

CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS : PART DWI

Docket # 2016KN037399

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THE PEOPLE OF THE STATE OF NEW YORK,

-against-

RICHARD CANIZARES,

Defendant.

***REPLY***  
**AFFIRMATION IN**  
**SUPPORT OF MOTION**  
**TO DISMISS**

-----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. The People concede that dismissal of the misdemeanor counts in the complaint  
is warranted, but urge this Court to deny dismissal of the traffic infraction, arguing that  
Defendant's speedy trial rights have not been violated with respect to the traffic  
infraction.

3. The Court of Appeals has held:

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.

People v Taranovich, 37 N.Y.2d 442, 446 (1975)

4. Conversely, by the same reasoning the less serious the charge, the less time the

People should be afforded to delay the trial by preparing. In People v. Mahon, 15 Misc.3d 1121(A), 839 N.Y.S.2d 435 (Nassau Dist. Ct. 2007) (St. George, J.), that court was confronted with the same question before this Court, and reasoned as follows:

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).

5. As stated above, the charges that Defendant is facing are perhaps the most common of driving-related offenses: driving while ability impaired and a related traffic infraction of double-parking in the City of New York. As stated above, the length of

delay in this case well exceeds the time allotted by the Legislature for the People to prepare for trial on a misdemeanor, a more serious charge. Further, because the People in this case moved to dismiss the only misdemeanor charge of VTL § 1192.3, the People in effect made a judicial admission 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.

6. The same argument made by the People in this case has been expressly rejected in at other reported decisions by this Court. See People v. Perkins, 37 Misc.3d 696 (Kings Co. Crim. Ct. 2012) (Farber, J.); People v. Manoylo, 15 Misc.3d 1130(A) (Kings Co. Crim. Ct. 2007) (Best, J.). Accordingly, this Court should reject this argument as well and dismiss the accusatory instrument.

Dated: April 7, 2017

Respectfully Submitted,

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TO:

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CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS : PART DWI

Docket # 2016KN037399

-----X  
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 April 7, 2017, I served a copy of the foregoing Reply Affirmation by mailing a copy using First Class mail through the United States Postal Service upon

ADA Michael Solomon, Esq.  
Kings County District Attorney's Office  
350 Jay Street  
Brooklyn, New York 11201  
VIA REGULAR MAIL AND EMAIL [solomonm@brooklynda.org](mailto:solomonm@brooklynda.org)

Dated: April 7, 2017

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PATRICK MICHAEL MEGARO

Docket # 2016KN037399

CRIMINAL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS : PART DWI

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THE PEOPLE OF THE STATE OF NEW YORK,

*-against -*

RICHARD CANIZARES,

Defendant.

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**REPLY AFFIRMATION, AFFIRMATION OF SERVICE**

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**PATRICK MICHAEL MEGARO, ESQ.**

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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: \_\_\_\_\_

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Service of a copy of the within: \_\_\_\_\_ is hereby admitted.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

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