

People v Quandt

2021 NY Slip Op 32059(U)

September 28, 2021

City Court of Watervliet, Albany County

Docket Number: CR-00057-21

Judge: Thomas E. Lamb

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STATE OF NEW YORK
WATERVLIET CITY COURT

COUNTY OF ALBANY

PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION AND ORDER
DOCKET No.: CR-00057-21

PHILIP QUANDT,

Defendant.

APPEARANCES:

FOR THE PEOPLE:

HON. P. DAVID SOARES
Albany County District Attorney
Albany County Courthouse
6 Lodge Street
Albany, New York 12207
By: Eric E. Bisailon, Jr. Esq., Assistant District Attorney

FOR THE DEFENDANT:

HON. STEPHEN W. HERRICK
Albany County Public Defender
112 State Street, 2nd Floor
Albany, New York 12207
By: Donald L. Partyka, Esq., Assistant Public Defender

Lamb, J.

On May 16, 2018 defendant Philip Quandt was charged with criminal mischief in the second degree, a class D felony (Penal Law § 145.10); menacing in the second degree, a class A misdemeanor (Penal Law § 120.14); and reckless endangerment in the second degree, a class A misdemeanor (Penal Law § 120.20). On October 17, 2018, the People's CPL 180.40/180.50 motion to reduce the felony charge to a misdemeanor was granted and the People announced trial readiness in open court. By decision and order dated February 25, 2019, defendant's initial

CPL 30.30 motion was denied by Colonie Town Court (see People v Philip Quandt, Docket No. CR-00057-21[Sommers, J., Feb. 25, 2019 omnibus decision and order]) upon finding that the People timely declared trial readiness on day 153 of the applicable 184 days (see CPL 30.30 [5][c]).¹ Now, defendant moves for an order invalidating the People’s January 7, 2020 Certificate of Compliance and concomitant statement of trial readiness alleging that: (1) the People failed to comply with their CPL 245.20 (1)(c) automatic discovery obligation relating to witness lists; and (2) the absence of a CPL 245.50 (3)/30.30 (5) judicial inquiry precludes a valid statement of readiness. Consequently, defendant further moves, pursuant to CPL 30.30, to dismiss all charges arguing that the People have failed to validly declare trial readiness within the applicable time frame set forth in CPL 30.30 – here 6 months or 184 days (minus excludable time) from the day after defendant’s arraignment on March 16, 2018 (People v Stiles, 70 NY2d 765, 767 [1987]).² The People oppose defendant’s motion and defendant has filed a reply.

2020 Statements of Trial Readiness

Effective January 1, 2020, the Legislature significantly broadened the People’s discovery obligations in enacting CPL Article 245 and repealing former CPL Article 240 (see People v Ozzie Williams, 2021 Slip Op 50743(U), 2021 WL 3356381 [Rosenthal, J., NYC Crim Ct, July 30, 2021]). Chief among the legislative changes is that now, “the People cannot be ready for trial unless they have first served on defendant and filed with the court a certificate of compliance certifying that they have complied with their discovery obligations pursuant to CPL 245.20”

¹This matter originated in Colonie Town Court and was transferred to Watervliet City Court on December 22, 2020 by order issued by Ackerman, JCC, pursuant to CPL 170.15.

²Both parties concede, and the court agrees, that pursuant to CPL 30.30 (5)(c), based on the timing of the People’s reduction of the felony to a misdemeanor, the People had 6 months from the day after defendant’s arraignment on the initial felony complaint in which to validly declare trial readiness. The court also notes that defendant has failed to argue that the People were responsible for any post-readiness delay between October 17, 2018 – January 7, 2020.

