# State of New York
# Court of Appeals

## OPINION

This opinion is uncorrected and subject to revision before publication in the New York Reports.

No. 88
The People &c.,
Appellant,
v.
Kyle D. Ernst,
Respondent.

Michael J. Hillery, for appellant.
Nicholas T. Texido, for respondent.

SINGAS, J.:

CPL 30.30 (4) (a) excludes from the People's statutory speedy trial clock the time a pre-trial motion is "under consideration by the court." Here, the record supports the motion court's affirmed finding that the parties agreed to forgo judicial consideration of the

undecided issues in defendant's omnibus motion. The lower courts thus properly concluded that, following this agreement, the motion was no longer "under consideration by the court" and that, consequently, the People were not ready for trial within the prescribed statutory period. We therefore affirm.

I.

Defendant was indicted on January 13, 2023. The People filed a certificate of compliance (COC) and statement of readiness (SOR) on February 17. At the next appearance on March 14, the court, after an inquiry, accepted the People's COC and SOR and adjourned to April 26 for motions. On April 25, defendant filed an omnibus motion seeking, among other things, suppression of his statements, disclosure of the grand jury instructions, dismissal of the indictment for insufficient evidence before the grand jury, and disclosure of medical and police records related to the case. On April 26, the court granted the People time to respond to the motion and subsequently scheduled a *Huntley* hearing for August 14.

At the close of that hearing, Supreme Court denied miscellaneous relief that defendant requested in his omnibus motion and then asked if there was "[a]nything else we need to address" other than defendant's requests for grand-jury related relief. Defense counsel responded that there were "two outstanding issues" that he hoped would "not [require] any court intervention." The court inquired what the parties would "like . . . to do as far as further scheduling." After discussing scheduling a trial date and how many days of trial testimony they anticipated, the court and the parties agreed that the judge's secretary would "reach out . . . to get a trial date." The court then inquired whether "[i]n the

meantime" the parties wished to have the matter brought "back in the near future to see if [they had] resolve[d] those other issues." Defense counsel declined and responded that "[w]e can just let you know if we have a problem," reiterating that the only thing the parties needed was for "the [c]ourt to take a look at any [g]rand [j]ury minutes . . . . Other than that, . . . no." At the conclusion of the proceeding, the court confirmed that it was "not giving [the parties] any future dates. I just made a note to [my secretary] to reach out to you to schedule a jury trial, and I will review the [g]rand [j]ury minutes and send you a written decision." The attorneys thanked the judge without further comment. Three days later, on August 17, the court denied defendant's requests for grand-jury related relief.

On January 18, 2024, defendant moved for the issuance of judicial subpoenas affording access to some of the information that was the subject of the remainder of his omnibus motion. Supreme Court granted the request. On May 6, the day before trial, defendant received a response to a FOIL request for police records that yielded undisclosed information related to the case. The same FOIL response also led defense counsel to discover that police had destroyed related body-worn camera footage pursuant to their standard retention policy. The following day, before jury selection commenced, defendant moved to dismiss the indictment, arguing that the People's COC was invalid because they had failed to exercise due diligence in complying with their automatic discovery obligations, rendering their accompanying SOR illusory. Defendant further argued that without the original SOR to stop the speedy trial clock, the People were not ready for trial within the statutory six-month period (*see* CPL 30.30 [1] [a]).

Supreme Court granted defendant's motion and dismissed the indictment. As relevant here, the court invalidated the People's COC upon finding that they failed to exercise due diligence in complying with their automatic discovery obligations. Without a valid COC supporting the People's SOR (*see* CPL 30.30 [5]), the court concluded that a total of 302 nonexcludable days had elapsed before the People validly declared ready for trial. In particular, the court concluded that the 154 days between the court's August 17, 2023 decision denying grand-jury-related relief and defendant's January 18, 2024 motion for judicial subpoenas were not excludable because CPL 30.30 (4) (a)'s tolling mechanism is available only while a pretrial motion is "under consideration by the court." The court reasoned that the remaining issues in defendant's omnibus motion were no longer "under consideration" after the August 14 hearing because the parties had stated that they intended to "work out" those issues without the court's intervention. The People appealed.

