

**People v Smith**

2022 NY Slip Op 34887(U)

October 11, 2022

County Court, Westchester County

Docket Number: Indictment No. 70070-22

Judge: Robert J. Prisco

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

-against-

SPEEDY TRIAL  
DECISION & ORDER

GARVIN SMITH,

Indictment No: 70070-22

Defendant.

-----X  
ROBERT J. PRISCO, J.

Defendant GARVIN SMITH was charged with Criminal Possession of a Weapon in the Second Degree pursuant to a felony complaint that was filed in the Mount Vernon City Court on June 28, 2021.

On June 29, 2021, via email, the People requested the Westchester County Department of Public Safety (WCDPS) Laboratory Director to perform a "rush ballistics" examination on the gun as a "felony hearing" pursuant to Criminal Procedure Law [CPL] § 180.80 was scheduled for Friday (July 2, 2021) in the Mount Vernon City Court (*see* People's Exhibit 10). No request was made for latent fingerprint or DNA analysis.

On January 13, 2022, Indictment Number 70070-22 was filed by the People. Defendant is charged thereby with one count of Criminal Possession of a Weapon in the Second Degree pursuant to Penal Law [PL] § 265.03 (3) [Count One], one count of Criminal Possession of a Weapon in the Third Degree pursuant to PL § 265.02 (1) [Count Two], and one count of Criminal Possession of a Firearm pursuant to PL § 265.01-b [Count Three].

Attached to Indictment Number 70070-22 is a Certificate of Compliance pursuant to CPL § 245.50 (1), which includes a "Statement of Readiness," wherein "[t]he People confirm and announce their readiness for trial on all counts charged." Attached to the Certificate of Compliance is a copy of the People's Discovery Disclosure Index pursuant to CPL §§ 245.20 and 245.50, and

Discovery Package Transmittal Notices from the Westchester County District Attorney's Office regarding the dates, times and methods of disclosure.<sup>1</sup>

On January 18, 2022, Defendant was arraigned by the Honorable Anne E. Minihan on the charges contained in Indictment Number 70070-22, he entered a plea of not guilty to said charges, and an omnibus motion and Determination of Readiness schedule was set. During this Court appearance, the People confirmed their readiness for trial.

On March 1, 2022, the Court received Defendant's Notice of Motion, Affirmation in Support, and Memorandum of Law, seeking various forms of judicial intervention and relief, including the striking of the People's Certificate of Compliance and Statement of Readiness as illusory, and dismissing the indictment on the ground that Defendant's right to a speedy trial had been violated. Specifically, Defendant argued that the People's filing of the Certificate of Compliance was premature because the Grand Jury minutes had not yet been disclosed.

On March 2, 2022, the People served and filed via email a Supplemental Certificate of Compliance. Included therein is a "Statement of Readiness" in which "[t]he People re-affirm and announce their readiness for trial on all counts charged in this matter." Attached to the Supplemental Certificate of Compliance is a copy of a Discovery Package Transmittal Notice which indicates that the Grand Jury minutes were transmitted to Defendant's counsel via the People's Discovery Portal on February 28, 2022.

On April 19, 2022, the scheduled Determination of Readiness date, the Court denied Defendant's motion to strike the People's Certificate of Compliance and Statement of Readiness, and his motion to dismiss Indictment Number 70070-22 on speedy trial grounds. Specifically, the Court determined that the People had exercised due diligence in obtaining the Grand Jury minutes, that the Statement of Readiness was valid, and that the People were ready for trial in 162 days pursuant to CPL § 30.30, "clearly within the six month statutory timeframe" (*see* Decision & Order, Minihan, J., 4/15/22). On consent of the People and Defendant's counsel, the Determination of Readiness date was adjourned until May 3, 2022.

---

<sup>1</sup> An Affirmation of Service and a communication with an attorney of the Legal Aid Society, which are also attached to the Certificate of Compliance, indicate that copies of the Certificate of Compliance and the above-mentioned attachments were mailed and emailed to the Legal Aid Society on January 12, 2022 (*see* People's Exhibit 7).

On May 3, 2022, a Trial Readiness Order was issued by this Court and the parties were directed to appear in the Trial Assignment Part ("TAP") on May 11, 2022.

