Court of Appeals

State of New York

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

JOSEPH SMIETANA,

Defendant-Appellant.

Brief of the
New York State Defenders Association

Amicus Curiae

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Cases

Statutory Provisions

Other Authorities

Page

Interest of Amicus and Summary of Argument

The New York State Defenders Association (NYSDA) is a not-for-profit membership association of more than 1200 public defenders, legal aid attorneys, 18-B counsel and private practitioners throughout the state. With funds provided by the state of New York, NYSDA operates the Public Defense Backup Center, which offers legal consultation, research, and training to more than 5,000 lawyers who serve as public defense counsel in criminal cases in New York. The Backup Center also provides technical assistance to counties that are considering changes and improvements in their public defense systems.

New York State contractually obligates NYSDA, through its Public Defense Backup Center, "to review, assess and analyze the public defense system in the state, identify problem areas and propose solutions in the form of specific recommendations to the Governor, the Legislature, the Judiciary and other appropriate instrumentalities." In this capacity, the Association has issued numerous reports identifying problems in the state's public defense system.

The Court of Appeals has granted NYSDA *amicus curiae* status in a number of important cases dealing with the rights of criminal defendants. Some of the cases in which this Court has granted NYSDA *amicus* status include: People v. Robinson, et al. ___ N.Y.2d ___ (Slip Op. # 141, 142, 143 - December 18, 2001); People v. Young, 94 N.Y.2d 171 (1999); People v. Romero, 91 N.Y.2d 750 (1998); People v. Grant, 91 N.Y.2d 989 (1998); People v. Burdo, 91 N.Y.2d 146 (1997); People v. Knowles, 88 N.Y.2d 763 (1996); People v. Ford, 86 N.Y.2d 397 (1995); People v. McKiernan, 84 N.Y.2d 397 (1994);

Matter of King v. N.Y.S. Div. of Parole, 83 N.Y.2d 788 (1994); People v. Van Pelt, 76 N.Y.2d 156 (1990); People v. Seaberg, 74 N.Y.2d 1 (1989); People v. Pollenz, 67 N.Y.2d 264 (1986) and People v. Bigelow, 66 N.Y.2d 417 (1985).

This case raises narrow, but important, issues concerning the proper construction of CPL § 110.20 and CPL § 30.30 (4)(g). Depending on the circumstances of a local criminal court filing outside the city of New York, CPL § 110.20 requires that either a law enforcement officer or a court clerk promptly transmit a copy of the accusatory instrument to the district attorney after commencement of an action that charges the defendant with a crime. The statute provides, inter alia, that law enforcement personnel must promptly transmit a copy of the accusatory instrument when a police or peace officer is the "complainant or the filer of a simplified information, or has arrested the defendant or brought him before the local criminal court on behalf of an arresting person. . . " (emphasis added). "In all other cases," the statue provides, "the clerk of the court in which the defendant is arraigned shall so transmit [the accusatory instrument]." Here, although a Buffalo Police Department detective was the complainant in a criminal action that charged the defendant with a misdemeanor and a violation, the police failed to transmit a copy of the accusatory instrument to the district attorney. As a result, the People first became aware of the charges at arraignment, 39 days after the criminal action had commenced. The lower courts held that this 39-day period was excludable as a matter of law for speedy trial purposes as an exceptional circumstance pursuant to CPL § 30.30 (4)(g). In view of the fact that it was a police officer who violated the statutory notice provision, *amici* argues below that exclusion of

the ensuing delay is legally unsupportable. *Amici* urges this Court to reject the lower courts' reasoning because a finding of exceptional circumstances in this context would only encourage violations of CPL § 110.20, and result in delays, inefficiency and unfairness to criminal defendants.

Statement of Facts

On June 5, 1998, Detective Mary Gugliuzza filed an accusatory instrument in the Buffalo City Court charging appellant, Joseph Smietana, with criminal contempt in the second degree (Penal Law § 215.50), a Class A misdemeanor, and harassment in the second degree (Penal Law § 240.26), a violation. The allegations were that Smietana violated an order of protection and verbally harassed his wife, Margot Smietana, on May 9, 1998 in front of her residence in Buffalo. Detective Gugliuzza made these allegations on "information and belief" and signed the instrument in her capacity as the "complainant" (A.10). After the charges had been filed and the criminal action had commenced, the Buffalo City Court issued a summons directing Smietana to appear in court for arraignment. Appellant appeared pursuant to the summons on July 14, 1998, 39 days after the charges had been filed.

