

People v Smith

2022 NY Slip Op 34889(U)

December 13, 2022

County Court, Westchester County

Docket Number: Indictment No. 70070-22

Judge: Robert J. Prisco

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This opinion is uncorrected and not selected for official publication.

COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

GARVIN SMITH,

FILED

DEC 16 2022

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

Defendant.

SPEEDY TRIAL
DECISION & ORDER
(CPL § 245.20 (1) (k))

Indictment No: 70070-22

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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, the People served a "Law Enforcement Agency Request" on the City of Mount Vernon Police Department. The request indicates that the Westchester County District Attorney "requests and requires your agency to provide a complete copy of its complete records and files related to the investigation of this case and the prosecution of this defendant." The materials requested include, but are not limited to, "any evidence or information discoverable under CPL 245; and specifically, under CPL 245.20 (1) (k)." Such request also specifies that this is "a continuing request and requirement."

On January 10, 2022, the People provided defense counsel with 1(k) questionnaires for Wendell Griffin, Mark Ludwicki, Michael Hutchins, Marlon Talbott, Tiffany Sexton, John Beckhman and Natasha Marquez, along with a folder of materials, which includes paperwork related to civil litigation, Public Integrity Investigation materials, and a list of Mark Ludwicki's prior violation convictions (*see* the People's Affirmation in Opposition at Pages 3-4).

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.¹

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 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.”

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 June 17, 2022, during an appearance before this Court, the People served and filed a second 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)).

On August 30, 2022, the Westchester County District Attorney’s Office received 60 gigabytes of materials from the Mount Vernon Police Department.²

On September 22, 2022, Chief Assistant District Attorney (“CADA”) Amy Finzi notified defense counsel, via letter, of the receipt of such materials from the Mount Vernon Police

¹ 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* Exhibit A attached to Defendant’s Notice of Motion).

² The People contend that “[f]rom the time of the enactment of the discovery legislation up to and including August 29, 2022, the District Attorney’s Office has made approximately 2,800 requests for discovery, including 1(k) materials, from the City of Mount Vernon Police Department” (*see* Page 8 of the People’s Affirmation in Opposition and Page 14 of the People’s Memorandum of Law).

Department and stated that such records “may be subject to discovery pursuant to CPL 245.20 (1) (k) (iv), as they pertain to, among other subjects, police disciplinary proceedings, civilian complaints, and internal affairs investigations.” The letter also indicated that the records were “extraordinarily voluminous and, although in digital format, not easily searchable,” and, as a result thereof, “determining if the materials are, in fact, subject to disclosure pursuant to Article 245 and have not been previously disclosed, is very difficult.” CADA Finzi further represented that the People were “working as quickly and carefully as possible to identify any discoverable information not previously disclosed to counsel, and if any such material is identified, [the People] will promptly notify counsel and make that information available pursuant to CPL 245.60.”³

On September 29, 2022, defense counsel sent a letter to the People demanding any and all outstanding impeachment material pursuant to CPL § 245.20 (1) (k) (*see* Exhibit N attached to Defendant’s Notice of Motion).

On October 12, 2022, the People served and filed a third Supplemental Certificate of Compliance. Included therein is a “Statement of Readiness” in which “[t]he People re-confirm and continue to announce their readiness for trial on all counts charged.” Within the Supplemental Certificate of Compliance, the People indicate that “[p]ursuant to documentation received from the City of Mount Vernon Police Department...on October 12, 2022, the People provided additional 1k materials for Natasha Marquez and Marlon Talbott to defense counsel via the Discovery Portal.” The People further indicated that “[t]he materials for Tiffany Sexton, Michael Hutchins, Mark Ludwicki and Wendell Griffin are still under review and will be provided as soon as completed.”⁴ The People also attached their September 22, 2022 letter, a case report from the Westchester County Department of Public Safety, with a blotter and an email chain pertaining to same.