On May 11, 2022, during an appearance in TAP, Defendant's counsel requested an adjournment of the case until May 24, 2022.

On May 24, 2022, during an appearance in TAP, Indictment Number 70070-22 was assigned to this Court for pre-trial hearings and trial and, upon the consent of the parties, the matter was adjourned until June 10, 2022.

On June 3, 2022, Defendant's counsel notified the People that it appeared that discovery material related to "DNA testing and latent print analysis" was missing and a demand was made for production and disclosure of such (*see* People's Exhibit 9). In their communication, Counsel specifically directed the People to the WCDPS Crime Laboratory Firearms Case Report that referred to the submission of the firearm for such purposes (*see* Page 4 of People's Exhibit 6). The report referencing such testing and analysis had been transmitted to Defendant's counsel via the People's Discovery Portal on July 2, 2021 (*see* Page 4 of People's Exhibit 5).

On June 7, 2022, the People emailed the Laboratory Director of the WCDPS Crime Laboratory and requested "any reports that exist" regarding DNA and fingerprint analysis (*see* People's Exhibit 11).

On June 8, 2022, via an email attachment, the Laboratory Director provided the People with "all [of] the material we have for Discovery for this case..., [including] the Latent Print test report." In this email, the Laboratory Director advised the People that the evidence was processed "for latent prints on June 30<sup>th</sup>, 2021 but none of value [were] developed" (*see* People's Exhibit 12).

On June 9, 2022, the material and laboratory reports that were received by the People on June 8, 2022, were transmitted to Defendant's counsel via the People's Discovery Portal (*see* People's Exhibit 13).

On June 10, 2022, during an appearance before this Court, the case was adjourned until June 17, 2022 for the selection of pre-trial hearing and trial dates. No Supplemental Certificate of Compliance was served and filed during that appearance regarding the material and laboratory reports that had been received by the People and transmitted to Defendant's counsel on June 9, 2022.

On June 17, 2022, during an appearance before this Court, the People served and filed an additional Supplemental Certificate of Compliance. Included therein is a "Statement of Readiness" in which "[t]he People confirm and announce their readiness for trial on all counts charged in this matter." In addition, the People verbally announced their readiness in response to this Court's inquiry of actual readiness (*see* CPL § 30.30 (5)). During this appearance, counsel for the defendant advised the Court that he was going to submit another motion challenging the People's prior statements of readiness and seeking dismissal of the indictment on speedy trial grounds. The matter was adjourned until August 5, 2022, for this Court's decision on such motion.

On June 24, 2022, the Court received Defendant's Notice of Motion, Attorney's Affirmation, Memorandum of Law, and attachments thereto, requesting that the People's Certificate of Compliance, Statement of Readiness and Supplemental Certificate of Compliance be stricken, and further seeking dismissal of Indictment Number 70070-22 pursuant to CPL § 30.30.

On July 15, 2022, the Court received the People's Affirmation in Opposition and Memorandum of Law.

On August 5, 2022, the Court directed that a Speedy Trial hearing be held on September 9, 2022 to address the issues raised in the People's and Defendant's motion papers.

On September 9, 2022, a hearing was held, during which the People contended that the Certificate of Compliance that was served and filed on January 13, 2022 was valid and that, accordingly, the accompanying Statement of Readiness was not illusory. Defendant argued that the People were not actually ready for trial on January 13, 2022 or on March 2, 2022, when the first Supplemental Certificate of Compliance was filed, because the documentation and laboratory reports relating to the latent print analysis had not been provided pursuant to CPL § 245.20 (1). It is the defendant's contention that the People were not actually ready until the service and filing of the Supplemental Certificate of Compliance on June 17, 2022, after those discoverable materials had been disclosed.

