CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART TRIAL 1

----------X Docket # 2016KN037399

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

NOTICE OF MOTION

RICHARD CANIZARES,

Defendant.

----------X

PLEASE TAKE NOTICE, that upon the annexed affirmation of PATRICK MICHAEL MEGARO, ESQ., an attorney duly admitted to practice law before the Courts of the State of New York, the annexed exhibits and the prior proceedings herein, the undersigned will move this Court at **Part TRIAL 1**, on **September 13, 2017** at 9:30 a.m., or as soon thereafter as counsel can be heard, for Orders:

1. Dismissal of this action pursuant to CPL §§ 30.20, 170.30(e), 210.20(1)(g) the Sixth Amendment of the United States Constitution, Article I, § 6 of the New York State Constitution, and New York Civil Rights Law § 10.

2. For such other and further relief as this Court may deem just and proper.

Dated: August 22, 2017

Respectfully Submitted,

_____

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New York Address:

To:
Grey Zone
Kings County District Attorney's Office
350 Jay Street
Brooklyn, New York 11201

Clerk, Criminal Court, Part TRIAL 1

120 Schermerhorn Street
Brooklyn, New York 11201

118-35 Queens Boulevard, # 400
Forest Hills, New York 11375

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART TRIAL 1

----------X Docket # 2016KN037399

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

AFFIRMATION IN SUPPORT OF MOTION TO DISMISS

RICHARD CANIZARES,

Defendant.

----------X

PATRICK MICHAEL MEGARO, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms as follows:

1. I am counsel of record for the Defendant in the above-entitled action, and as such, I am fully familiar with the facts and circumstances of this case.

2. Unless otherwise specified, all allegations of fact are based upon inspection of the record of this case or upon conversations with Assistant District Attorneys, the defendant, and counsel's own investigation. The Court is respectfully referred to the attached Memorandum of Law for all legal arguments.

3. The Defendant was originally charged in Docket # 2016KN037399 with Operating a Motor Vehicle While Under the Influence of Alcohol or Drugs, VTL § 1192.3, a misdemeanor punishable by up to one year in prison, and Operating a Motor Vehicle While Under the Influence of Alcohol or Drugs, VTL § 1192.1, a traffic infraction.

4. The Defendant was arraigned in Part AR3 in this Court on June 23, 2016,

represented by an attorney from The Legal Aid Society. At the arraignment, the People lacked a corroborating affidavit from Police Officer Jorge Pocasangre, and the case was adjourned to Part DWI to July 15, 2016 for conversion, and Defendant was released on his own recognizance.

5. Thereafter, the case was scheduled on the following dates for the following purposes:

Date:	**Case On For:**	**Result:**
7/15/2016	Conversion	People did not have corroborating affidavit, adjourned to 9/19/2016 for conversion
9/19/2016	Conversion	Case converted off calendar prior to court date, adjourned to 11/1/2016 for open file discovery
11/1/2016	Open File Discovery	OFD Provided, adjourned to 12/15/2016 for hearing and trial
12/15/2016	Hearing and Trial	**People not ready**, requested 6 days; case adjourned to 1/27/2017 for hearing and trial
1/27/2017	Hearing and Trial	**People not ready**, requested 7 days, adjourned to 3/20/2017 for hearing and trial
3/20/2017	Hearing and Trial	People file and serve a response to the defense motion to dismiss, adjourned to 4/28/2017 for decision

4/28/2017	Decision on motion	Motion to dismiss VTL § 1192.3 granted, motion to dismiss VTL § 1192.1 denied; **People not ready**, adjourned to 6/8/2017 for hearing and trial
6/8/2017	Hearing and Trial	**People not ready**, requested 6/19/2017; case adjourned to 7/17/2017 for hearing and trial
7/17/2017	Hearing and Trial	Bench Warrant Ordered (error by defense counsel, see transcripts of 6/8/2017 and 7/24/2017)
7/24/2017	Vacate Warrant	Bench warrant vacated, ROR reinstated, adjourned to 8/14/2017 for hearing and trial
8/14/2017	Hearing and Trial	**People not ready**, request 8/21/2017, adjourned to 9/13/2017 for hearing and trial

6. On April 28, 2017, this Court issued a decision dismissing Count # 1, VTL § 1192.3 pursuant to CPL § 30.30 upon the People's concession that 99 days of speedy trial time had elapsed. However, the Court denied the motion to dismiss Count # 2, VTL § 1192.1, ruling that CPL § 30.30 did not apply.

7. Since April 28, 2017, the People have not moved this case forward to trial. Utilizing a CPL § 30.30 analysis, 117 days of chargeable time have elapsed.

8. For the foregoing reasons and the reasons set forth in the Memorandum of Law, this case should be dismissed pursuant to CPL § 30.20, the Sixth Amendment of the United States Constitution, Article I, § 6 of the New York State Constitution, and New

York Civil Rights Law § 10. The Defendant reserves the right to reply to the prosecution's response.