(People v Quinlan, 71 Misc3d 266, 268–69 [NY Crim Ct 2021]; see CPL 245.50 [3]; CPL 30.30 [5]). Once the People declare trial readiness, the law requires the court to “make inquiry on the record as to their actual readiness” and “[t]he prosecution shall not be deemed ready for trial for purposes of section 30.30 . . . until it has filed a proper certificate pursuant to subdivision one of this section” (People v Quinlan, supra at 268–69, quoting CPL 245.50 [3]). As a “‘proper’ certificate of compliance — that is, one filed in good faith asserting that the prosecution has exercised the necessary due diligence in complying with their obligations — is now a prerequisite before the People may legally be deemed ready for trial, previous case law holding that discovery failures do not impact the People’s readiness have now been abrogated by statute and are no longer controlling.” (People v Adrovic, 69 Misc3d 563, 575 [NY Crim Ct, Kitsis, J., Sept 3, 2020]). Accordingly, if upon inquiry the court determines that the People have not complied with their automatic discovery obligations and are not ready for trial, the People’s “statement or notice of readiness shall not be valid for [speedy-trial purposes]” (CPL 30.30 [5]).³ Moreover, “Article 245 contains an express ‘presumption of openness,’ favoring disclosure when interpreting the discovery provisions” (People v Soto, No. CR-007995-21NY, 2021 WL 3355998, at *1 [NY Crim Ct, Rosenthal, July 30, 2021]), citing 245.20 [7] and William C. Donnino, Practice Commentary, McKinney’s Cons Laws of NY, CPL § 245.10 [“the prosecutor’s obligations to provide discovery under the current statutes are so broad as to virtually constitute ‘open file’ discovery, or at least make ‘open file’ discovery the far better course of action to assure compliance. Thus, a prosecutor who fails to engage in ‘open file’ discovery (except for ‘work product’ and information subject to a protective mandate of a statute or court order) may do so at his or her professional peril while also jeopardizing the viability of a

³CPL 30.30 (5) expressly holds that a judicial inquiry testing the People’s declaration of readiness is only excused when defendant waives disclosure requirements.

prosecution’’]).

To establish a violation under CPL 30.30, defendant has the initial burden of demonstrating the existence of a delay in excess of the statutory time period (see People v Brown, 28 NY3d 392 [2016]; People v Santos, 68 NY2d 859, 861 [1986]). Upon meeting the initial burden, the burden then shifts to the People to establish that certain periods within that time period should be excluded (see People v Brown, *supra*; People v Fields, 214 AD2d 332 [1st Dept 1995]). The People also have the burden of clarifying the basis for an adjournment on the record, so that the motion court can determine to whom an adjournment should be charged (see People v Cortes, 80 NY2d 201, 215 [1992]; People v Berkowitz, 50 NY2d 333 [1980]).

As previously noted, the parties concede that when the People first claimed trial readiness in open court on October 17, 2018 -- 153 of the 184 applicable days had accrued (May 17, 2018 - October 17, 2018). The legislative changes effective January 1, 2020 did not invalidate the People’s October 17, 2018 statement of readiness as “[l]egislative amendments that take effect during the pendency of a case apply to subsequent proceedings [], but do not serve to invalidate prior proceedings” (People v Nge, 67 Misc3d 650, 654 [NY Crim Ct 2020, Kitsis, J., Apr 14, 2020] [internal citations omitted]). Instead, “on January 1, 2020, the People reverted to a state of unreadiness and could not be deemed ready until filing the proper certificate of compliance required by CPL 245.50” (*id.*). Thus, as of January 1, 2020, for purposes of CPL 30.30, the People had 31 days (184 -153 = 31 days) to comply with their automatic discovery obligations (see CPL 245.20) and validly declare trial readiness.

January 1, 2020 – January 7, 2020 (7 days chargeable)

Defendant argues that the People’s declaration of readiness as contained in their January 7, 2020 Certificate of Compliance is illusory because the People failed to provide a witness list

and associated contact information and instead, responded to CPL 245.10 (1) (c) by indicating “[a]ll persons named in discovery are potential witnesses” (Ppl’s Aff in Opp at β 20).

Defendant having met his initial burden, the burden shifts to the People to show that specific periods of delay should be excluded from the CPL 30.30 calculation (see People v Brown, supra; People v Fields, 214 AD2d 332 [1st Dept 1995]; People v Ramirez-Correa, supra at 572 [and citations within]). Said differently, “the People must controvert the factual basis for the motion” (People v Ramirez-Correa, supra, citing CPL 170.45; CPL 210.45 [4]; see People v Lomax, 50 NY2d 351, 357 [1980]). Here, the People argue that they do not have to provide a witness list because CPL 245.20 (1) (c) does not specifically say they have to (Ppl’s Aff in Opp at ββ 18-19). CPL 245.20 (1) (c), provides in relevant part:

The prosecution shall disclose to the defendant, and permit the defendant to discover, inspect, copy, photograph and test, all items and information that relate to the subject matter of the case and are in the possession, custody or control of the prosecution or persons under the prosecution's direction or control, including but not limited to: [] (c) The names and adequate contact information for all persons other than law enforcement personnel whom the prosecutor knows to have evidence or information relevant to any offense charged or to any potential defense thereto, *including a designation by the prosecutor as to which of those persons may be called as witnesses* [emphasis added].

