STATE OF NEW YORK
SUPREME COURT
COUNTY OF MONROE

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

Indictment No. 2020-0022

Defendant.

APPEARANCES: SANDRA DOORLEY, ESQ.
Monroe County District Attorney
KEVIN SUNDERLAND, ESQ., Of Counsel
Attorney for People

YOUSEF N. TAHA, ESQ.
Attorney for Defendant

DECISION AND ORDER

VICTORIA M. ARGENTO, J.S.C.

Defendant has moved to dismiss the indictment based on the alleged failure of the People to be ready for trial within the requisite statutory period pursuant to CPL 30.30. The People filed a written response opposing the motion. The Court has reviewed the submissions of both parties and rules as follows.

A criminal action is commenced by the filing of an accusatory instrument against a defendant in a criminal court (CPL 1.20[17]). That occurred here on May 9, 2019 when defendant was charged in Rochester City Court by felony complaint with crimes that ultimately resulted in this indictment. The People were required to be ready for trial within six months of that date: November 9, 2019, which amounts to 185 days (CPL 30.30[1][a]).

The time period from May 9, 2019 through July 10, 2019, a total of 63 days, must be charged to the People because a felony complaint had been filed and defendant had not waived any time. On July 11, 2019, in response to an email from the prosecutor asking if the defendant was interested in a previously conveyed plea offer, defense counsel emailed the prosecutor asking him to hold off on presenting the case to the grand jury for one week while his client considered the offer. Contrary to the People's contention, this time period is not chargeable to the defense because "counsel merely requested an opportunity to discuss a plea bargain before the District Attorney presented the case to the grand jury," which did "not constitute an explicit and unambiguous waiver of defendant's speedy trial rights" (*People v. Leubner*, 143 AD3d 1244 [4th Dept. 2016]). Therefore, the time period from July 11, 2019 through July 28, 2019, an additional 18 days, must be charged to the People.

On July 29, 2019, defense counsel emailed the prosecutor and stated: "I formally waive 30.30 and 180.80 time requirements at this time regarding the felony charges/presentation on behalf of , at this time until further notice" (see Court Exhibit 1). This email stopped the speedy trial clock (*see People v. Liotta*, 79 NY2d 841, 843 [1992][A defendant may consent to the exclusion of time that would otherwise be chargeable to the People if such consent was "clearly expressed by defendant or defense counsel"]; *People v. Waldron*, 6 NY3d 463, 467 [Speedy trial time may be excluded where "defendant's counsel explicitly waived speedy trial rights in order to complete ongoing plea negotiations"]; CPL 30.30[4][b]). The critical question is when did the clock begin running again.

Defendant's answer is August 16, 2019, which was the day defense counsel emailed the prosecutor the following: "After consulting with we would not be willing to accept

your offer. Please make arrangements to have presented to testify at any and all Grand Jury Proceedings involving him" (see Court Exhibit 1). If defendant is correct his motion must be granted because he was subsequently indicted and the People did not declare trial readiness before Governor Cuomo issued an executive order suspending speedy trial time limitations on March 20, 2020, meaning that an additional 217 days would be added to the time already charged to the People. The People appear to be arguing that the speedy trial clock never began running again because defense counsel never explicitly revoked the July 29, 2019 waiver. Their position is that the July 29th email said the waiver was in effect "until further notice" and such notice was never given.

Was the email from defense counsel on August 16th "notice" that the 30.30 waiver was withdrawn? In attempting to answer this question that email must be considered in context and the Court is mindful that the burden is on the People to show that specific time periods should be excluded (*see People v Santos*, 68 NY2d 859 [1986]). The July 29th email waiving 30.30 was in response to an email from the prosecutor three days earlier stating, "i would like the offer to remain available he must waive 30.30 by Monday, July 29, 2019 at 5:00 p.m. or the offer will be revoked" (see Court Exhibit 1). The purpose of the July 29th response from defense counsel was to buy time for his client to consider the plea offer currently on the table and delay grand jury presentation. Counsel even wrote in the email that time was being waived "regarding felony charges/*presentation*" [emphasis supplied]. The email concluded by stating that time was being waived "until further notice." The specific manner of that notice was not specified.

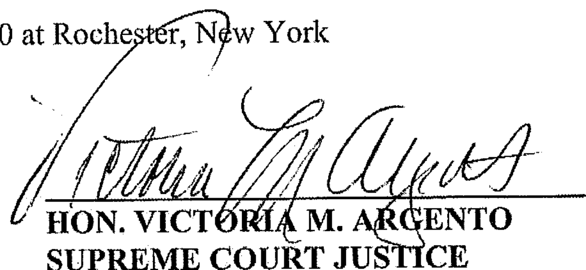
With this context in mind, the August 16th email provided sufficient notice to the People that speedy trial time was no longer being waived. In that email defense counsel ended pre-

indictment plea negotiations and acknowledged that the case would be presented to the grand jury. Having rejected the offer and asked for grand jury notice, there was no logical reason for defendant to continue waiving speedy trial time. While the email from defense counsel did not mention the 30.30 waiver by name, viewed in context it was sufficient notice to the prosecutor that the previous waiver was withdrawn. The Court of Appeals has repeatedly stated that "prosecutors would be will advised to obtain unambiguous written [speedy trial] waivers" (*People v. Dickinson*, 18 NY3d 835, 836 [2011]; *People v. Waldron*, 6 NY3d 463, 468 [2006]). Here, the July 29th waiver certainly became, at best for the prosecutor, ambiguous after the August 16th email. In the Court's eyes it became invalid.

The speedy trial clock began running again on August 17, 2020, and did not stop until March 20, 2020, when the Governor suspended criminal trials due to the COVID-19 pandemic (see Executive order 202.8). That amounts to 216 days, putting the People beyond the six months by which they needed to be ready for trial. Defendant's motion is therefore granted and the indictment is dismissed pursuant to CPL 30.30.

This constitutes the Order of the Court.

Dated this 8th day of October, 2020 at Rochester, New York



HON. VICTORIA M. ARGENTO
SUPREME COURT JUSTICE