Dated: August 22, 2017

_____

PATRICK MICHAEL MEGARO

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART TRIAL 1
----------X Docket # 2016KN037399
THE PEOPLE OF THE STATE OF NEW YORK,

-against-

RICHARD CANIZARES,

Defendant.
----------X

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO DISMISS PURSUANT TO CRIMINAL PROCEDURE LAW § 30.20 AND THE SPEEDY TRIAL GUARANTEES OF THE UNITED STATES CONSTITUTION AND THE NEW YORK STATE CONSTITUTION

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Clerk, Criminal Court, Part TRIAL 1

120 Schermerhorn Street
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I. VIOLATION OF CONSTITUTIONAL RIGHT TO SPEEDY TRIAL

The Speedy Trial Clause of the Sixth Amendment states that "[I]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial…"

> The evils at which the [Speedy Trial] Clause is directed are readily identified. It is intended to spare an accused those penalties and disabilities - incompatible with the presumption of innocence - that may spring from delay in the criminal process. The Court recognized in United States v. Ewell, 383 U.S. 116, 120, (1966), that the speedy-trial right 'is an important safeguard to prevent undue and oppressive incarceration prior to trial.' We also recognized in Ewell that a speedy trial is intended 'to minimize anxiety and concern accompanying public accusation.'

Dickey v. Florida, 398 U.S. 30, 41 (1970) (Brennan, J., concurring).

The right to a speedy trial is "one of the most basic rights preserved by our Constitution," and is enforceable against the states through the Fourteenth Amendment. Klopfer v. North Carolina, 386 U.S. 213, 226 (1967). In addition, the New York Court of Appeals has long held that, under the New York Constitution, "'unreasonable delay in prosecuting a Defendant-Appellant constitutes a denial of due process of law.'" People v. Singer, 44 N.Y.2d 241, 253 (1978) (quoting People v. Staley, 41 N.Y.2d 789, 791 (1977)). Where, as here, a constitutional speedy trial violation is established, the charges must be dismissed with prejudice. See Strunk v. United States, 412 U.S. 434, 440 (1973); People v. Taranovich, 37 N.Y.2d 442, 444 (1975).

In Barker v. Wingo, 407 U.S. 514 (1972), the Supreme Court adopted a four-part balancing test to determine whether a defendant's Sixth Amendment right to a speedy trial has been violated in a pending criminal prosecution: (1) length of delay, (2) the

reason for the delay, (3) defendant's assertion of his right, and (4) prejudice to defendant. Id. at 530.

The Court further held that "none of the four factors identified above [are] either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant." Id. at 533. "[B]ecause of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case. To take but one example, **the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge**. Barker, supra at 530-531 (emphasis added).

The right to a speedy trial is also guaranteed by the New York State Constitution, encompassed in the Due Process Clause contained in Article I, § 6. The New York Court of Appeals has "long held that in criminal prosecutions an unreasonable delay in prosecuting a defendant following an arrest can constitute a violation of the Due Process Clause of our Constitution." Matter of Benjamin L., 92 N.Y.2d 660, 667 (1999). This right is codified in the New York Bill of Rights, specifically in the Civil Rights Law § 12, which guarantees that "[i]n all criminal prosecutions, the accused has a right to a speedy and public trial…" and further codified in Criminal Procedure Law § 30.20(1) which provides that "[a]fter a criminal action is commenced, the defendant is entitled to a speedy trial." People v. Berkowitz, 50 N.Y.2d 333, 348 (1980).

> The speedy trial guarantee established by the 6th Amendment to the Federal Constitution and embodied in

> CPL 30.20 and Civil Rights Law § 12 is intended to ensure fair and humane treatment of an accused person by protecting him or her against prolonged imprisonment while awaiting trial, providing relief from the anxiety and public suspicion that accompanies a criminal accusation which remains untried, and reducing the possibility that through the loss of witnesses or the dulling of memory the means of proving his or her innocence may be lost. It also serves the interests of society in seeing that those accused of crime are swiftly brought to justice.

People v. Anderson, 66 N.Y.2d 529, 534–35 (1985) (citations omitted).

Similar to the United States Supreme Court, the New York Court of Appeals has also formulated a multi-prong test in determining whether a defendant's State Constitutional right to a speedy trial has been violated. In People v Taranovich, 37 N.Y.2d 442, 444-445 (1975), the Court of Appeals enunciated the following factors that a trial court confronted with a speedy trial claim must examine:

> (1) the extent of the delay;
> (2) the reason for the delay;
> (3) the nature of the underlying charge;
> (4) whether or not there has been an extended period of pretrial incarceration; and
> (5) whether or not there is any indication that the defense has been impaired by reason of the delay.