At arraignment Smietana pleaded not guilty and the court assigned counsel to represent him (A.13-15). Because the District Attorney's office had not previously been notified of the June 5th filing, the prosecution learned about the charges for the first time at the arraignment. As a result, the criminal action was adjourned at the People's

request from July 14 to August 7th (24 days). On August 7th, the People announced trial readiness on the record, 63 days after the charges had been filed (A.32).

Thereafter, the case was adjourned at the defendant's request from August 7th to September 8th for motions (32 days), and by the court from September 8th to October 12th for trial scheduling purposes (34 days). The court again adjourned the case from October 16th to October 28th for scheduling reasons (12 days). Upon learning for the first time on October 28th that one of its witnesses required a sign language interpreter, the prosecution requested an adjournment and the non-jury trial was rescheduled to commence on December 21, 1998 (54 days) (A.44-48).

On December 21, 1998, defense counsel moved to dismiss the charges on the ground that Smietana's statutory right to a speedy trial had been violated. Counsel argued that the 39-day period from June 5, 1998, when the criminal charges had been filed, and July 14, 1998, the date of arraignment in the Buffalo City Court, was chargeable to the People. Counsel maintained that CPL § 110.20 required the police to notify the District Attorney of the filing, and Detective Gugliuzza's failure to do so did not constitute an exceptional circumstance under CPL § 30.30 (4)(g). Counsel argued that this 39-day period of delay, in addition to other periods of delay that were chargeable to the People, exceeded the 90 day readiness period specified in CPL § 30.30 (1)(b). Defense counsel separately argued that all of the time that had elapsed since the initial filing was chargeable to the People because the accusatory instrument had never been properly converted to information (A.25-34).

The People responded that the initial 39-day period of delay (June 5 – July 14) was excludable as an exceptional circumstance under CPL § 30.30 (4)(g) because CPL § 110.20 required the court clerk, not the police, to notify the District Attorney of the filing. Because the clerk had failed to do so in Smietana's case, the People claimed that the delay was excusable pursuant to the Fourth Department's holding in People v. LaBounty, 104 A.D.2d 202 (4th Dept. 1984). *See* People's Memorandum of Law dated March 11, 1999 at 4-9.

In a decision and order dated March 19, 1999, the Buffalo City Court held that Smietana's speedy trial rights had been violated with respect to the misdemeanor charge of criminal contempt in the second degree. The court held that because the misdemeanor complaint had never been properly converted to an information the People's purported announcement of trial readiness on August 7th was ineffective. Accordingly, the court charged the People with more than 90 days of delay and dismissed the misdemeanor count of the accusatory instrument (A.45).

However, the court reached a different conclusion with respect to the second count of the accusatory instrument, harassment in the second degree. First, the court held that the governing speedy trial period for this violation was only 30 days because the misdemeanor count was jurisdictionally defective (A.46-47).[1] The court went on to hold that the People's August 7th announcement of trial readiness was effective with respect to the lesser charge and it satisfied the 30-day readiness period applicable to the

[1] This holding was never challenged and is not at issue in the instant appeal.

violation. Citing People v. LaBounty, 104 A.D.2d 202 (4th Dept. 1984), the court reasoned that the People were not chargeable with the 39-day period of delay between the filing of the charge on June 5th and Smietana's arraignment on July 14th because the "People could not proceed against a defendant without having notice or knowledge that an action has been commenced" (A.47). Concluding that the People were responsible for only 24-days of delay (July 14 to August 7th), the court denied Smietana's motion to dismiss the violation (A.48).

Smietana was convicted of harassment in the second degree after a non-jury trial in the Buffalo City Court and he appealed to the Erie County Court. The County Court affirmed the conviction in an order dated January 22, 2001. One of the disputed speedy trial issues raised on appeal was whether the People were chargeable with the initial 39-day period of delay between the criminal court filing and the arraignment. Relying on People v. LaBounty, 104 A.D.2d 202 (4th Dept. 1984) and People v. Mickewitz, 210 A.D.2d 1004 (4th Dept. 1994), the County Court held that the initial 39-day period of delay was not chargeable to the prosecution because "the People cannot announce their readiness with respect to a case about which they have no knowledge and the speedy trial statute should not be viewed as imposing such a requirement" (A.8).

Smietana now appeals pursuant to a May 22, 2001 order granting him leave to appeal to the Court of Appeals.

