

People v Koegel

2022 NY Slip Op 33883(U)

November 18, 2022

City Court of Peekskill, Westchester County

Docket Number: CR 02222-20

Judge: Reginald J. Johnson

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CITY COURT: CITY OF PEEKSKILL
COUNTY OF WESTCHESTER: STATE OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK,

-against-

DECISION & ORDER
CR 02222-20

RINA KOEGEL,

Defendant.

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REGINALD J. JOHNSON, J.

The defendant moves, by her attorney Zev Goldstein, to dismiss this proceeding pursuant to the newly enacted CPL Article 245 and newly amended Criminal Procedure Law (CPL) §30.30, to strike the People’s Certificate of Compliance and Statement of Readiness, to compel discovery, and to waive the defendant’s appearance pursuant to CPL §340.50(2), the U.S. Constitution and the N.Y. Constitution, and for such other and further relief as the Court deems appropriate. The People did not submit any opposition to this motion.

For the reasons that follow, the motion is granted in part and denied in part.

Background

I. Factual Background

On November 29, 2022, at approximately 11:41 a.m., at or about Route 9 northbound at Welcher Ave, City of Peekskill, County of Westchester, P.O. Bitawi

alleges that he observed the defendant operating a black 2020 Nissan traveling at a speed of 77 mph in a 55mph zone, which he verified with his Stalker Dual radar. P.O. Bitawi stopped the defendant and issued her a simplified information for traveling 77 mph in a 55mph zone in violation of Vehicle & Traffic Law (VTL) §1180-(d) (see Bitawi Supporting Deposition).

II. Procedural Background

The defendant was issued the traffic ticket for speeding on November 19, 2020. On December 7, 2020, Izidor Mikhli, Esq. filed a notice of appearance¹ with the Court and stated “[w]e hereby plead Not Guilty on behalf of our client and do not request a supporting deposition. Please advise us of the conference date and/or disposition by mail instructions” (see Izidor Mikhli, Esq. letter dated 12/3/20). A pre-trial conference date was scheduled for July 27, 2022, at 9:30 a.m. At the conference on July 27, 2022, defendant’s attorney requested a motion schedule, which the Court scheduled as follows: motion by 8/16/22, opposition by 9/6/22, reply, if any, by 9/13/22, and a decision by 10/31/22. The defendant filed her motion with Court on August 15, 2022. The City Prosecutor did not submit any

¹ Accompanying the notice of appearance was a copy of the supporting deposition, a copy of the simplified traffic information, a photocopy of the defendant’s license, and an authorization to appear signed by the defendant.

opposition to the motion, so the Court deemed the motion fully submitted on September 13, 2022.

III. Discussion

A. Motion to Dismiss pursuant to newly enacted CPL Article 245 and newly amended CPL §30.30

Defendant argues that the instant proceedings should be dismissed due to the People's failure to provide discovery within 30 days of the commencement of these proceedings based on the newly enacted CPL Article 245 and the newly amended CPL §30.30(1)(d). The new CPL Article 245 [effective January 1, 2020] states, in pertinent part,

[T]he prosecutor's discovery obligation under subdivision one of section 245.20 of this article shall be performed as soon as practicable, but not later than fifteen days before the trial of a simplified information charging a traffic infraction under the vehicle and traffic law.... CPL §245.10(1)(a)(iii).²

² Effective April 9, 2022, CPL §245.10(1)(a)(iii) was amended to relieve the People of the obligation to provide

CPL §30.30 states that where the People are not ready for trial within the time frames enumerated therein, a motion to dismiss based on said unreadiness must be granted (see CPL §§30.30[1], 30.20[1], *People v. Berkowitz*, 50 N.Y.2d 333 [1980]). The purpose of CPL§30.30 is to guarantee prompt resolution of criminal charges by addressing prosecutorial readiness for trial, and it is singularly focused on addressing delays occasioned by prosecutorial inaction (see *People v. Anderson*, 69 N.Y.2d 529 [1985], *People v. Bruno*, 300 A.D.2d 93 [1st Dept 2002]). CPL §30.30 (1)(d) and (e) state that the People must be ready:

(d) 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.

(e) for purposes of this subdivision, the term offense shall include vehicle and traffic law infractions.

