People v Papuga
2022 NY Slip Op 32708(U)
August 4, 2022
County Court, Wyoming County
Docket Number: Docket No. 8648
Judge: Michael M. Mohun

At a term of the County Court held in and for the County of Wyoming, at the Courthouse in Warsaw, New York, on the 4th day of August, 2022.

PRESENT: **HONORABLE MICHAEL M. MOHUN**
County Court Judge

STATE OF NEW YORK
COUNTY COURT: COUNTY OF WYOMING

THE PEOPLE OF THE STATE OF NEW YORK

v.

DUMITRU PAPUGA,

Defendant-Appellant.

DECISION AND ORDER
Docket No. 8648
Warsaw Town Court No. 21010040

The above-named defendant-appellant appealed from his conviction by the Warsaw Town Court (Ronald Errington, J.), following a bench trial concluded on November 1, 2021, upon the charge of Disobeying a Traffic Control Device (Vehicle and Traffic Law §1110[a])

NOW, upon the defendant-appellant's Notice of Appeal and Affirmation of Errors dated November 3, 2021, the Return of the Warsaw Town Court, consisting of a three-page factual narrative along with the papers contained in the Town Court's file relating to the case, the Record on Appeal prepared by Zev Goldstein, Esq., attorney for the defendant-appellant, the defendant-appellant's Appeal Brief by Zev Goldstein, Esq., the People's Brief and Appendix by Adam W. Koch, Assistant District Attorney, and the Reply Appeal Brief by Zev Goldstein, Esq., the matter having been submitted for determination and due deliberation having been had, the following decision is rendered upon the defendant-appellant's appeal.

Counsel for defendant-appellant contends in his brief that this Court must answer in the affirmative the following questions: 1) "Whether the Record on Appeal is jurisdictionally defective"; 2) "Whether the Supporting Deposition was jurisdictionally defective"; 3) "Whether the People exceeded their time under CPL § 30.30(1)(e)"; and 4) "Whether the People complied with discovery pursuant to CPL §§ 245.10(1)(iii), 245.20 (1)(s) and 245.25 (2)." In the Affirmation of Errors, he states the last three points as follows: "We submit that Judge Errington erred by: a.

denying the motion to dismiss for insufficient factual allegations, and b. denying the motion to dismiss for the People's CPL §30.30 violation, and c. allowing the trial to proceed without the People having complied with discovery, CPL [Article] 245." He urges this Court to reverse the conviction, vacate the sentence and remit the fine on the basis of these four asserted errors.

With respect to the lower court's Return, the Court finds that it is sufficient to permit appellate review of the errors claimed by the defendant-appellant. The filing of the lower court's Return in this case occurred after this Court granted the defendant-appellant's November 16, 2021, motion pursuant to CPL §460.10(e) seeking an Order compelling the lower court to file the Return. In its January 18, 2022, Decision and Order, the Court directed the lower court to file the Return within 30 days. The Court subsequently denied as moot the defendant-appellant's March 2, 2022, motion asking the Court to hold the lower court in contempt for willfully failing to comply with the January 18 Decision and Order because, by the time the March 2 contempt motion was heard, the lower court's Return had already been filed. The defendant-appellant's March 2 motion also demanded that this Court, upon the precedent of People v. Feldes (73 N.Y.2d 661 [1989]), deem the allegations in the Affirmation of Errors to be admitted and summarily reverse the conviction. The Court declined to grant this relief. Counsel for the defendant-appellant, insisting that the Return as filed remained deficient and that Feldes required the reversal of the conviction, moved on May 6, 2022, to "reargue" the March 2 motion. In a Decision and Order dated May 25, 2022, the Court denied the motion to reargue. Needless to say, the question of whether this Court erred in these rulings is not one properly before the Court in this appeal. This Court is hardly in a position to provide appellate review of its own rulings.