The Appellate Division affirmed with two Justices dissenting (*see* 240 AD3d 1252 [4th Dept 2025]). The majority and the dissent agreed that the People failed to exercise due diligence and that the People's initial COC was invalid, rendering their accompanying SOR illusory (*see id.* at 1254; *id.* at 1256 [Curran & Smith, JJ., dissenting in part]). However, they disagreed as to whether the period following Supreme Court's August 17 order was excludable under CPL 30.30 (4) (a). The Court concluded that the People "failed to meet their burden of establishing that any issues remained 'under consideration by the court' with respect to defendant's omnibus motion following th[at] . . . order" (*id.* at 1255 [majority opinion]). In particular, "in response to the court's inquiry . . . as to what issues from defendant's omnibus motion remained under its consideration, defense counsel

advised, without objection from the prosecutor, that the only thing remaining" was for the court to "take a look at . . . any grand jury minutes" (*id.* [internal quotation marks and brackets omitted]). After resolving "the issue of the grand jury minutes in its August 17, 2023 order," the court did not "consider additional issues from the omnibus motion, nor did either party ask the court, at any time after August 17, 2023, to consider any additional issues from the omnibus motion" (*id.*). Accordingly, the Court held that the People had exceeded the applicable statutory speedy trial period and so Supreme Court properly granted defendant's motion to dismiss the indictment (*see id.* at 1255-1256).

Two Justices dissented (*see id.* at 1256-1260 [Curran & Smith, JJ., dissenting in part]). As relevant here, the dissent would have held that the undecided discovery issue that the parties agreed to work out among themselves remained under consideration by the court after the August 14 hearing within the meaning of the statute because defendant's motion was "undecided, unresolved, and pending" (*id.* at 1258). The dissent would have held that "[a]bsent withdrawal of those parts of the motion, the motion necessarily remained pending—particularly given defense counsel's indication that he did not yet need court intervention on the subject" (*id.* at 1259). A dissenting Justice granted the People leave to appeal.

II.

The People initially contend that Supreme Court erred in dismissing the indictment because defendant unreasonably delayed his challenge to the People's COC and his motion to dismiss the indictment. At the relevant time, CPL 245.50 (4) (b) and (c) required that a party notify the opposing party of any deficiency in their COC and challenge the COC "as

soon as practicable" (former CPL 245.50 [4] [b]-[c]; *see People v Bay*, 41 NY3d 200, 213 [2023]).[1] The statute provided no specific deadline for such a challenge (*see* former CPL 245.50 [4] [c]). Moreover, as we recently held in *People v Roper*, a motion to dismiss an accusatory instrument on statutory speedy trial grounds may be made at any time before trial (*see* 46 NY3d 149, 153 [2026], citing CPL 170.30 [2]).

Here, defendant alerted the People to the missing discovery in his omnibus motion 67 days after the People filed—and 42 days after the Court accepted—their initial COC and SOR. The People did not produce the requested materials in the year between defendant's motion and the scheduled trial date. Moreover, defendant moved to dismiss the indictment and challenged the COC the day after he received the response to his FOIL request confirming the existence of materials that the People had failed to disclose. Under the circumstances, the record supports the affirmed finding that defendant notified the People and challenged the People's COC "as soon as practicable" (former CPL 245.50 [4] [b]-[c]). Moreover, defendant's motion to dismiss, made "prior to the commencement of trial," was also timely (*Roper*, 46 NY3d at 152, quoting CPL 170.30 [2]).

III.

When determining whether the People have complied with their statutory speedy trial obligations (*see* CPL 30.30), we have repeatedly emphasized the important distinction between time that elapses before and after the People are ready for trial. Prereadiness delay

[1] Supreme Court granted defendant's motion well before the 2025 amendments to CPL 245.50 (*see* L 2025, ch 56, § 1, part LL, § 4), and we do not address those amendments here.

is presumptively attributed to the People (*see People v Barden*, 27 NY3d 550, 556 [2016]; *People v Luperon*, 85 NY2d 71, 81 [1995]). Thus, "[o]nce a defendant sufficiently alleges that the People were not ready within the statutory period" (*People v Brown*, 28 NY3d 392, 403 [2016]), the People bear the burden of demonstrating the "excludability of any period of prereadiness delay" (*Luperon*, 85 NY2d at 83; *accord People v Cortes*, 80 NY2d 201, 213 [1992]). Indeed, "[t]he failure to declare readiness within the statutory time limit will result in dismissal . . . unless the People can demonstrate that certain time periods should be excluded" (*People v Price*, 14 NY3d 61, 63 [2010]). By contrast, "the defendant ordinarily has the burden of showing that any postreadiness adjournments occurred under circumstances that should be charged to the People" (*Cortes*, 80 NY2d at 215; *see People v Anderson*, 66 NY2d 529, 541 [1985]), though it remains "the People's burden to ensure, in the first instance, that the record of the proceedings at which the adjournment was actually granted is sufficiently clear to enable the court . . . to make an informed decision as to whether the People should be charged" (*Cortes*, 80 NY2d at 215-216; *see People v Liotta*, 79 NY2d 841, 843 [1992]; *see also Brown*, 28 NY3d at 405-406).