Id. at 445.

Like the Supreme Court, the Taranovich court was quick to "add that no one factor or combination of the factors set forth below is necessarily decisive or determinative of the speedy trial claim, but rather the particular case must be considered in light of all the factors as they apply to it." Taranovich, supra at 445 (internal citation omitted). However, above all else, a trial court's weighing of these factors "must be

carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution." Barker, supra at 533.

A. The Extent of the Delay

The first prong of both the Barker and Taranovich test focuses on the extent of the delay. "The first factor, the extent or duration of the delay, is, of course, important inasmuch as it is likely that, all other factors being equal, the greater the delay the more probable it is that the accused will be harmed thereby." People v. Romeo, 12 N.Y.3d 51, 56 (2009), quoting Taranovich, supra at 445.

In the case at bar, Defendant was charged with one of the most common offenses to appear daily on a New York City Criminal Court's calendar: drunk driving. There was nothing complex, unusual, or extraordinary about the charges in his case. Nonetheless, the delay occasioned by the People's failure to move this case to trial totaled **117 days** spread over the course of over one calendar year. As these periods of delay are well in excess for what the New York Legislature has determined to be appropriate for a misdemeanor case to be brought to trial, this Court should find that the instant prosecution was unduly delayed for an unreasonable amount of time for the remaining traffic infractions. As elaborated in People v. Mahon, 15 Misc.3d 1121(A), 839 N.Y.S.2d 435 (Nassau Dist. Ct. 2007) (St. George, J.):

> This Court holds that the speedy trial time period regarding a violation of Vehicle and Traffic Law § 1192.1, Driving While Impaired, should not be greater than the time period governing a violation of Vehicle and Traffic Law § 1192.2, Driving While Intoxicated (which is ninety (90) days.). A violation of VTL § 1192 .1 is a lesser included charge of VTL § 1192.2, and as such is a less serious offense. A

> conviction for violating VTL § 1192.2 carries a maximum term of imprisonment of up to one (1) year, and a conviction for violating VTL § 1192.1 carries a maximum term of imprisonment of up to fifteen (15) days. Therefore, it would not be sensible for the speedy trial time period regarding the latter to exceed the time period regarding the former. In fact, such would be contrary to the very essence and structure of speedy trial statutes which provide longer time periods for more serious charges. The underlying reasoning of the speedy trial statutes obviously is that the People should be given more time to prepare for more serious charges. With respect to charges of VTL § 1192.1 and VTL § 1192.2, it is inconceivable that the People would need more time to prepare a VTL § 1192.1 case, than a VTL § 1192.2 case. **In fact, the preparation time regarding a VTL § 1192.1 case should be less than**, **but at most equal to, a VTL § 1192.2 case**. The subject matter, the witnesses, and the testimony are similar if not identical in both a VTL § 1192.1 and VTL § 1192.2 case. Consequently, there is no reason that the speedy trial time regarding a charge of VTL § 1192.1 should exceed the speedy trial time regarding a charge of VTL § 1192.2.

Id. (emphasis added).

B. The Reason for the Delay

The second prong of both the Barker and Taranovich test considers the reason the prosecution assigns to the delay. Reasons such as negligence, court congestion, or engagement by the prosecutor on other cases "nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the Defendant." Barker, supra at 531. The New York Court of Appeals has likewise held that court congestion does not relieve the People from its obligation to move a case to trial. See People v. Correa, 77 N.Y.2d 930, 931 (1991), People v. Cortes, 80 N.Y.2d 201 (1992). The Court of Appeals and the Appellate Division have further

recognized that assistant district attorneys are fungible and, therefore, the District Attorney's office is required to supply substitute attorneys to avoid being held accountable for delay. See People v. Jones, 68 N.Y.2d 717 (1986); People v Warren, 85 A.D.2d 747(2d Dept. 1981); People v. McCaffery, 78 A.D.2d 1003 (4th Dept.1980).

Here, the District Attorney's office delayed Defendant's case for **117 days** and had failed to answer ready for trial every time the case was scheduled for trial, over the course of fifteen (15) months. Prior to that, the People only answered ready for trial with a Certificate of Readiness, filed off-calendar and served on the wrong attorney, prior to the case being scheduled for trial, and answered ready for trial on a date when pre-trial discovery had not been completed, again when the case was not scheduled for trial.

The reasons given on the record for the People's failure to be ready are unavailability of the arresting officer or the Assistant District Attorney assigned to prosecute the case. These are invalid reasons to justify an extended delay and a deprivation of the Defendant's right to a speedy trial. As noted above, New York Courts have consistently held that vacation conflicts and unavailability of the assigned prosecutor due to trial engagements in another case does not excuse delay. See Jones, supra; Warren, supra; McCaffery, supra; People v. Bowe, 129 Misc.2d 1057 (Kings Co. Crim. Ct. 1985) (Kramer, J.), People v. Greenfield, 144 Misc.2d 179 (Kings Co. Crim. Ct. 1989) (Tomei, J.). Thus, as the vast majority of the delays in this case cannot be attributed to Defendant, this Court must find this factor in his favor.