After consideration of the above referenced submissions, the exhibits that were received during the Speedy Trial hearing and the arguments that presented therein, the Court decides Defendant's Motion as follows:

**1. DEFENDANT'S REQUESTS TO STRIKE THE PEOPLE'S CERTIFICATE OF COMPLIANCE, STATEMENT OF READINESS AND SUPPLEMENTAL CERTIFICATE OF COMPLIANCE, AND TO DISMISS INDICTMENT NUMBER 70070-22 PURSUANT TO CPL § 30.30 IS DENIED.**

Pursuant to CPL § 245.20 (1), the People must automatically disclose to defendant "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" (*see People v Moss*, 2022 NY Slip Op. 22189 [Crim Ct, NY County 2022]; *People v Martinez*, 75 Misc3d 1212(A), 2022 NY Slip Op. 50476(U), [Crim Ct, NY County 2022]; *People v Darren*, 75 Misc3d 1208(A), 2022 NY Slip Op. 50415(U), [Crim Ct, NY County 2022]; *People v Aquino*, 74 Misc3d 1147, 1152 [Sup Ct, NY County 2022]; *People v Rodriguez*, 73 Misc3d 411, 413 [Sup Ct, Queens County 2021]) and the statute sets forth a non-exhaustive list of items and information that must be disclosed to the defendant as part of the People's initial discovery obligation (*see People v Deas*, 75 Misc3d 190, 193 [Sup Ct, Westchester County 2022]; *People v Rodriguez*, 73 Misc3d at 413; *People v Perez*, 73 Misc3d 171, 173 [Sup Ct, Queens County 2021]; *People v Soto*, 72 Misc3d 1153, 1155 [Crim Ct, NY County 2021]). CPL § 245.20 (2) further requires the People to "make a diligent, good faith effort to ascertain the existence of [such] material or information," and where it exists, to make it available for discovery, even if the material is not within their possession, custody, or control (*see People v Martinez*, 75 Misc3d 1212(A), 2022 NY Slip Op. 50476(U); *People v Darren*, 75 Misc3d 1208(A), 2022 NY Slip Op. 50415(U); *People v Cajilima*, 75 Misc3d 438, 440 [Sup Ct, Nassau County 2022]; *People v Williams*, 73 Misc3d 1091, 1103-1104 [Sup Ct, Kings County 2021]; *People v Perez*, 73 Misc3d at 174).

However, notwithstanding the mandates of CPL § 245.20 (1) and (2), "[n]owhere within CPL article 245...is there a requirement that the People disclose every discovery item under CPL 245.20 (1) prior to the valid filing of a certificate of compliance. On the contrary, CPL article 245...present[s] a theme emphasizing the importance of good faith efforts by the People, and reasonableness under the circumstances, as it relates to discovery compliance" (*People v Bruni*, 71 Misc3d 913, 917 [County Ct, Albany County 2021]; *see People v Leonardo*, 75 Misc3d 1237(A), 2022 NY Slip Op. 50755(U), [Crim Ct, Queens County 2022]; *People v Pierna*, 74

Misc3d 1072, 1087-1088 [Crim Ct, Bronx County 2022]; *People v Barralaga*, 73 Misc3d 510, 514 [Crim Ct, NY County 2021]; *People v Rodriguez*, 73 Misc3d at 416-417; *People v Knight*, 69 Misc3d 546, 552 [Sup Ct, Kings County 2020]; *People v Erby*, 68 Misc3d 625, 633 [Sup Ct, Bronx County 2020]; *People v Askin*, 68 Misc3d 372, 378-379 [County Court, Nassau County 2020]). “Article 245 requires the prosecution to proactively disclose qualifying material to defendant and file a ‘certification of good faith compliance’ prior to stating their readiness for trial” (emphasis added) (*People v Leonardo*, 75 Misc3d 1237(A), 2022 NY Slip Op. 50755(U), citing CPL § 30.30 (5) and CPL § 245.50 (3)). Consequently, numerous courts have found that belated disclosure should not invalidate a Certificate of Compliance that was made in good faith after the exercise of due diligence (*People v Sime*, 2022 NY Slip Op. 22295, [Crim Ct, Kings County 2022]; *People v Rodriguez*, 73 Misc3d 411, 416 [Sup Ct, Queens County 2021], citing *People v Bruni*, 71 Misc3d 913 [County Ct, Albany County 2021]; *People v Erby*, 68 Misc3d 625, 633 [Sup Ct, Bronx County 2020]; *People v Gonzalez*, 68 Misc3d 1213[A], 2020 NY Slip Op 50924[U] [Sup Ct, Kings County 2020]; *People v Knight*, 69 Misc3d 546, 552 [Sup Ct, Kings County 2020]; *People v Lustig*, 68 Misc3d 234, 247 [Sup Ct, Queens County 2020]; *People v Randolph*, 69 Misc 3d 770, 770 [Sup Ct, Suffolk County 2020]) and a Certificate of Compliance need not be invalidated for the belated disclosure of discoverable material not previously known to the People (*see People v Surgick*, 73 Misc3d 1212[A], 2021 NY Slip Op. 51007 [U], [Albany City Ct 2021] or because of “[i]nadvertent errors or omissions” (*People v Pondexter*, 76 Misc3d 349, 353 [Crim Ct, NY County 2022], citing *People v Nelson*, 75 Misc3d 1203[A], 2022 NY Slip Op 50347 (U), [Crim Ct, NY County 2022]; *People v Rodriguez*, 73 Misc3d 411; *People v Moore*, 72 Misc3d 903 [Sup Ct, Kings County 2021])).