ARGUMENT

AS A POLICE OFFICER VIOLATED CPL § 110.20 BY FAILING TO PROMPTLY TRANSMIT A COPY OF THE ACCUSATORY INSTRUMENT TO THE DISTRICT ATTORNEY AFTER COMMENCEMENT OF THE CRIMINAL ACTION, THE RESULTING 39-DAY PERIOD OF DELAY SHOULD NOT HAVE BEEN EXCLUDED AS AN EXCEPTIONAL CIRCUMSTANCE PURSUANT TO CPL § 30.30 (4)(G).

CPL § 110.20 requires prompt notification to a district attorney "when a criminal action is commenced outside the city of New York on an accusatory instrument that charges the defendant with a crime." Preiser, Practice Commentary CPL § 110.20, McKinney's Cons. Laws of New York, Book 11-A at p. 309. In most circumstances, this duty falls to the police, who must promptly transmit a copy of the accusatory instrument to the district attorney whenever a police officer "is the complainant or the filer of a simplified information, or has arrested the defendant or brought him before the local criminal court on behalf of an arresting person" (emphasis added).[2] In rare circumstances, where the police are not involved in the filing charges or the arrest of an

[2] The statute provides in full:

> When a criminal action in which a crime is charged is commenced in a local criminal court, other than the criminal court of the city of New York, a copy of the accusatory instrument shall be promptly transmitted to the appropriate district attorney upon or prior to the arraignment of the defendant on the accusatory instrument. If a police officer or a peace officer is the complainant or the filer of a simplified information, or has arrested the defendant or brought him before the local criminal court on behalf of an arresting person pursuant to subdivision one of section 140.20, such officer or his agency shall transmit the copy of the accusatory instrument to the appropriate district attorney. In all other cases, the clerk of the court in which the defendant is arraigned shall so transmit it.

accused person, the statute requires the clerk of the local criminal court to transmit a copy of the accusatory instrument to the district attorney.

The criminal action filed against appellant, Joseph Smietana, on June 5, 1998 originally included a misdemeanor count as well as a second count charging him with the non-criminal violation of harassment in the second degree. The complainant in this criminal action was a detective employed by the Buffalo Police Department. Therefore, under the clear terms of CPL § 110.20, a police officer, not the clerk of the court, was required to promptly transmit a copy of the accusatory instrument to the District Attorney's office. The police officer's failure to do so should not be considered an exceptional circumstance under CPL § 30.30 (4)(g) so as to excuse the 39-day period of delay between the date of filing and arraignment.

The People wrongly claim that, when a defendant has not been arrested, CPL § 110.20 only requires the police to give notice to district attorneys when a criminal action has been initiated by simplified information. *See* Resp. Br. at 9. This extremely narrow construction of the statutory language does not make grammatical sense (i.e., complainant . . . <u>of</u> a simplified information) and is redundant because police or peace officers are *always* the "complainants" in criminal actions initiated by simplified information. *See* CPL§§ 2.30 (1)(e), 100.10, 100.25. Moreover, such a constricted reading of the statutory language is inconsistent with the purpose and legislative history of CPL § 110.20.

Enacted in 1977 at the request of the Office of Court Administration, CPL § 110.20 was designed to fill the "information gap" that had resulted when district

attorneys were not timely alerted to the commencement of criminal actions in local criminal courts outside of New York City. *See* Memo from the Division of Criminal Justice Services to Judah Gribetz, counsel to the Governor, dated June 13, 1977, a copy of which is attached hereto as Exhibit A. A prompt statutory notification mechanism was viewed as critical to efficient case processing and to compliance with the district attorney's notice obligations under CPL § 710.30. It was also viewed as a means of preventing unauthorized dispositions of criminal charges without the People's consent.[3]

The legislative history makes clear, beyond doubt, that police officers were intended to notify the district attorney whenever they were involved with the filing of an information or complaint, or the arrest of an accused person. The OCA memorandum in support of the bill stated:

> This bill would require that a peace officer who makes an arrest or files a complaint or information be required to promptly submit a copy of the accusatory instrument to the district attorney. When the complaint is a civilian and no peace officer is involved, the court would undertake this.