C. The Nature of the Underlying Charge

Upon such a serious charge, the District Attorney may be

> expected to proceed with far more caution and deliberation than he would expend on a relatively minor offense. Of course, this is not to say that one's right to a speedy trial is dependent upon what one is charged with, but rather that the prosecutor may understandably be more thorough and precise in his preparation for the trial of a class C felony than he would be in prosecuting a misdemeanor.

Taranovich, supra at 446.

Conversely, by the same reasoning the less serious the charge, the less time the People should be afforded to delay the trial by preparing.

Here, the remaining charges that Defendant faced were perhaps the most common of driving-related offenses: Driving While Intoxicated and Driving While Ability Impaired.

Moreover, since this Court dismissed the VTL § 1192.3 misdemeanor charge, the only charge remaining on the docket is a traffic infraction. The People conceded dismissal of the misdemeanor charge, thereby admitting that the case was not as serious or complex as a misdemeanor charge of Driving While Intoxicated, which requires a higher level of proof than Driving While Ability Impaired.

D. Prejudice to the Defendant

"Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. The Supreme Court has identified three such interests: (i) to prevent oppressive pretrial incarceration, (ii) to minimize anxiety and concern of the accused, and (iii) to limit the possibility that the defense will be impaired." Barker, at 532.

The instant prosecution represented 42-year old Defendant's first arrest and

contact with the criminal justice system. In the almost 14 months that this case was pending in the Criminal Court, Defendant made numerous court appearances after his arraignment. As Defendant is employed full-time, he lost significant vacation time, sick time, and several unpaid days for the multiple adjournments, only one of which can be attributed to the fault of the defense. In short, the delay in this case not only caused him significant financial hardship; it threatened his livelihood during a particularly difficult economic time.

It must be further noted that this was a particularly weak case for the People from the outset. First, there was no admissible evidence that Defendant had a blood alcohol concentration in excess of the legal limit. Secondly, there is no admissible evidence that Defendant refused to submit to a chemical test as he clearly exercised his limited right to counsel prior to the administration of a breath test. Thirdly, the only witness as to Defendant's alleged operation of a motor vehicle is a resident of the State of Florida, and unlikely to return to court in Brooklyn to testify in a traffic infraction trial in which there were no injuries.

E. Defendant's Assertion of the Right

Above all else, the Supreme Court has recognized that "[t]he defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." Barker, at 531-532. The law in New York is equally well-settled that adjournments consented to by the defense must be clearly expressed to relieve the People of the responsibility for the delay. Defense counsel's failure to object to the adjournment or failure to appear does not constitute

consent to an adjournment. People v. Smith, 82 N.Y.2d 676, 678 (1993), see also People v. Liotta, 79 N.Y.2d 841 (1992); People v. Cortes, 80 N.Y.2d 201, 216 (1992).

That being said, Defendant's assertion of his speedy trial right in this particular case was constant. With the exception of obtaining discovery early in the case and an honest mistake on the part of defense counsel concerning the correct court date, Defendant did not consent to any further adjournments or seek delay in this case. Instead, the defense remained ready to litigate this matter almost every time this case was scheduled for trial.

CONCLUSION

Based upon the foregoing reasons, this Court should dismiss the instant action because the Defendant's right to a speedy trial has been violated.

Respectfully Submitted,

_____

PATRICK MICHAEL MEGARO

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART TRIAL 1

----------X Docket # 2016KN037399

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

AFFIRMATION OF SERVICE

RICHARD CANIZARES,

Defendant.

----------X

PATRICK MICHAEL MEGARO, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms as follows:

1. I am over the age of 18 and am not a party to this action

2. On August 22, 2017, I served a copy of the foregoing Notice of Motion, Affirmation in Support, Memorandum of Law, and Exhibits by mailing a copy using First Class mail through the United States Postal Service upon

Kings County District Attorney's Office
350 Jay Street
Brooklyn, New York 11201

Dated: August 22, 2017

_____

PATRICK MICHAEL MEGARO

Docket # 2016KN037399

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART TRIAL 1

THE PEOPLE OF THE STATE OF NEW YORK,

-against -

RICHARD CANIZARES,

Defendant.

NOTICE OF MOTION, AFFIRMATION IN SUPPORT, MEMORANDUM OF LAW IN SUPPORT, AFFIRMATION OF SERVICE

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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated:_____ Signature:_____

Service of a copy of the within:_____ is hereby admitted.

Dated:_____ Signature:_____
