

People v. Pearse

County Court of New York, Essex County

February 16, 2024, Submitted; March 4, 2024, Decided

Index No. CV23-0489

Reporter

2024 N.Y. Misc. LEXIS 982 *

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent, - against - REBEKAH PEARSE, Appellant.

Core Terms

deposition, trial court, charges, discovery, traffic, motion to dismiss, simplified

Counsel: [*1] Benjamin Goldman Law Office (Codruta Antonovici, Esq.), Valley Stream, New York, for Appellant.

Kzisty L. Sprague, Esq., Essex County District Attorney, Elizabethtown, New York¹

Judges: Hon. Richard B. Meyer, J.C.C.

Opinion by: Richard B. Meyer

Opinion

Decision and Order on Appeal

Appeal from a judgment of the Justice Court of the Town of North Elba (*Friedmann, J.*), rendered October 3, 2023 convicting the defendant after a non-jury trial of two traffic infractions, failure to keep right (*VTL § 1220[a]*) and moving from a lane unsafely (*VTL § 1128[a]*), and imposing a fine of \$100.00 plus a surcharge of \$93.00 on each conviction.

The defendant challenges her convictions and seeks to have them annulled and vacated, claiming, *inter alia*, that the accusatory instruments consisting of simplified traffic informations are legally insufficient and defective

¹ This criminal action was not prosecuted by the Essex County District Attorney in the trial court. Instead, it was prosecuted by the complaining New York State Trooper. Except for quoted passages, all references in this decision and order to the "prosecution" thus denote the Trooper.

for failing to be supported by factual allegations in a supporting deposition, the prosecution violated the defendant's speedy trial rights (*CPL §30.30[1][d]*), and the prosecution failed to furnish discovery as ordered by the trial court. The People do not oppose the relief sought.

On May 12, 2023, the defendant was issued two simplified traffic informations (*CPL §1.20[5]; §100.102[a]*) by Dan M. Kelley (Kelley), a New York State Trooper, [*2] charging her with the subject offenses. She entered not guilty pleas and a demand for a supporting deposition by mail on June 5, 2023. The trial court issued an order to Kelley on June 5, 2023 directing him to furnish a supporting deposition within thirty (30) days and scheduled the defendant to appear on July 11, 2023, for the purpose of a conference in order to afford her with "the opportunity to discuss your case with the prosecutor to negotiate a plea bargain." The notice scheduling this appearance also stated, "THIS IS NOT A TRIAL DATE".

By a motion dated June 28, 2023, the defendant sought dismissal of the charges on the grounds that the defendant's rights under CPL §30.30 were violated because the prosecution did not file a valid certificate of compliance with discovery and statement of readiness for trial, and Kelley lacked personal knowledge of facts sufficient to support the charges. Alternatively, the defendant sought an order compelling the prosecution to provide discovery. No supporting deposition was provided by Kelley within the time required therefor, no certificate of compliance was filed, and no papers in opposition to the motion were filed with the trial court. Nonetheless, [*3] in a written decision dated August 11, 2023, the trial court denied the motion to dismiss, directed that discovery be provided by September 8, 2023, and scheduled the case for trial on October 3, 2023.

The defendant filed another motion to dismiss on September 27, 2023, seeking dismissal of the charges

pursuant to CPL §245.80(1)(b) for the failure of the prosecution to comply with discovery and 'serve the required certificate of compliance and statement of readiness. In a letter dated September 28, 2023, the defendant's attorney notified the trial court that no discovery, certificate of compliance and statement of readiness, or supporting deposition had been provided, and that it appeared that there was no need for a trial. The record contains a copy of this letter with the following handwritten notation:

"Per Judge Friedmann, traffic trial, w/trooper prosecuting, will be held 10/3/23 @ 2:00 p.m. - trooper has provided 'discovery' in form of supporting dep. Dated 6/14/23 - copy to follow."

Supporting depositions signed by Kelley and dated June 14, 2023, were thereafter provided to the defendant. Both depositions state that the basis of Kelley's knowledge of the facts underlying the charges is "information [*4] and belief.

Kelley and counsel for the defendant appeared for trial on October 3, 2023. Counsel for the defendant again moved for dismissal of the charges, but the trial court denied the motion stating, "[w]ell, actually, that's the business of the district attorney to dismiss them. It's not the judge's place." The trial proceeded by Kelley testifying in a long narrative rather than by question and answer. He was extensively cross-examined by the defendant's attorney. After the close of evidence and closing statements, the trial court rendered a verdict of guilty against the defendant and imposed the fines and surcharges. A notice of appeal was filed on October 6, 2023. An affidavit of errors along with the trial transcript were filed on December 4, 2023, and the trial court's return was filed December 15, 2023.