See Office of Court Administration memorandum in support of S.3507/77, a copy of which is attached hereto as Exhibit D. Similarly, a Division of Criminal Justice Services memo dated June 13, 1977 explained the notification provision as follows:

> Under this proposal, the burden of furnishing the district attorney with a copy of the accusatory instrument is properly cast, for the most part, upon the arresting peace officer. In the rare instance where the complainant is a private person and no peace officer is involved, the duty devolves upon the clerk of the appropriate court (emphasis added).

[3] See, e.g. Letter from B. Anthony Morosco on behalf of the District Attorney's Association to Judah Gribetz dated June 20, 1977, a copy of which is attached hereto as Exhibit B. Memorandum from the Hon. Albert Rosenblatt on behalf of the New York State Bar Association's Criminal Justice Section to counsel to the Governor dated June 22, 1977, a copy of which is attached hereto as Exhibit C.

See Exhibit A. The Practice Commentary to CPL § 110.20 likewise refutes respondent's narrow interpretation of the statutory language. It provides, "Where the instrument is filed or the arrest is made or assisted by a police or peace officer, it is the responsibility of the officer or the officer's agency to transmit a copy of the instrument to the district attorney." Preiser Practice Commentary CPL § 110.20, McKinney's Cons. Laws of New York, Book 11-A (emphasis added).

Furthermore, contrary to the argument advanced by the People below (which has now apparently been abandoned), the reference to the "complainant" in CPL § 110.20 does not refer to the alleged victim of a criminal offense, but to the person who has "subscribed and verified" the accusatory instrument. CPL § 110.20 is in *pari materia* with CPL § 110.15 (1), which provides: "An information, a misdemeanor complaint and a felony complaint must . . . be subscribed and verified by a person known as the 'complainant.' The complainant may be any person having knowledge, whether personal or upon information and belief, of the commission of the offense or offenses charged." Here, Detective Gugliuzza subscribed and verified the accusatory instrument upon information and belief and, hence, was the complainant for purposes of CPL § 110.20 (A.10).

Respondent incorrectly asserted below that this straightforward interpretation of CPL § 110.20 represents a "hyper-technical" reading of the word "complainant." According to respondent, whether the duty to notify the district attorney belongs to the police or the clerk of the court hinges on the identity of the "true complainant" (i.e. victim), which can be gleaned only from a "reading of the information and supporting

deposition" in any given criminal action. *See* People's Memorandum of Law dated March 11, 1999 at 7. However, not only does this interpretation of CPL § 110.20 violate basic principles of statutory construction (*see*, *e.g.* Statutes §§ 221, 233), it would be completely unworkable. This is so because, while there can be only one complainant for a given accusatory instrument, there can be multiple victims referred to in the same instrument. For example, a two-count instrument charging the defendant with petit larceny and resisting arrest might include a supporting deposition from a store clerk and a police officer who responded to the scene of the crime. Under respondent's view, the identity of the "true complainant" would be unclear in these circumstances. In addition, respondent's argument overlooks the fact that a criminal action can be commenced by misdemeanor complaint, which does not include a supporting deposition. *See* CPL § 100.05 (4). In these cases, the "true complainant" could not be identified from a supporting deposition.[4]

Therefore, to the extent People v. LaBounty, 104 A.D.2d 202 (4th Dept. 1984) might have held that CPL § 110.20 requires a court clerk to provide notice to the district attorney when a police officer has filed the charges, it should not be followed by this Court.[5] Once the charges had been filed against Joseph Smietana on June 5, 1998, the statute clearly required the police to promptly transmit a copy of the accusatory

[4] The People also wrongly assert that CPL § 110.20 does not apply in Smietana's case because the misdemeanor count was ultimately dismissed and the only remaining count was a violation. See Resp. Br. at 8-9. Obviously, a police officer's duty to notify is triggered by the status of the criminal action at the time of filing, not at the time of disposition.

[5] Although it appears that a police officer was the complainant in LaBounty, the court stated that the "responsibility to notify the district attorney [under CPL § 110.20] rested solely with the court clerk."

instrument to the district attorney's office. The police officer's failure to do so should not be excused as an exceptional circumstance pursuant to CPL § 30.30 (4)(g).

Here, the People made no showing that Detective Gugliuzza's failure to transmit a copy of the accusatory instrument to the district attorney was due to an "exceptional" occurrence, such as illness or other disability. *See e.g.*, People v. Womack, 90 N.Y.2d 974 (1997). Indeed, in light of respondent's claim that CPL § 110.20 imposed a duty on the court clerk, the People were never in a position to make such a showing here. Thus, under the rubric of "exceptional circumstances" the People are actually asking this Court to adopt a blanket CPL § 30.30 exclusion that would apply from the date of commencement of a criminal action until the date a district attorney receives actual notice of the filing, no matter who failed to comply with CPL § 110.20: a court clerk or a police officer.

