COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Appellant,

-against-

NO. 28

PATRICK LABATE,

Respondent.

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20 Eagle Street
Albany, New York
February 15, 2024

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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CHIEF JUDGE WILSON: Next case on the calendar is People v. Labate.

MS. IANNUZZI: Good afternoon. May it please the court. I'm ADA Amanda Iannuzzi, on behalf of the appellant, Queens County District Attorney Melinda Katz, and I'd like to request three minutes for rebuttal, please.

CHIEF JUDGE WILSON: Of course.

MS. IANNUZZI: This court has long recognized that following the people's statement of readiness, any period of adjournment more than that actually requested by the people is excluded.

In People v. Brown, and its companion case, People v. Kennedy, this court emphasized that basic rule, and further held that an off-calendar statement of readiness is presumed truthful and accurate, that if the people state they are not ready after previously filing an off-calendar statement of readiness, the people must explain the reason for their change in readiness status. And this court held that a defendant bears the ultimate burden in the post-readiness context to show that an off-calendar statement of readiness was illusory, and that the delay should be charged to the people.

JUDGE CANNATARO: Did the people explain the reasons for their non-readiness at the at-calendar appearance when they requested an adjournment?

MS. IANNUZZI: They did not. And that fact alone is not detrimental to this case because - - -

CHIEF JUDGE WILSON: Did they - - - did they ever?

MS. IANNUZZI: I'm sorry, Your Honor. I couldn't - - -

CHIEF JUDGE WILSON: Did they ever explain it - - - so they come back another six weeks later or so. They're still not ready. Did they ever say - - - I mean, I take it that Brown said - - - I think Brown says you don't have to have the explanation on the record, but you have to have an explanation. Is that fair?

MS. IANNUZZI: That - - - that's correct in the context of which Brown applies, which is off-calendar statements of readiness. That wasn't the facts of what happened here. There was no off-calendar statement of readiness at issue. This was an in-court declaration of unreadiness and a request for time. And the rule that governs that particular scenario that should have been applied by the Appellate Term here was the rule announced in the companion case to Brown, which was People v. Kennedy, that the people are charged with the time that they request - - -

CHIEF JUDGE WILSON: But for Kennedy, there was an explanation given, right?

MS. IANNUZZI: Correct. But the - - -

CHIEF JUDGE WILSON: So here we're - - - we're dealing with a situation that is neither Brown nor Kennedy in a way, right. Where there's no explanation given. Come back, you're still not ready six weeks later, and there's no explanation given for either that, the prior time, or this time, right?

MS. IANNUZZI: I would respectfully disagree with Your Honor saying that this is not like Kennedy, because factually it is. Yes, the only difference is that in Kennedy, there was a reason on the record. But Kennedy's rule in the way it is announced is not a conditional rule. It is not, the people are charged with the time they request only if they give a reason as to why they're not ready. So - - -

JUDGE HALLIGAN: So - - - go ahead.

MS. IANNUZZI: So to get back to Your Honor's question, and the question also that you posed, Judge Wilson, is that the fact that the people failed to give an explanation to the court - - - the standing ADA's response was, I don't know. I don't have that information - - - cannot be the sole fact that renders the people's request illusory. And that makes sense because since the rule is not conditional, how can the people's request be deemed illusory, so - - -

JUDGE TROUTMAN: If that'd be creating a new rule?

MS. IANNUZZI: I'm sorry, Your Honor.

JUDGE TROUTMAN: If that'd be creating a new rule, interpreting it that way.

MS. IANNUZZI: It - - - it would, it would. And by doing that, this court would essentially be overruling Kennedy's bright-line rule that the people are charged with only the time that they request. And that is a - - - again, is a bright-line rule that promotes predictability in the 30.30 process because, in that context, everybody in the courtroom knows if I, as the prosecutor, walk in and say, Your Honor, the people are not ready, I request February 20th, the people are charged with time, and they're charged with the five days up until the 20th. And if, Your Honor is the presiding judge says we can't do February 20th, we're going to adjourn it out to March 20th, that additional time is not charged to the people - - -

JUDGE CANNATARO: Is the court within its rights charging for time beyond that requested - - - where there is a request for an explanation and none is given? I mean, if the court's legitimately inquiring as to the - - - the non-illusoriness of the statement of readiness, can - - - can they not craft a remedy if they suspect that it's not legitimate?

MS. IANNUZZI: Potentially, yes. I mean, in this case, if on that - - - there's two real adjournments at issue. I'll refer to them as the September adjournment, which is the situation where they walked - - - people walked in, said not ready, and requested time.

JUDGE CANNATARO: Yeah.

MS. IANNUZZI: If - - - the court could - - - theoretically could have done one of two things, it could have put the people into SOR status and directed them, because of that lack of a reason, to file when you're ready, people, or file on the date you requested. Or it could have essentially called the people's bluff and put the case on for the date the people requested. So the court did neither of those things, and instead put the case on for a date a month beyond the people's request. So - - -

JUDGE CANNATARO: So having elected to do that, the court has to take responsibility for the time beyond that which the people requested, basically.

MS. IANNUZZI: Well, the time beyond that, the people didn't request. But up - - - up until the point the time request - - - the - - - up until the date that the people requested, the people are actually being charged with that time.

JUDGE CANNATARO: No, no, I'm saying that - - -

MS. IANNUZZI: Yes. Uh-huh.

JUDGE CANNATARO: - - - everything after that, that's on the court?

MS. IANNUZZI: Under the application of Kennedy, yes, that is time then attributed to the court, which under that rule is not charged to the people, correct.

JUDGE HALLIGAN: So I take it that then your view is that the concern here was not the lack of an explanation, but the way in which the court responded to the lack of an explanation?