“automatic discovery” to a defendant in the prosecution of a traffic infraction (see Laws 2022, ch 56, §6 (Part UU, Subpart D). The act took effect on May 9, 2022. A defendant must now file a motion for discovery and the Court, at the first appearance, must advise the defendant of the right to file said motion [see new CPL §245.10(1)(a)(iii)].

Specifically, the defendant argues that CPL §30.30 (1)(d) requires the People to announce ready on offenses, which includes vehicle and traffic infractions [§30.30 (1)(e)], within thirty days of the commencement of the prosecution, and since the instant charge is a traffic infraction, the People were required to complete discovery and serve and file a certificate of compliance and statement of readiness within said thirty day period, or the charge should be dismissed (see CPL §245.50[1],[3] and §245.80[2]). Here, the People have not served and filed a certificate of compliance and statement of readiness within thirty days of the commencement of this prosecution.

The dispositive issue for the Court is whether the People's failure to serve and file a certificate of compliance and statement of readiness within thirty days of the commencement of these proceedings mandate dismissal. Defendant cites *People v. De La Paz*, 2021 N.Y. Misc. LEXIS 5390 (Clinton County Court, 2021) for the proposition that the People's failure to announce ready within 30 days of the commencement of a traffic infraction prosecution constitutes a speedy trial violation warranting dismissal of the proceedings pursuant to CPL§30.30(1)(d). The *De La Paz* court held that the failure of the People to serve and file a certificate of compliance and statement of readiness within thirty days of the commencement of the traffic infraction prosecution mandated dismissal of the

proceedings (*De La Paz*, 2021 N.Y. Misc. LEXIS 5390 at **3-4). This Court respectfully declines to follow the holding in *De La Paz* and finds its interpretation of CPL §30.30(1)(d) to be misplaced.

The Appellate Term, Second Department has expressly stated that the 2020 amendments to CPL §30.30 clearly indicated that the legislature intended the application of speedy trial rights to apply only to those cases in which “the defendant is accused of one or more offenses, at least one of which is a violation and none of which is a crime” [CPL§30.30(1)(d)]. Specifically, the Court stated

Pursuant to the 2020 amendments to CPL 30.30, the 30-day time period of CPL 30.30(1)(d) only applies if (1) the accusatory instrument accuses defendant of one or more offenses, (2) one or more of the offenses is a violation, and (3) no offense is a crime. Although CPL 30.30(1)(e) provides that a traffic infraction is an offense, and Vehicle and Traffic Law § 155 provides that a traffic infraction is not a crime, Penal Law §10.00(3) defines a violation as “an offense, other than a ‘traffic infraction.’”

People v. Ambrosini (Zachary), 74 Misc.3d 83, **85-86 (App Term, 2d Dept 2022)

In People v. Vasquez, the Second Department further stated

[W]e note that Vehicle and Traffic Law §155 provides that a traffic infraction is not a crime and that Penal Law §10.00(3) defines a violation as ‘an offense, other than a “traffic infraction.”’ If, in enacting [the amended] CPL 30.30(1)(e), the legislature wanted CPL 30.30(1)(d) to apply to an accusatory instrument which charges one (or more) traffic infractions(s) only, it would have had to simultaneously amend CPL 30.30(1)(d) by deleting the words, ‘at least one of which is a violation.’ As the legislature failed to so amend CPL 30.30(1)(d), the statutory speedy trial requirements of CPL 30.30(1)(d) would not apply [thereto].

75 Misc.3d 49, **51-52 (App Term, 2d Dept 2022), quoting *People v. Lopez*, 73 Misc.3d 133[A] (App Term, 2d Dept, 9th & 10th Jud Dists 2021)

Simply stated, speedy trial rights under CPL 30.30(1)(d) only applies in cases where “the defendant is accused of one or more offenses, at least one of which is a violation and none of which is a crime.” In the case at bar, as in the *De La Paz* case, the defendant is only charged with a traffic infraction, therefore the speedy trial rights under CPL §30.30(1)(d) do not apply. Since the *De La Paz* court

held that speedy trial rights do apply under these circumstances, this Court declines to follow it. The defendant's application to dismiss the simplified traffic information on speedy trial grounds pursuant to CPL §30.30(1)(d) is denied.

