


THE PEOPLE OF THE STATE OF NEW YORK,

**DECISION AND ORDER**

vs.

Docket No. SMZ-70390-24/001  
Case No. 2024-9117

 Defendant/Appellant

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**JULIE A. CAMPBELL, J.**

The Defendant/Appellant having filed a Notice of Appeal from his conviction and sentence, and the Court having received Appellant's record on appeal, Appellant's brief, the People's reply brief, and the Appellant's sur-reply. The Appellant having been represented Zev Goldstein, Esq., The Law Offices of Zev Goldstein, PLLC, and the Respondent having been represented by the Cortland County District Attorney's Office.

The Appellant appeals asserting that: a) the record on appeal was jurisdictionally defective; b) the trial court erred in not granting Appellant's speedy trial motion; c) the trial court erred in not ruling on Appellant's discovery motion; and d) reversal requires dismissal. The Respondent asserts that: a) the record on appeal was not jurisdictionally defective; b) the defendant's speedy trial motion was untimely; c) the trial court did not err in not granting a discovery sanction; and d) if reversal is warranted, a new trial is in order.

NOW, having reviewed the record, briefs and arguments of counsel, the Court finds as follows:

Defendant/Appellant appeals from a July 24, 2024 judgment of conviction, following trial, for the vehicle and traffic offense of speeding [VTL 1180(d)], 90 mph in a 65 mph zone. Upon his conviction, the Appellant was sentence to a fine of \$300.00 plus a \$93.00 surcharge.

While driving on Interstate 81 North on October 11, 2023, the Appellant was stopped by the New York State Police and ticketed for speeding in violation of VTL 1180(d). The Appellant was accused of traveling 90 miles per hour in a 65 mile per hour speed zone. On November 13, 2023, the Appellant entered a plea of not guilty, requested a copy of the supporting deposition, and requested an adjournment to engage in plea negotiations with the people. The case was adjourned to January 22, 2024 at the defendant's request. A supporting deposition was served on the defendant on November 23, 2023. Plea negotiations ensued and



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the people filed a Recommended Vehicle and Traffic Disposition dated January 18, 2024 which memorialized their plea offer and a written statement of trial readiness.

On March 18, 2024, the Appellant notified the court that he had rejected the plea offer and requested a trial date. Trial was scheduled for July 24, 2024. Appellant filed a Motion to Dismiss, Compel and Waive dated July 10, 2024 seeking a speedy trial dismissal of the charge for failure to timely provide discovery and file a Certificate of Compliance and seeking to waive the defendant's personal appearance at trial. The people failed to reply to the motion. The motion was not heard or decided prior to the commencement of trial. Trial ensued on July 24, 2024. Following the Appellant's conviction, defense counsel inquired about the status of the July 10, 2024 motion. The people acknowledged receipt but did not file a reply. The lower court noted that no motion was received. This appeal ensued. The defendant's July 10, 2024 motion was included in the Court's Return. There was no date stamp on the July 10, 2024 motion, therefore this court has no way of knowing if it was received by the lower court prior to trial or following the Appellant's conviction.

With respect to a statutory claim, a motion for dismissal on speedy trial grounds must be granted "where the people are not ready for trial within: (d) thirty days of commencement of a criminal action wherein a defendant is accused of one or more offenses, the least of which is a violation and none of which is a crime" [CPL 30.30(1)(d)]. The statute further states that "for purposes of this subdivision, the term offense shall include vehicle and traffic law infractions" [CPL 30.30(1)(e)]. "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) day" [*People v. Pearse, 2024 NY Misc LEXIS 982 (2024)*].

The top count of the accusatory instrument determines the time frame within which the people must announce ready [CPL 30.30(1)(a); *People v. Galindo, 38 NY3d 199 (2022)*]. A criminal action is commenced by "the filing of an accusatory instrument against a defendant in a criminal court, and, if more than one accusatory instrument is filed in the course of the action, it commences when the first of such instruments is filed [CPL 1.20(17)]. The day of filing is excludable from the speedy trial calculations [*People v. Stiles, 70 NY2d 765 (1987)*]. When advancing a motion to dismiss on statutory speedy trial grounds, it is incumbent upon the proponent to set forth the relevant time frames necessary to calculate the time.

The defendant was charged via a Uniform Traffic Ticket dated October 11, 2023.<sup>1</sup> Thus, the people were required to be ready within thirty (30) days' time, or no later than November 10, 2023 [CPL 30.30(1); *People v. Pearse, 2024 NY Misc LEXIS 982 (Essex Co. Ct., 2024)*].

When calculating time for speedy trial purposes, certain periods of time are excluded by statute. The actual day the action was commenced is excluded from computation of speedy trial time [*People v. Stiles, 70 NY2d 765 (1987)*]. Periods of delay resulting from the absence or unavailability of the defendant are not chargeable to the people [CPL 30.30(4)(c)(i)]. Periods of

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<sup>1</sup> The charges were filed in Cortlandville Town Court under Case No. 23060441.

delay resulting from a continuance requested or consented to by the defendant are not chargeable to the people [CPL 30.30(4)(b)].

The people must announce ready for trial in open court with defense counsel present or by written notice to defense counsel and the court clerk and the court must make an inquiry on the record as to actual readiness [CPL 30.30(5)]. The people may declare readiness while still gathering additional evidence to strengthen its case [People v. Wright, 50 AD3d 429 (First Dept., 2008)].

In the instant case, the people first announced ready for trial on January 18, 2024.

The Appellant was charged on October 11, 2023. A total of thirty three (33) days passed before the defendant entered a plea of not guilty and requested an adjournment to confer with the people. The 33 days from October 11, 2023 to November 13, 2023 are chargeable to the people for purposes of speedy trial.

On November 13, 2023, the case was adjourned to January 22, 2024 at the request of the defendant. Accordingly, that time shall not be chargeable to the people. On January 18, 2024 the people filed a written statement of trial readiness.

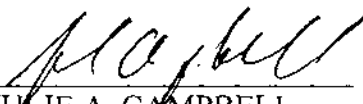
CPL 30.30 (1)(a) requires the people to be ready for trial thirty (30) days of the commencement of the criminal action. On these charges, a total of 33 days of pre-readiness delay attributable to the people occurred between the commencement of this criminal action and the people's announcement of readiness for trial. Therefore, the court is constrained to reverse the defendant's conviction and grant dismissal on speedy trial grounds [People v. Pearse, 2024 NY Misc LEXIS 982 (Essex Co. Ct., 2024)].

#### CONCLUSION

The Appellant's appeal from the judgment of conviction from Cortlandville Town Court is granted. The conviction is reversed, and the charge dismissed on speedy trial grounds.

Dated: *Declar* 30, 2024

ENTER

  
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HON. JULIE A. CAMPBELL  
County Court Judge