Under the current automatic discovery regime (*see* CPL art 245), a valid COC "attesting to good faith compliance with CPL 245.20's disclosure requirements" is ordinarily an indispensable prerequisite to trial readiness (*Bay*, 41 NY3d at 210; *accord* CPL 245.50 [1], [3]). Consequently, the validity of the People's COC and accompanying SOR has become a central focus of statutory speedy trial practice. If the COC and accompanying SOR are valid, the court must evaluate any subsequent delay as postreadiness delay. But if the COC is invalid, then the SOR is illusory, and the court must

instead treat all delay as *pre*readiness delay—placing the burden of establishing excludability on the People (*see Bay*, 41 NY3d at 213; *People v England*, 84 NY2d 1, 4 [1994])—until a valid SOR is filed.

Here, although the People filed a COC and SOR before the delay in question, the motion court and the Appellate Division agreed that the People's failure to disclose material subject to automatic discovery rendered their COC invalid because they failed to exercise due diligence and make reasonable inquiries prior to filing it (*see Bay*, 41 NY3d at 213). The People do not dispute that finding. As a result, the People's accompanying SOR was illusory and did not stop the speedy trial clock (*see id.*; *England*, 84 NY2d at 4). The parties further agree that the excludability of the 154-day period following Supreme Court's August 17 decision is dispositive of defendant's motion. Accordingly, the narrow issue before us is whether the People met their burden to demonstrate that this period was excludable.

The answer depends on a question of statutory interpretation. Specifically, the parties dispute the meaning of CPL 30.30 (4) (a)'s language excluding "a reasonable period of delay resulting from other proceedings concerning the defendant, including . . . pre-trial motions . . . and the period during which such matters are *under consideration by the court*" (emphasis added). We have explained that this provision excludes delay caused by the "preparation, argument, and consideration" of such motions (*People v Dean*, 45 NY2d 651, 657 [1978]) and therefore relieves the People of their burden to "causally trace their lack of readiness to [a] defendant's actions before the court is warranted in excluding" the

delay (*People v Worley*, 66 NY2d 523, 527 [1985]).[2] As it applies to defense motions specifically, we have explained that the exclusion is justified because any "delays have been caused by the defendant for [their] own benefit, and with the court's permission, under circumstances in which both the defendant and the court have determined that the adjournment is desirable" (*id.*). We have accordingly applied section 30.30 (4) (a) to exclude time where a court "held under advisement [a] defendant's motion" (*People v Moorhead*, 61 NY2d 851, 852 [1984]). The Appellate Division has similarly held that the time when a motion is "sub judice"—that is, before the court—is excludable because the People "cannot be charged with the time a court takes to decide a . . . motion" (*People v Douglas*, 209 AD2d 161, 162 [1st Dept 1994]; *accord People v Fluellen*, 160 AD2d 219, 223 [1st Dept 1990]).

Consistent with this interpretation, CPL 30.30 (4) (a) will ordinarily operate to exclude all "time a court takes to decide a defense motion" (*Douglas*, 209 AD2d at 162). Here, however, the parties agreed to forgo a court ruling on the balance of defendant's omnibus motion. Consequently, the motion was no longer "under consideration by the

[2] No party has argued that CPL 30.30 (4) (a) does not apply to automatic-discovery-related motions (*but see generally* concurring op). Regardless, the concurrence's theory in that regard appears to be based on a misunderstanding of the role of protective orders in the automatic discovery scheme (*see* concurring op at 2-5). CPL 245.20 (5) and 245.70 (1) relate to an exemption from disclosure when a party demonstrates "good cause" for withholding material that CPL 245.20 (1) covers, not disputes over whether CPL 245.20 (1) covers material in the first instance (*see* CPL 245.20 [5] [allowing party to move for protective order when "good cause exists for declining to make any of the disclosures set forth above"]; *see also* 245.70 [4] [listing factors relevant to determining whether "good cause" exists for nondisclosure]).

court" and the subsequent delay cannot be causally attributed to defendant's motion, even though the motion was not formally withdrawn. Therefore, the People cannot claim the benefit of this exclusion.

The People argue that this interpretation will perversely disincentivize the People from engaging in good faith negotiations to resolve discovery disputes with defendants without court intervention. We disagree. Our narrow holding does not affect how CPL 30.30 (4)'s exclusions ordinarily apply to such negotiations. For example, CPL 30.30 (4) (b), which is not at issue here,[3] provides for the exclusion of a "period of delay resulting from a continuance granted by the court at the request of, or with the consent of, the defendant." An adjournment based on the parties' on-the-record agreement to postpone a court ruling on a defendant's motion will ordinarily be excludable under this provision (*see Barden*, 27 NY3d at 553; *People v Kopciowski*, 68 NY2d 615, 616-617 [1986]; *People v Meierdiercks*, 68 NY2d 613, 614-615 [1986]; *Worley*, 66 NY2d at 527; *see also People v Smith*, 82 NY2d 676, 678 [1993]; *Liotta*, 79 NY2d at 843).