On October 14, 2022, during an appearance before this Court, the People verbally announced their readiness in response to this Court’s inquiry of actual readiness (*see* CPL § 30.30 (5)).⁵ The matter was thereafter adjourned to October 21, 2022, for a determination by defense

³ The September 22, 2022 letter is attached to the People’s Affirmation in Opposition.

⁴ The Supplemental Certificate of Compliance also indicated that there were no additional discoverable materials received by the People for John Beckham.

⁵ The third Supplemental Certificate of Compliance was also served on the defendant during this appearance.

counsel as to whether an additional motion challenging the People's prior statements of readiness and seeking dismissal of the indictment on speedy trial grounds would be filed.

On October 19, 2022, the People served and filed, via email, a fourth Supplemental Certificate of Compliance. Included therein is a "Statement of Readiness" in which "[t]he People re-confirm and continue to announce their readiness for trial on all counts charged." Within this Supplemental Certificate of Compliance, the People again indicate that "[p]ursuant to documentation recently received from the City of Mont Vernon Police Department, on October 19, 2022 the People provided materials related to Tiffany Sexton, Michael Hutchins and Mark Ludwicki."

On October 21, 2022, during an appearance before this Court, the People verbally announced their readiness in response to this Court's inquiry of actual readiness (*see* CPL § 30.30 (5)).⁶ Counsel for defendant advised the Court that he was going to submit a motion challenging the People's prior statements of readiness and seeking dismissal of the indictment on speedy trial grounds, based upon the People's filing of additional impeachment materials on October 12 and 19, 2022.⁷ A motion schedule was set and the matter was adjourned until December 16, 2022, for this Court's decision and order on such motion.

On November 4, 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 Certificates of Compliance be stricken, and further seeking dismissal of Indictment Number 70070-22 pursuant to CPL § 30.30.

On November 23, 2022, the Court received the People's Affirmation in Opposition, Memorandum of Law, and attachments thereto.

On December 2, 2022, the Court received Defendant's Reply to the People's Affirmation in Opposition, and the attachment thereto.

After consideration of the above referenced submissions, the Court decides Defendant's Motion as follows:

⁶ The fourth Supplemental Certificate of Compliance was also served on the defendant during this appearance.

⁷ Defendant filed two (2) previous motions challenging the People's prior statements of readiness and seeking dismissal of the indictment on speedy trial grounds. The facts related to those motions are contained within this Court's Decision and Order dated October 11, 2022, and are incorporated herein.

DEFENDANT'S REQUESTS TO STRIKE THE PEOPLE'S CERTIFICATE OF COMPLIANCE, STATEMENT OF READINESS AND SUPPLEMENTAL CERTIFICATE OF COMPLIANCES, 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).

Relevant to this Decision and Order, CPL § 245.20 (1) (k) requires that the prosecutor disclose “[a]ll evidence and information, including that which is known to police or other law enforcement agencies acting on the government’s behalf in the case, that tends to: (i) negate the defendant’s guilt as to a charged offense; (ii) reduce the degree of or mitigate the defendant’s culpability as to a charged offense; (iii) support a potential defense to a charged offense; (iv) impeach the credibility of a testifying prosecution witness; (v) undermine evidence of the defendant’s identity as a perpetrator of a charged offense; (vi) provide a basis for a motion to suppress evidence; or (vii) mitigate punishment” and such disclosure must occur expeditiously

upon its receipt, “whether or not such information is recorded in tangible form and irrespective of whether the prosecutor credits the information.”

