant part, that within 15 days of the defendant’s initial arraignment, the People shall disclose to the defendant all evidence and information, including that which is known to police and other law enforcement agencies acting on the government’s behalf in the case, that tends to [] “impeach the credibility of a testifying prosecution witness” (CPL 245.20 [1][k][iv]; see *Kyles v Whitley*, 514 US 419, 437 [1995][“the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police”]; *People v Rouse*, 34 NY3d 269 [2019]; *People v Smith*, 27 NY3d 652, 660 [2016]; *People v Baxley*, 84 NY2d 208, 213-214 [1994]). CPL 245.20 also makes clear that “[i]nformation under this subdivision shall be disclosed whether or not such information is recorded in tangible form and irrespective of whether the prosecutor credits the information.”

Specifically, the defendant asserts that the People have not engaged in a “diligent, good faith effort” to ascertain the existence of Brady/Giglio material for their law enforcement witnesses (see CPL 245.20 [1][k][iv]). The basis for the defendant’s assertion was the People’s service upon him of certain “impeachment material questionnaires” which four of the People’s law enforcement witnesses refused to complete. The People assert that they satisfied their CPL 245.20 (1)(k)(iv) Brady/Giglio obligations merely by providing the questionnaires to their witnesses, regardless of the answers provided. However, in seeming direct contravention of that opinion, the People inform of their intention to provide the complete personnel files for Police Officer Butler, Sergeant Jimm Lewis and Detectives Jason Wilson and Ryan Moore to the Court for in camera review upon receipt. The Court declines the People’s invitation at this juncture, to become involved in what assuredly is the People’s initial Brady/Giglio obligations (see CPL 245.20 [1][k][iv]; Civil Rights Law 50-a [4][exempting assistant district attorneys from the

provisions of Civil Rights Law 50-a who are required to review personnel records for their law enforcement witnesses “in the furtherance of their official functions”]).

The Court finds no basis, at this juncture, to become involved in what assuredly is the People’s initial Brady/Giglio obligation. If, after the People review these materials, and further assuming the parties cannot agree after diligently conferring in attempting to reach an accommodation about this discovery dispute (see CPL 245.35 [1]), the parties may then seek a ruling from the Court (see People v Bonifacio, 179 AD3d 977 [2 Dept 2020]).

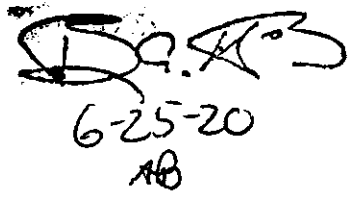
The Court will hold a judicial inquiry regarding the People’s Third Supplemental Certificate of Compliance on **Tuesday, March 17, 2020 at 9:00 a.m.**

**OTHER MOTIONS**

Any motions not specifically granted herein are hereby denied. This memorandum shall constitute the decision and order of the Court.

Dated: March 11, 2020  
Albany, New York

  
THOMAS A. BRESLIN, JSC

  
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