Applying this understanding of the statute, there is ample support in the record for the motion court's affirmed finding that defendant's omnibus motion was no longer "under consideration by the court" after the court's August 17 order. That order resolved the remaining issues in defendant's omnibus motion other than the discovery issue that the parties agreed on the record to work out among themselves by informing the court that they

[3] We therefore have no occasion to address whether CPL 30.30 (4) (b) would exclude the time at issue here.

hoped they would "not [require] any court intervention" and declining the court's offer to set a future appearance date to deal with the issue. Though the People did not explicitly endorse this arrangement on the record at the August 14 hearing, they made no objection, did not ask the court to schedule a future appearance, agreed that trial was the next step, and never reengaged the court on the issue. Therefore, the record supports the conclusion of the lower courts that, under these circumstances, the People did not meet their burden to establish that the ensuing period was excludable. Because the inclusion of the disputed 154 days puts the People outside their 181-day window to be ready for trial, Supreme Court properly granted defendant's motion pursuant to CPL 30.30 to dismiss the indictment.

Accordingly, the order of the Appellate Division should be affirmed.

WILSON, Chief Judge (concurring):

I agree with the majority's decision to affirm the Appellate Division order, but for a different reason. The automatic disclosure rules embodied in CPL 245.20 and the speedy trial reforms incorporated into CPL 30.30 precisely set out what should happen when automatic disclosure is not timely provided. Even if the welfare check branch of Mr.

Ernst's omnibus motion had remained "under consideration by the court" (CPL 30.30 [4] [a]), that would not have stopped the speedy trial clock. When a defendant moves to compel production of materials that the People are already obligated to disclose under CPL 245.20, the ensuing "delay" from the pendency of that motion does not "result[] from" the motion (CPL 30.30 [4] [a]); it results from the People's noncompliance. CPL 245.20 (5) provides that, if either party believes it has "good cause" to refuse to make any automatic disclosure, it may move for a protective order. Similarly, CPL 245.10 (1) (a) provides that when the People believe certain material is not discoverable, they may notify the defendant in writing and withhold the material pending a protective order ruling from the court. Under CPL 245.70 (8), a motion for protective order, if made in "good faith," would stop the statutory speedy trial clock under CPL 30.30 (4) (a). By contrast, if the People withhold material without seeking a protective order, they bear the consequences under CPL 30.30 if the court later holds the material automatically discoverable. Reading the CPL to stop the clock when a defendant moves to compel discovery that the People are required to produce automatically would discourage defendants from bringing discovery disputes to court, increasing the likelihood a case would be eventually dismissed under CPL 30.30. The Legislature tied disclosure requirements to the speedy trial clock not to create proliferation of speedy trial dismissals, but, instead, to move cases along more expeditiously.

The discovery materials at issue in this case include body-worn camera footage and a related police report from a welfare check on two of Mr. Ernst's children. In his April 2023 omnibus motion, Mr. Ernst specifically requested those welfare check materials,

arguing that they would be useful for impeaching J.K., a key prosecution witness. The People objected to that request, arguing that the materials were not relevant.[1]

Under the CPL, Mr. Ernst had no need to seek an order compelling discovery of materials the People were required to disclose automatically. CPL 245.20 (5) provides that "subdivisions one, two, three and four of this section shall have the force and effect of a court order." That provision renders superfluous Mr. Ernst's motion to compel production of the welfare check materials—he already had such an order by the terms of the statute. Stopping the speedy trial clock for the court to order something already ordered is contrary to the statutory scheme.

Instead, the CPL sets out precisely what is to happen if the People, in this case, believed they had a reason to withhold the material. CPL 245.20 (5) provides: If in a party's judgment "good cause exists for declining to make any of the [automatic] disclosures set forth above, such a party may move for a protective order pursuant to section 245.70 of this article and production of the item shall be stayed pending a ruling by the court." Similarly, CPL 245.10 (1) (a) provides that when the People believe certain material is not discoverable, they may notify the defendant in writing and withhold the material pending a protective order ruling from the court. Here, the People never moved for a protective order, so the speedy trial clock never stopped.[2]

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[1] Supreme Court eventually reached and rejected that argument in June 2024 when granting Mr. Ernst's CPL 30.30 motion.

