

People v Beaupre

2021 NY Slip Op 32604(U)

October 28, 2021

City Court of Cohoes

Docket Number: CR#1004-21

Judge: Eric M. Galarneau

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At a Trial Term of the Cohoes City Court-Criminal Part held in and for the City of Cohoes, New York on the 28th day of October, 2021.

PRESENT: HON. ERIC M. GALARNEAU
City Court Judge

STATE OF NEW YORK
COUNTY OF ALBANY

COHOES CITY COURT — CRIMINAL PART

THE PEOPLE OF THE STATE OF NEW YORK *

-against- *

DECISION AND ORDER

ANDRE BEAUPRE, *

CR#1004-21

Defendant. *

APPEARANCES: HON. P. DAVID SOARES.
Albany County District Attorney
(Bryanne Perlanski-Brucato Esq., of Counsel)
Attorney for the People

HON. STEPHEN W. HERRICK
Albany County Public Defender
(Rebecca K. Harp, Esq, of Counsel)
Attorney for the Defendant

Galarneau, Eric, M, J.

On June 15, 2021, the above-named defendant was charged with Petit Larceny (Penal Law (PL) §155.25). The defendant, through his attorney, now moves for omnibus relief, including a motion to invalidate the People's certificate of compliance. The People have opposed the motion. The following constitutes the Decision and Order of the Court.

DEFENDANT'S MOTION TO INVALIDATE THE PEOPLE'S CERTIFICATE OF COMPLIANCE AND STATEMENT OF READINESS

On August 23, 2021, the People filed their statement of readiness (SoR) and Certificate of Compliance (CofC). On August 26, 2021, the Court conducted an inquiry pursuant CPL §30.30(5), deeming the People ready for trial. For her part, the defendant objected, but the Court

permitted formal objections to be made in writing (CPL §245.50[4]). The defendant now seeks to invalidate the CofC and SoR. The People filed a supplemental CoC on September 28, 2021.

CPL §245.50 requires that the People file a CofC as a precursor to speedy trial readiness (CPL §245.50[3]; CPL §30.30[5]). The CofC must affirm that, “after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery”, the prosecutor has complied with their discovery obligations under CPL §245.20. (CPL §245.50[1]). Failing to do so can have two distinct consequences. First, it may nullify the People’s statement of speedy trial readiness under CPL §30.30. Second, it can result in the imposition of sanctions pursuant to CPL §245.80. Each will be considered in turn.

In this case, there is no dispute that the People have failed to provide certain calibration records, nor that these items would qualify as material related to “scientific tests or experiments” as would require disclosure under CPL §245.20[1][j]. Further, the People have not raised any issue as to the information being beyond their possession or control or that of any “public servant engaged in law enforcement activity” (CPL §245.20[1][j]; *see People v. Preston*, 70 Misc.3d 355 [Cohoes City Court 2020]). Therefore, the Court is compelled to conclude that (1) the information is in the People’s possession as that is defined under CPL §245.20[1][j] and that (2) they have not provided it to the defense. As such, the People’s readiness for trial is invalid unless there is a statutory exception.

The People point to various “good faith” savings clauses, which purports to permit the filing of a CofC and SoR even in the absence of full compliance with discovery. In fact, both CPL §245.50 and 30.30 contain such language. (CPL §245.50[1] ad [3]; CPL §30.30[5]). However, the issue turns on whether the People’s non-compliance was in good faith.

Among the cases cited by the People is *People v. Bruni* (71 Misc.3d 913 [Alb. Co. Ct. 2021]). In that case, the Court concluded that the People's CofC was valid despite their failure to disclose police personnel records that had been lost due to a data breach. Critical to the *Bruni*'s determination was that the People had acted in good faith under the "unique" circumstances of the case. The Court explained (*Id.*, at 922):

A review of CPL article 245, intertwined with CPL 30.30 (5), makes it clear that there is not a rigid, bright-line rule for the courts to follow with the various discovery disputes that often arise. Instead, the determination must be made, depending on the unique case at hand, as to whether the People have reasonably and substantially adhered to their discovery obligations and acted in good faith doing so.