"CPL 30.30(1)(e) means what it says — namely, that a traffic infraction is an 'offense' for purposes of subdivision (1) of CPL 30.30" (*People v Galindo*, 38 N.Y.3d 199, 202, 171 N.Y.S.3d 865, 867, 191 N.E.3d 1136, 1138 [2022]), and therefore, a motion to dismiss "must be granted where the people are not ready for trial within * * * thirty days of the commencement of a criminal action ..." (CPL §30.30[-1][d]).

"'Ready for trial' comprises two elements, (i) 'either a statement of readiness by the prosecutor in open court, transcribed [*5] by a stenographer, or recorded by the clerk or a written notice of readiness sent by the prosecutor to both defense counsel and the appropriate court clerk' and (ii) the

People must in fact be ready to proceed at the time they declare readiness (*People v. Kendzia*, 64 N.Y.2d 331, 337, 486 N.Y.S.2d 888, 476 N.E.2d 287). Delays caused by pre readiness court congestion do not excuse the People from timely declaring their readiness for trial (*People v. Smith*, 82 N.Y.2d 676, 678, 601 N.Y.S.2d 466, 619 N.E.2d 403; *People v. Brothers*, 50 N.Y.2d 413, 417, 429 N.Y.S.2d 558, 407 N.E.2d 405). Thus, in the absence of a statement of readiness to proceed, any delay due to court congestion is entirely chargeable to the People (*People v. Smith, supra; People v. Brothers, supra; cf., People v. Stirrup*, 91 N.Y.2d 434, 671 N.Y.S.2d 433, 694 N.E.2d 434)." (*People v Chavis*, 91 N.Y.2d 500, 505, 673 N.Y.S.2d 29, 31, 695 N.E.2d 1110, 1112 [1998]).

Although the "automatic discovery" requirements of CPL §245.20(1) do not apply to "a simplified information charging a traffic violation" (CPL §245.10[1][a][iii]), the prosecution must still declare readiness for trial within the required thirty (30) days. Moreover, "[w]here a defendant moves to dismiss an indictment on the grounds specified in CPL 30.30 and includes in the moving papers sworn allegations that there has been unexcused delay in excess of the statutory maximum, the motion must be granted summarily unless the People controvert the factual basis for the motion ([citations omitted])." (*People v Santos*, 68 N.Y.2d 859, 861, 508 N.Y.S.2d 411, 413, 501 N.E.2d 19, 21 [1986]). Here, the prosecution did not submit any papers in opposition to the [*6] June 28, 2023 motion to dismiss on speedy trial grounds or otherwise establish the existence of any excludable periods of time (see CPL §30.30[4]). Thus, the trial court committed reversible error in denying the defendant's motion to dismiss the charges on speedy trial grounds.

Moreover, there is no evidence that the supporting depositions demanded by the defendant were furnished within the thirty (30) days required by CPL §100.25(2) as ordered by the trial court on June 5, 2023. "If properly requested, a supporting deposition must be served on the defendant or his counsel within 30 days from the date the court receives the request or at least five days before trial, whichever is earlier (see, *id*). The People's failure to timely supply the supporting deposition renders the simplified information insufficient on its face (see, CPL 100.40[2]) and warrants its dismissal (see, CPL 170.30[1][a]; 170.35[1][a])" (*People v Perry*, 87 N.Y.2d 353, 355, 662 N.E.2d 787, 787-88, 639 N.Y.S.2d 307, 307-308 [1996]; see, also, *People v Tyler*, 1 NY.3d

493, 776 N.Y.S.2d 199, 808 N.E.2d 334 [2004]). Again, the trial court committed reversible error in denying the June 28, 2023 motion to dismiss due to the failure of the prosecution to serve supporting depositions within the thirty (30) days of the June 5, 2023 order.

Although the trial transcript is replete with blatant reversible errors by the trial judge, those [*7] gross deficiencies need not be addressed due to "the cardinal principle of judicial restraint - if it is not necessary to decide more, it is necessary not to decide more" (PDK Laboratories Inc. v. US DEA, 362 F.3d 786, 799, 360 U.S. App. D.C. 344 [*Roberts, J, concurring see, also, People v. Carvajal*, 6 N.Y.3d 305, 316, 812 N.Y.S.2d 395, 402, 845 N.E.2d 1225, 1232 ["We are bound, of course, by principles of judicial restraint not to decide questions unnecessary to the disposition of the appeal"]).

The October 3, 2023 verdict and judgment below must be, and hereby is, reversed, on the law, the June 28, 2023 motion to dismiss is granted, and the simplified traffic informations charging the defendant with failure to keep right (VTL § 1220[a]) and moving from a lane unsafely (VTL § 1128[a]) are dismissed. The matter is remitted to the Town of North Elba Justice Court for further administrative procedures which must be undertaken by that court in furtherance of this decision (CPL §470.45).

It is so ordered.

ENTER

/s/ Richard B. Meyer

Hon. Richard B. Meyer, J.C.C.

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