[2] Contrary to the majority's objection (*see* majority op at 9 n 2), my analysis does not depend on protective orders. It depends on CPL 245.20 (5), under which the People's automatic disclosure obligations already carry "the force and effect of a court order." Even

This statutory scheme makes sense. Were we to conclude that a defense motion to compel production of materials that are subject to automatic disclosure by the People tolls the speedy trial clock, it would dissuade defense counsel from moving to compel such materials. Here, by way of example, it is undisputed that the People failed to turn over the welfare check materials and that their certificate of compliance (COC) was therefore invalid. If Mr. Ernst had not included a demand for the welfare check materials in his omnibus motion but had merely informed the People repeatedly, as he did, that they had an obligation to disclose those materials, the speedy trial clock would have continued to run; the disclosure failure would have been litigated in the context of a 30.30 motion to dismiss the accusatory instrument, and the People would have had no argument about tolling.

If all discovery motions are assumed to toll the speedy trial clock under CPL 30.30 (4) (a), even when the motion seeks to compel discovery required to be provided automatically, defense counsel would be incentivized to pursue discovery disputes informally rather than move to compel disclosure. Avoiding such motions would

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if no protective-order mechanism existed, a motion to compel automatic discovery would still not toll the speedy trial clock. That aside, the statutory scheme expressly contemplates that the People may seek judicial determination of whether certain materials are discoverable in the first instance. CPL 245.10 (1) (a) applies to "materials claimed to be non-discoverable"—it does not confine the procedure to materials that are concededly automatic discovery but warrant protection for some other "good cause." Moreover, CPL 245.70 (8) conditions speedy trial tolling on the motion having been filed in "good faith," not on the People prevailing. Therefore, even if the People eventually fail to establish "good cause" under CPL 245.70 (4), they could still be entitled to tolling under CPL 30.30 (4) (a).

allow otherwise chargeable time to continue accruing, increasing the prospect of dismissal on a subsequent CPL 30.30 motion. Indeed, Mr. Ernst's counsel advised the Court that since this case, he had been requesting automatic disclosure materials by letter, not by motion, just to avoid tolling the speedy trial clock. That practice will lead to more speedy trial dismissals and fewer discovery disputes resolved by motion. However, the goal of CPL 30.30 is not to get meritorious prosecutions dismissed, but to promote prompt prosecution and reduce delays (*see People v Anderson*, 66 NY2d 529, 535 n 1 [1985], quoting 1972 McKinney's Session Laws of NY at 3259; *see also* Senate Introducer's Mem in Support of 2019 NY Senate Bill S1738 ["Kalief's law will reduce undue delay by requiring the court to approve exclusions when a statement of unreadiness has followed a statement of readiness"]). By providing that materials subject to automatic disclosure have the force of a court order and requiring the party subject to automatic disclosure to move for a protective order to stop the speedy trial clock, the Legislature set the incentive structure to promote the paramount purpose of moving criminal cases along expeditiously. Reading CPL 30.30 (4) (a) as tolling the clock for all discovery motions, even those seeking to compel materials subject to automatic disclosure, is contrary to the language and purpose of the recent revision to the disclosure and speedy trial rules.

Of course, there can be legitimate disputes about whether certain materials are subject to automatic disclosure. The Legislature provided for that circumstance not by tolling the speedy trial clock when a party moves to compel disclosure, but by placing the burden to move for a protective order on the party withholding material. That motion for a protective order suspends the statutory order requiring production and, therefore, stops

the speedy trial clock until the motion is decided. This way, the incentive structure is placed where it should be: the speedy trial clock keeps running unless the party with the disclosure obligation moves for relief. Placing the burden as the CPL does, on the party bearing the production obligation, incentivizes the speedy resolution of disclosure disputes instead of the proliferation of speedy trial dismissals. Moreover, placing that burden on the party bearing the automatic disclosure obligation (in practice, most often the People) is no departure from settled law. As the majority explains, prereadiness delay is presumptively attributed to the People, who bears the burden of proving any excludability (majority op at 6-7; *People v Berkowitz*, 50 NY2d 333, 349 [1980]).

Although the majority's holding does not conflict with my analysis, by examining whether the portion of the omnibus motion to compel was pending after August 17, 2023, it implies that the pendency of that motion is relevant. Under the Legislature's carefully constructed scheme tying automatic disclosure obligations to COCs and the speedy trial clock, it is not.

Order affirmed. Opinion by Judge Singas. Judges Rivera, Garcia, Cannataro, Troutman and Halligan concur. Chief Judge Wilson concurs in result in an opinion.

Decided November 24, 2026