This Court should decline to adopt such a per se rule because it would only encourage violations of CPL § 110.20 and defeat the very purpose of the statute, which is to ensure prompt notification to the district attorney whenever criminal charges have been filed. In practical terms, such a blanket rule would undermine the clear mandate of CPL § 100.05, which provides that a criminal action commences with the filing of an accusatory instrument, and replace it with a de facto rule that commencement occurs when a prosecutor receives actual notice of the filing. Such an uncertain rule would frequently give rise to factual disputes that would require an evidentiary hearing to resolve. In short, the People's proposed "exceptional circumstances" rule would result only in inefficiency, delay, factual disputes and unfairness. *See e.g.* People v. Hendryx,

178 Misc.2d 200 (Cattaraugus County Ct. 1998) [5-month delay in criminal action attributable to police failure to comply with CPL § 110.20 excludable under extraordinary circumstances provision of CPL § 30.30 (4)(g)].

While there might be some reason to exclude delays attributable to a court clerk's failure to comply with CPL § 110.20 (an issue not before this Court), there is no justification for exclusion of delays that are caused by a police officer's neglect of this statutory duty. Unlike a court clerk, a police officer, especially one who is the complainant in a criminal action, is an integral part of the law enforcement establishment that is prosecuting the defendant, and he or she can reasonably be expected to heed a prosecutor's instructions about the importance of complying with CPL § 110.20. *See* People v. O'Doherty, 70 N.Y.2d 479 (1987); People v. Schulz, 67 N.Y.2d 144 (1986); People v. Spruill, 47 N.Y.2d 869 (1979).

Finally, it is not unfair to charge the People with pre-arraignment delay where, as here, a criminal action has been commenced and the court has issued a summons directing the defendant to appear for arraignment at a later date. While there is no doubt that the 30-day trial readiness period applicable to violations can exert time pressure on prosecutors in these circumstances, the Legislature has already provided district attorneys with a means of excluding such pre-arraignment delay under CPL § 30.30.

In 1993, the Legislature amended CPL § 120.20 (3) and CPL § 210.10 (3) to authorize an alternative method of securing a defendant's appearance in court for arraignment without a court-issued summons or warrant. The sections were amended

to provide: *"Upon the request of the district attorney, in lieu of a warrant of arrest or summons, the court may instead authorize the district attorney to direct the defendant to appear for arraignment on a designated date if it is satisfied that the defendant will so appear."* See L.1993, ch. 446. In the same bill, the Legislature also enacted CPL § 30.30 (4)(i), which excludes for speedy trial purposes the *"period prior to the defendant's actual appearance for arraignment in a situation in which the defendant has been directed to appear by the district attorney pursuant to subdivision three of section 120.20 or subdivision three of section 210.10."* One commentator has observed that the Legislature added this speedy trial exclusion in order to "provide an incentive for the district attorney to request the court to use the least onerous method for securing the defendant's appearance. This would follow from the fact that exclusion does not apply where the court exercises its contemporaneously granted expanded authority to issue a summons . . ." (emphasis added). *See* Preiser, Practice Commentary CPL § 30.30, McKinney's Cons. Laws of New York, Book 11-A, 2001 pocket part at p. 61.

By simply eschewing a court-issued summons, and directing the defendant by letter to appear for arraignment on a designated date pursuant to CPL § 120.20 (3), district attorneys in New York are automatically entitled to exclusion of all pre-arraignment delay under CPL § 30.30 (4)(i). Since the People did not avail themselves of this statutory mechanism in Joseph Smietana's case, the 39-day period of pre-arraignment delay is not excludable.

Because the People did not declare trial readiness within the statutory time frame, and the default was not attributable to exceptional circumstances, appellant's

statutory right to a speedy trial was violated. Accordingly, the judgment of conviction should be reversed, and appellant's motion to dismiss should be granted.

CONCLUSION

FOR THE ABOVE-STATED REASONS, AND THE REASONS SET FORTH IN APPELLANT'S BRIEF, THE JUDGMENT OF CONVICTION SHOULD BE REVERSED AND DEFENDANT'S MOTION TO DISMISS SHOULD BE GRANTED.

Respectfully submitted,

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