With regard to defendant's argument that the simplified traffic information should be dismissed under CPL Article 245 because the People failed to provide discovery within 30 days of the commencement of the instant proceedings in violation of CPL §30.30(1)(d), the Court finds this argument to be equally unavailing for two reasons. First, the Court has already found that CPL 30.30(1)(d) does not apply in this case because the defendant was not charged with a violation, only a traffic infraction. Second, even if the Court were to find that CPL Article 245 applies and requires the People to provide automatic discovery, the statute states: "the prosecutor's discovery obligation under subdivision one of section 245.20 of this article shall be performed as soon as practicable, but **not later than fifteen days before the trial of a simplified information charging a traffic infraction under the vehicle and traffic law...**" [CPL §245.10(1)(a)(iii)] (emphasis added). Since this matter has not been scheduled for trial, the People could not have failed to provide automatic discovery "not later than fifteen days before the trial." In this regard, the defendant's application for dismissal under CPL Art 245 is premature.

B. Sanctions under CPL§245.80

Defendant moves for sanctions pursuant to CPL §245.80 based on the People's failure to provide automatic discovery within 35 days of the commencement of these proceedings. CPL §245.80 provides for sanctions against the non-complying party and sanctions may range from granting a continuance to dismissal of all or some of the charges [CPL §245.80(2)]. The automatic discovery rule requires the People to comply with their discovery obligations without any action from the defendant, and the burden is placed squarely on the People unless the defendant expressly waives the receipt of discovery; the mandatory compliance with automatic discovery is a precondition of readiness for trial [see *People v. Mashiyach*, 70 Misc.3d 456 (Crim Ct. Kings Co. 2020), *People v. Lobato*, 66 Misc.3d 1230[A] (Crim Ct. Kings Co. 2020), CPL §245.75]. Here, the People must provide automatic discovery no later than 15 days prior to the start of the trial [see pre-amendment CPL §245.10(1)(a)(iii)]. Since no trial has been scheduled in this matter, the People are not in violation of their obligation to provide automatic discovery and therefore the People are not, at this time, subject to sanctions under CPL §245.80. As previously stated, effective May 9, 2022, the People are no longer required to provide automatic discovery in cases charging a traffic infraction, and the defendant is required to file a motion requesting same if the

defendant wants it. At the first appearance, Courts must inform defendants of the right to file a motion for discovery [see new CPL §245.10(1)(a)(iii)].

C. Certifications under CPL §§30.30(5), 30.30(5-a)

Defendant requests that the Court “compel the filing of the certifications required by CPL §§30.30(5), 30.30(5-a).” The People have an affirmative duty to complete their automatic discovery and serve and file a certificate of compliance and a statement of readiness not later than 15 days prior to the traffic trial [pre-amendment CPL §245.10(1)(a)(iii)]. If that does not happen, then the People are not ready, and the defendant can make the appropriate application for relief under CPL §245.80. Since pre-amendment CPL §245.10(1)(a)(iii) gives the People not later than 15 days prior to trial to complete their automatic discovery and serve and file a certificate of compliance and a statement of readiness, the Court declines to compel the People to perform an obligation earlier than the statute that created the obligation provides for.

D. Waiver of Appearance Pursuant to CPL §340.50(2)

The defendant moves to waive her appearance in this matter and to appear by counsel only. The application is granted and defendant’s appearance in this matter is hereby waived [see *People v. Bollu*, 61 Misc.3d (Steuben County Ct.

2018)].

Any other issue(s) not specifically addressed by this Decision and Order are denied or deemed moot.

Based on the aforesaid,

It is Ordered that the defendant's motion pursuant to CPL Article 245 and newly amended CPL §30.30 is denied;

Ordered that the defendant's motion to waive her appearance pursuant to CPL§340.50(2) is granted; and

Ordered that the parties are to appear for trial on January 25, 2023, at 9:30 a.m.

This constitutes the Decision and Order of the Court.

Enter,

Reginald J. Johnson

Honorable Reginald J. Johnson

Dated: November18, 2022

In deciding this motion, the Court reviewed the simplified information, supporting deposition, letter from The Law Office of Izidor Mikhli, PLLC with accompanying copy of supporting deposition, copy of UTT #MZ32CK7JQZ, copy of defendant's driver's license, and copy of authorization to appear, and Notice of Motion to Dismiss, Strike, Compel and Waive Appearance filed by Zev Goldstein, Esq.

Cc: Zev Goldstein, Esq.
Ingrid O'Sullivan, Esq.
Peekskill Corporation Counsel's Office