As *Burin* points out, "good faith" is a flexible term, which can vary depending upon the case at hand. In *Bruni*, for example, the People could not disclose police personnel records because the records had been destroyed. In itself, the destruction of the personnel records may have absolved the People of the requirement to provide the records as a precondition for their CofC (see CPL §245.50[1]; CPL 245[1][b]). But *Bruni* went further, observing that the People had also made "reasonable inquires" of police officers about the existence of any favorable information (see CPL §245.35). Under the circumstances, there is no question that the People acted in "good faith" in *Bruni* (see CPL §30.30[5]).

However, as flexible as "good faith" may be, its scope is often elusive. In other words, "good faith" may not, in all cases, mean "good enough". Indeed, the statute could easily be construed as suggesting that "good faith" is limited to only one kind of discoverable material –that which is "lost, destroyed or unavailable", as expressly intimated in CPL §240.50(1) and (3). The statute simply is not clear on this point. What is clear is that, at the very least, "good faith" pertains to the People's efforts to obtain discoverable material. Where there are no efforts, there can be no good faith.

But what kind of effort is needed? Often, that will depend on the nature of the item that was not disclosed. For example, failing to turn over a draft accusatory instrument may qualify as a *de minimis* oversight that would not invalidate an otherwise compliant SoR (see, e.g., *People v. Cano*, 71 Misc.3d 728 [Queens Co. Sup. Ct. 2020]). On the other hand, failing to turn over calibration records—which would be required at trial as a foundational evidence in connection with one of the alleged offenses—is not *de minimis*. Greater effort would therefore be required. In other words, the more material the disclosure, the greater the effort must be to obtain it.

That leaves the question of how to assess whether the People made good faith efforts in a particular case. Here, the answer to that question depends on whether the contested records are fully within the People’s custody or control such that the People can release them. To be disclosable, information must be in the possession or control of the prosecution or any “public servant engaged in law enforcement activity” (CPL §245.20[1][j]; see *People v. Preston*, 70 Misc.3d 355 [Cohoes City Court 2020]). The records in this case were in the possession of the Cohoes Police Department, which clearly qualifies as a “a public servant engaged in law enforcement agency”. By statute, the records are therefore within the prosecutor’s custody or control.

Under these facts, it cannot be said that the People demonstrated good faith compliance with their discovery requirements. In fact, as the defense points out, the defense alighted on the prosecutorial oversight because several documents alluded to the missing information. There is no reason that the prosecution could not have undertaken the same process of verification. As such, the People’s Certificate of Compliance, dated August 23, 2021, is deemed invalid and a new inquiry will be held as to the CoC filed on September 28, 2021.

PRECLUSION - STATEMENTS

The People are precluded from using all statements that are subject to CPL 710.30 that were not disclosed as required by CPL §710.30.

PRECLUSION OF IDENTIFICATION EVIDENCE NOT DISCLOSED PURSUANT TO CPL §710.30

The People are precluded from using all identifications that are subject to CPL §710.30 that were not disclosed within the time frame prescribed in the Criminal Procedure Law.

DISCLOSURE OF *BRADY* MATERIAL, AND MATERIAL REQUIRED TO BE DISCLOSED
UNDER ARTICLE 245 OF THE CRIMINAL PROCEDURE LAW

The Court directs the People to comply with the directives set forth in Brady v. Maryland, 373 U.S. 83 (1963) and Article 245 of the Criminal Procedure Law.

SANDOVAL AND VENTIMIGLIA HEARINGS


The Court will hold Sandoval and Ventimiglia in accordance with Article 245 of the Criminal Procedure Law.

RENEWAL OF MOTIONS

Defendant's request to make any further motions will be decided by the Court if and when any further motions are made by the defendant. All other motions and requests contained in the defendant's moving papers not specifically addressed herein are denied with leave to renew upon citation to specific legal authority which directly supports the request.

This shall constitute the Decision and Order of the Court.

Dated: October 28, 2021
Cohoes, New York



Eric M. Galarneau
Cohoes City Court Judge