The plain terms of CPL 245.20 (1) (c) requires the People to engage in a mandatory two-part process: (1) disclosure of names and adequate contact information *for all persons* other than law enforcement personnel *whom the prosecutor knows to have evidence or information relevant to any offense charged or to any potential defense thereto* (see CPL 245.20 [1])[emphasis added]; and (2) a further *designation by the prosecutor as to which of those persons may be called as witnesses* (see CPL 245.20 [1] [c])[emphasis added]). The statutory text fails to support the People’s assertion that: “any attorney who has tried a case knows that determinations with respect to whether a particular witness will be called are almost always fluid, often times up to

the moment a judge utters ‘call your next witness, counsel’” (Ppl’s Aff in Opp at β 20). Rather than pigeonholing, as the People contend, CPL 245.20 (1) (c) merely requires the People to err on the side of disclosure (see also CPL 245.20 [7]) by requiring them to designate *potential* prosecution witnesses (see 245.20 [1] [c]) from those persons identified as having known “evidence or information relevant to any offense charged or to any potential defense thereto” (CPL 245.20 [1]). So, to the extent the People argue that CPL 245.20 (1) (c) is flexible, the court agrees. However, the inherent fluidity of CPL 245.20 (1) (c) does not support the People’s action in this case of directing defendant to sift through a pile of discovery to ascertain and create a witness list. The People fail to argue how their CPL 245.20 (1) (c) response contained in its January 7, 2020 Certificate of Compliance exemplifies “due diligence” and a “good faith” effort to comply with its discovery obligations (see CPL 245.20 [1]). Moreover, the People have not argued that any “special circumstances” (CPL 245.50 [3]) are applicable in this case or that they required more time to fully comply with automatic discovery.

Here, the only excludable time asserted by the People is an alleged 15 days at the start of January 2020, based upon a theory adopted by some courts closer to enactment of CPL Article 245. The 15 days correlate to the former applicable time period for discovery disclosures. Even assuming, *arguendo* that this court considered the 15-day excludible time in theory, and further assuming the referred to 15 days made statutory sense considering the amendments made to the People’s discovery disclosure timeline – now 20-35 days depending on defendant’s custodial status (see CPL 245.10 [1][a][i], [ii]), such exclusion would not alter the CPL 30.30 analysis in this case. Defendant’s allegations that they are to be afforded an opportunity to be heard to ascertain whether the disclosure requirements have been met pursuant to CPL 30.30 (5) notwithstanding, the court finds the People’s January 7, 2020 Certificate of Compliance invalid

because the People had the existent discoverable material in their possession yet failed to comply with CPL 245.20 (1) (c) and 245.50 (3).

January 8, 2020 - March 10, 2020 (61 days chargeable)

The People filed a second Certificate of Compliance on March 10, 2020 after enumerating potential witnesses and providing some contact information and declared trial readiness again.⁴ As noted above, starting on January 1, 2020, the People only had 31 days of statutory speedy trial time remaining. As the People's January 7, 2020 Certificate of Compliance has been deemed invalid, at a minimum, the People are charged with 69 days from January 1, 2020 to March 10, 2020 – the next earliest date that the People could possibly be deemed ready for trial. The two time periods of May 17, 2018 to October 17, 2018 (153 days chargeable) and January 1, 2020 to March 10, 2020 (69 days chargeable) result in 222 days chargeable to the People, which is 38 days over the applicable time period of 184 days. As there remains unexcused delay exceeding 184 days, pursuant to CPL 30.30 (5)(c), defendant's motion to dismiss all charges pending against him must be granted. Motion granted.

This shall constitute the Decision and Order of this Court.

ENTER.

SO ORDERED.

Dated: September 28, 2021
Watervliet, New York



Hon. Thomas Lamb
Watervliet City Court Judge

⁴The court notes that the People's March 10, 2020 fails to contain the required CPL 30.30 (5-a) certification thus, even assuming, arguendo, that this Certificate of Compliance had been timely filed and a judicial inquiry was conducted, this Certificate of Compliance would have to be found invalid as a matter of law (see CPL 30.30 [5-a]).