In this regard, however, the Court observes that the claimed errors of the lower court do not depend on the record of the trial – which, because the proceedings before the Warsaw Town Court were not recorded by a court stenographer (see CPL §460.10[3]), can only be supplied by the court's Return. As defendant-appellant's counsel concedes in his Reply Appeal Brief, "this appeal deals with pre-trial errors, not trial errors" and "[t]herefore, a transcript of the trial would be irrelevant." All of the pre-trial errors complained of were either the subject of written rulings of the court, or, if they were orally delivered from the bench, they have been adequately stated in the three-page narrative submitted as part of the court's Return. Therefore, this is not a case where an absent or inadequate return has left this Court "with nothing meaningful to review" (People v. Rokahr, 141 Misc.2d 117, 119 [St. Lawrence County Ct., 1988]). On the contrary, the record placed before the Court contains all that is needed to permit appellate review of the errors claimed by the defendant-

appellant in the Affirmation of Errors. No doubt, "the preparation and filing of [the] return, whatever may be the content of the return, amounts to a procedural condition precedent to perfection of the appeal" (id.), but the CPL also directs that "[a]n appellate court must determine an appeal without regard to technical errors or defects which do not affect the substantial rights of the parties" (CPL §470.05[1]). Any alleged remaining defect in the Return is consequently not, in this Court's estimation, a basis for the reversal of the conviction.

Proceeding to the merits, it is undisputed that the People never served a written certificate of compliance pursuant to CPL §245.50(1). Moreover, it appears that counsel for the defendant-appellant is correct in asserting that the Legislature intended that the discovery obligations enacted by CPL Article 245 should apply in all prosecutions, even those where the only charges are traffic infractions (see CPL §245.10[1][a][iii]). There being no exemptions in the statute to the certification requirement of §245.50(1), the Court concludes that a certificate of compliance is required even in a prosecution, like the one in this case, where the only charge is a traffic infraction. The Court is not persuaded, however, that the remedy for the failure to file a written certificate of compliance is dismissal. Nor is the Court persuaded that Justice Errington erred in allowing the trial to proceed after receiving the prosecutor's oral representation that all discovery had been provided to the defense.

Similarly, the Court rejects the contention of counsel for the defendant-appellant that Justice Errington erred in failing to dismiss the case on statutory speedy trial grounds. On the contrary, since the defendant-appellant was charged with only a traffic infraction, none of the time limits established by CPL §30.30(1) apply to his case (People v. Fisher, 167 Misc.2d 850 [Criminal Court, City of New York, Richmond County, 1995]; People v. Kreinen, 2002 N.Y. Slip Op. 40359[U] [Sup. Ct., Appellate Term, New York, 9th and 10th Judicial Districts, 2002]; William C. Donnino, 2020 Supp. Practice Commentaries, McKinney's Cons. Laws of NY, CPL §30.30, 2020 Pocket Part at 91-93). Counsel for the defendant-appellant argues that the addition in 2019 of subsection (e) – which states that "for the purposes of this sudivision, the term offense shall include vehicle and traffic law infractions" – has rendered the 30-day time limit contained in CPL §30.30(1)(d) applicable to prosecutions where the only charge is a traffic infraction. This is incorrect. Subsection (d) provides that a motion to dismiss on the ground that the defendant has been denied a speedy trial "must be granted where the people are not ready for trial within" "thirty days of the commencement of a criminal action wherein the defendant is accused of one or more offenses, at least one of which is a violation and none of which is a crime." This subsection cannot apply to

the defendant-appellant's case because the charge he faced is a traffic infraction (Penal Law §10.00[2]; Vehicle and Traffic Law §155), not a violation (Penal Law §10.00[3]). Accordingly, the Court finds that the lower court properly denied the defendant-appellant's motion to dismiss on speedy trial grounds.

The Court reaches a different conclusion with respect to the defendant-appellant's remaining claim of error – the claim that the court should not have denied his motion to dismiss the Simplified Traffic Information, as supplemented by the trooper's supporting deposition, for facial insufficiency. The motion should have been granted.