In the instant case, the People did not request that latent fingerprint analysis or DNA testing be performed.<sup>2</sup> They had only requested that a ballistics examination be performed in time to comply with their CPL § 180.80 obligation and the report of such was provided to Defendant’s counsel on July 2 and 16, 2021 (*see* Pages 4 and 5 of Peoples Exhibit 5). It was therefore not

---

<sup>2</sup> While “DNA testing and latent print analysis” were both referred to in the WCDPS Crime Laboratory Firearms Case Report, no DNA testing was performed in this matter.

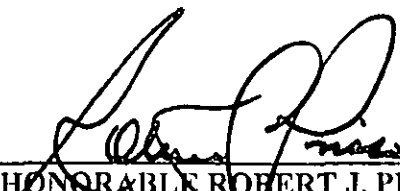
reasonable for the People to know that latent fingerprint analysis material existed. When the People became aware of the possible existence of such material on June 3, 2022, after Defendant's counsel directed them to a single notation within a fifteen (15) page laboratory report that had been provided to Defendant's counsel eleven (11) months earlier, the People emailed the director of the laboratory two working days after being so notified and requested "any reports that exist" in connection therewith. The People received the requested materials the following day, June 8, 2022, and those materials were then provided to Defendant's counsel on June 9, 2022.

Moreover, the fact that the aforementioned materials were not previously disclosed does not demonstrate a lack of due diligence on the People's part. Due diligence cannot be measured in a vacuum. It is clear from the Discovery Disclosure Indexes and the Discovery Package Transmittal Notices that the People had been diligent and acting in good faith in satisfying their discovery obligations pursuant to CPL Article 245. The failure to disclose materials related to an activity that the People had not requested nor knew about, i.e., latent fingerprint testing, does not negate that finding.

As "the People have shown that they exercised due diligence and good faith reasonable under the specific circumstances of the case before the court" when they filed their Certificate of Compliance (*People v Sime*, 2022 NY Slip Op. 22295, [Crim Ct, Kings County 2022]; see *People v Pierna*, 74 Misc3d at 1088), and "expeditiously provided any missing materials" pursuant to their continuing duty to do so pursuant to CPL § 245.60 (*People v Pondexter*, 76 Misc3d at 353), this Court finds that the People's Certificate of Compliance served and filed on January 13, 2022, the Supplemental Certificate of Compliance served and filed on March 2, 2022, and the Statements of Readiness contained therein were valid, and that Defendant's right to a speedy trial within the statutory timeframe of CPL § 30.30 was not violated. Accordingly, Defendant's motion is denied.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York  
October 11, 2022

  
HONORABLE ROBERT J. PRISCO  
County Court Judge

To: HON. MIRIAM E. ROCAH  
Westchester County District Attorney  
111 Dr. Martin Luther King Jr. Blvd.  
White Plains, New York 10601  
Attn: Assistant District Attorney Courtney Johnson

THE LEGAL AID SOCIETY OF  
WESTCHESTER COUNTY  
Attorney for Defendant Garvin Smith  
150 Grand Street-Suite 100  
White Plains, New York 10601  
Attn: Thomas M. Montella, Esq.