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 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*, 76 Misc3d 1107, 1111-1112 [Crim Ct, Kings County 2022]; *People v Rodriguez*, 73 Misc3d at 416, citing *People v Bruni*, 71 Misc3d 913; *People v Knight*, 69 Misc3d 546, 552 [Sup Ct, Kings County 2020]; *People v Gonzalez*, 68 Misc3d 1213[A], 2020 NY Slip Op 50924[U] [Sup Ct, Kings County 2020]; *People v Erby*, 68 Misc3d at 633; *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, on June 29, 2021, the People sent a “Law Enforcement Agency Request” to the Mount Vernon Police Department, which included a “continuing request and requirement” for all discovery materials, including 1(k) materials, to be provided to the People (*see* Law Enforcement Agency Request attached to the People’s Affirmation in Opposition). On January 10, 2022, prior to the People filing their Certificate of Compliance, “the People turned over 1(k) questionnaires as to each officer designated on the Discovery Disclosure Index, as well as additional members of law enforcement involved in the case”⁸ (*see* Pages 16-17 of the People’s Memorandum of Law). The People also provided a folder of impeachment materials, including civil litigation documents and Public Integrity Investigations (*see* Page 17 of the People’s Memorandum of Law). Accordingly, by providing the defense with the 1(k) questionnaires and other impeachment materials prior to the filing of their Certificate of Compliance, the People fulfilled their initial discovery obligation.

Thereafter, on August 30, 2022, the People received “60 gigabytes” of materials from the Mount Vernon Police Department, which the People allege is the “equivalent of 40 million pages of materials” (*see* Page 21 of the People’s Memorandum of Law). Due to the volume of these materials, a letter notification was sent by the District Attorney’s Office to defense counsel dated September 22, 2022, alerting counsel of the existence of documents that might pertain to members of law enforcement involved in the defendant’s case (*see* Page 22 of the People’s Memorandum of Law and September 22, 2022 letter attached to the People’s Affirmation in Opposition). The People submit that, once the review of such materials was concluded, those pertaining to the relevant members of the Mount Vernon Police Department were sent to defense counsel on October 12, 2022 and October 19, 2022, after which Supplemental Certificates of Compliance were filed (*see* Pages 22-23 of the People’s Memorandum of Law).

These efforts demonstrate to the Court that the People engaged in a diligent, good faith effort to obtain the impeachment materials from the City of Mount Vernon Police Department, pursuant to CPL Article 245. Here, the People have outlined the due diligence and good faith

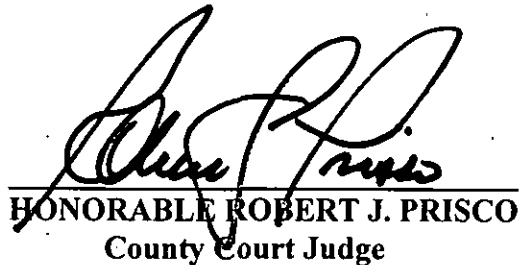
⁸ The Mount Vernon Police Department personnel included Wendell Griffin, Mark Ludwicki, Michael Hutchins, Marlon Talbott, Tiffany Sexton, John Beckham, and Natasha Marquez. The People contend that at the time, “these were the only materials in the possession of the District Attorney’s Office and they were the only materials known to the District Attorney’s Office to exist with regard to these specific members of law enforcement” (*see* Page 21 of the People’s Memorandum of Law).

efforts that they took to obtain and provide the initial and additional discovery materials and information to the defendant. If there is any discoverable material or information that remains outstanding, it is not due to a lack of good faith effort or due diligence on the part of the People.

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*, 76 Misc3d at 1111; *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 Certificates of Compliance served and filed on March 2, June 17, October 12 and 19, 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.⁹ Accordingly, Defendant’s motion is denied.

The foregoing constitutes the Decision and Order of this Court.

Dated: White Plains, New York
December 13, 2022



HONORABLE ROBERT J. PRISCO
County Court Judge

⁹ While the People state that their file is “unclear about whether certain adjournments, namely the adjournments on January 18, 2022 and February 1, 2022 were done with defendant’s consent” (*see* Page 37 of the People’s Memorandum of Law), such dates constitute a period of delay resulting from proceedings concerning the defendant, including pretrial motions and the period during which such matters were under consideration by the Court, and are thus excludable pursuant to CPL § 30.30 (4) (a) (*see People v Brown*, 99 NY2d 488, 491-492 [2003]; *People v Bowman*, 197 AD3d 714, 714 [2d Dept 2021]; *People v Murray*, 154 AD3d 881, 882 [2d Dept 2017]).

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