To be sufficient, a supporting deposition for a Simplified Traffic Information must contain "allegations of fact, based either upon personal knowledge or upon information and belief, providing reasonable cause to believe that the defendant committed the offense or offenses charged" (CPL §§100.25[2], 100.40[2]). Vehicle and Traffic Law §1110(a) states that "[e]very person shall obey the instructions of any official traffic-control device applicable to him placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this title." The supporting deposition served by Trooper Helmer states that "Defendant was observed operating aforementioned motor vehicle westbound on State Route 20A in the town of Warsaw, Wyoming County on a prohibited roadway for vehicles over 9 tons." Missing from the supporting deposition is any mention or hint of a traffic sign or other traffic control device. This is a fatal omission which renders the supporting defective because "there are no facts stated anywhere in the [supporting deposition] to indicate what, if any, traffic control device the Defendant disobeyed" (People v. Strafer, 10 Misc.3d 1072(A), 2006 N.Y. Slip Op. 50046[U], *4, [Crim. Ct., City of New York, Kings Co., 2006]; see also People v. Bollag, 42 Misc.3d 149[A], 2014 N.Y. Slip Op. 50407(U) [Sup. Ct., Appellate Term, 2nd Dept., 9th and 10th Judicial Districts, 2014]; People v. Looney, 67 Misc.3d 135[A], 2020 N.Y. Slip Op. 50522[U], *2, [Sup. Ct., Appellate Term, 2nd Dept., 9th and 10th Judicial Districts, 2020], leave to appeal denied by 35 N.Y.3d 1067 [2020]).

The Court notes that signs or markings are required to make effective the exclusion of trucks over a certain weight from a designated highway (Vehicle and Traffic Law §1683[a][7]; see also Vehicle and Traffic Law §1110[b]). In this regard, the weight restriction differs from the state-wide maximum speed limit of 55 miles-per-hour which does not rely for its effectiveness on the erection of signs (see Vehicle and Traffic Law §1683[a][15]). Therefore, since signs are required to establish the weight restriction, the existence of a sign is an essential element of the charge of

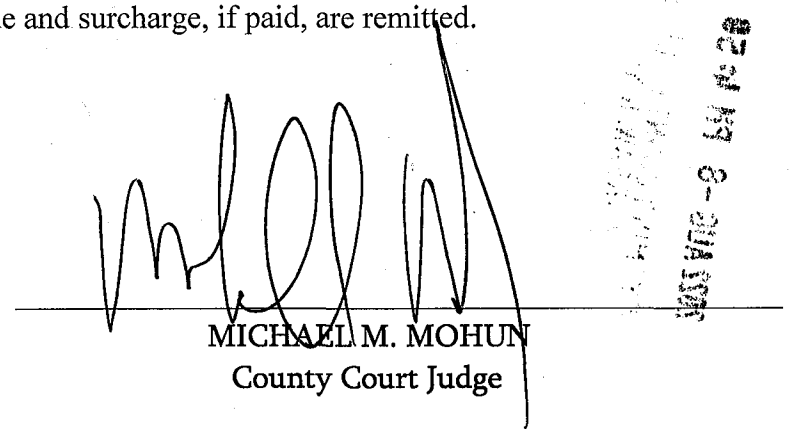
disobeying a weight restriction falling under Vehicle and Traffic Law §1683(a)(7). It follows that a supporting deposition in a case charging a violation of Vehicle and Traffic Law §1110(a) in connection with a weight restriction cannot be facially sufficient if it does not include some factual basis for concluding that the defendant disobeyed one or more signs erected to alert travelers that they are entering a weight restricted area.

Contrary to the contention of the People, the defendant-appellant did not waive his right to a facially sufficient accusatory instrument by failing to make a timely demand for a supporting deposition pursuant to CPL §100.25(2). No demand was needed in this case because Trooper Helmer opted to serve the supporting deposition together with the Simplified Traffic Information. "The People's tender of such a deposition voluntarily, rather than waiting for defendant's request, should not obviate the need for the deposition to provide reasonable cause" (People v. Key, 45 N.Y.2d 111, 116 [1978]). In addition, the defendant-appellant preserved the issue for appellate review by moving to dismiss for facial insufficiency.

NOW, THEREFORE, it is hereby

ORDERED that the judgment of conviction is reversed, the simplified traffic information is dismissed, and the fine and surcharge, if paid, are remitted.

DATED: August 4, 2022



MICHAEL M. MOHUN
County Court Judge