MS. IANNUZZI: It's not that the way - - - well, it'll be the way the Appellate Term responded to the lack of an explanation, not the motion court, because the motion court ultimately agreed that this situation was governed by Kennedy and that the people should have been charged a - - -

JUDGE HALLIGAN: No, but I mean, I thought - - - I thought you said that in the event the people come in and they either request an adjournment or I think, probably are not ready in the first instance, that the court has several options available to it in order to ensure that the people are - - - are actually living up to their 30.30 requirements, and that the court didn't do that here. And even though it asked for an explanation and none was given, it should have proceeded in a different way if it wanted to

hold the people to the cloth in a meaningful way.

MS. IANNUZZI: Well, I guess it's a combination of both. You know, I don't want to represent that it's the court's fault that - - - that this happened, but the court had options available to it. But ultimately, Kennedy's rule announced by this court is what governs. So the rule as I - - -

JUDGE HALLIGAN: So they're free to simply decline to give an explanation, I take it your view is, and then the court has to proceed in one of the ways that you suggested if it - - - if it wants to hold the people to - - - to account for that?

MS. IANNUZZI: Yes, it can - - -

JUDGE SINGAS: And isn't it contingent on whether or not it's pre- or post-readiness when you're asking for that adjournment? Isn't there a distinction if you're asking for an adjournment pre-readiness versus post?

MS. IANNUZZI: Well, the distinction is that in the pre-readiness context the people are always being charged with time.

JUDGE SINGAS: Correct.

MS. IANNUZZI: So there - - - there is a distinction in that - - - in that context compared to the post-readiness where, at this point now, time is stopped until the people make the representation that they are not

ready to proceed. And then they request that time and are charged up until that point.

And ultimately, that can't go on forever because the people state not ready at their own peril. By stating not ready, you're now announcing in open court that the people are going to be charged with time, and you are inching closer and closer to, whether it's 90 or 180 days, whatever the number - - - the target number is for 30.30 in that context.

So to conclude here, Your Honors, the - - - the most important thing to take away from this case is that - - - is two things, is that the Appellate Term applied the wrong rule. They used Brown, which acts to invalidate off-calendar statements of readiness. And the second factor here is that the defendant utterly failed to meet his burden to show that the people could not have been ready on the date that they requested.

If there are no further questions, I'll await my rebuttal time. Thank you.

CHIEF JUDGE WILSON: Thank you.

MR. PERBIX: Good afternoon. For appellant, Mr. Patrick Labate, Brian Perbix, Appellate Advocates.

Your Honors, when the people's on-the-record statements about their trial readiness naturally give rise to doubts about their actual state of readiness, the people

cannot simply remain silent. In response to the defense's motion to dismiss pursuant to 30.30, alleging - - -

JUDGE TROUTMAN: Would this be a new rule?

MR. PERBIX: I'm sorry?

JUDGE TROUTMAN: Would this be a new rule requiring that they give an explanation as to why they're asking for an adjournment?

MR. PERBIX: Not at all. This would be a straightforward application of the well-established 30.30 rules established by this court in People v. Brown, as well as under the post-readiness adjournment delay rules. And I can address both, but I initially want to note - - -

JUDGE TROUTMAN: So if - - - there's no difference between off-calendar readiness and readiness on the record?

MR. PERBIX: Well, what's important to note about People v. Brown is the extent to which the majority opinion emphasized that its decision in all three of those cases, actually Brown, Kennedy, and Young that the decision was rooted in this court's established precedent. And it did so by citing to, you know, this court's long-standing case law governing illusory statements of readiness. And it did so without distinction to whether or not the challenged prosecutorial readiness statements were made off the record, as those - - - particularly at issues in People v.

Sibblies, as well as People v. Brown, Kennedy and Young were, or those that were made on the record. And it did so by citing to earlier cases such as People v. England, Kendzia and this long history that this court has of requiring judicial inquiry into the people's actual state of readiness when it is challenged by the defense on a 30.30 motion.

JUDGE CANNATARO: Counsel, are disputes of this kind going to be ameliorated to any degree by People v. Bay now that there's going to be some sort of inquiry by the court concerning an off-calendar statement of readiness?

MR. PERBIX: To a certain extent, yes. There is now the procedure, of course, that a statement of readiness isn't even valid until the mandatory inquiry has been completed and the court is itself satisfied that the discovery laws have been complied with.

JUDGE CANNATARO: I mean, you have a better reason to believe that when the people come in and say, we're not ready today, it doesn't - - - assuming the hearing has been held as called for in Bay, you have more reason to believe that it's not an illusory statement of readiness, it's - - - it's just a - - - you know, a statement that we can't go forward today.

MR. PERBIX: Well, that may be true. However, I would submit that post the - - - after the Bay discovery

hearing, certificate of compliance hearing - - - whatever we want to call it - - - when that - - - when the people have stated ready, which is the point at which the inquiry is mandated, any subsequent trial adjourned dates where the people are not ready on a scheduled trial date, are requesting time, whether or not they are or are not putting a reason on the record, that - - - that, I don't think, is addressed by this court's decision in Bay.

JUDGE SINGAS: But isn't Brown more narrow than that? Isn't Brown really - - - weren't we concerned with the gamesmanship that may come into play if you're - - - if you file an off-calendar statement of readiness. So there's no testing of that. And then the people immediately come in on the next date and they're not ready again. I think that Brown is limited to those circumstances. And the court would then be required to ask, well, why not, because I can't tell if that original statement of readiness was in fact illusory or not. But once they come - - - once there's a post-readiness adjournment, is it your position that every post-readiness adjournment has to be explained on the record?

MR. PERBIX: Only when challenged by the defense on a 30.30 motion alleging that, for example, a readiness statement on the record or an adjournment request is illusory or otherwise nongenuine.

And I'm glad, Your Honor Judge Singas, brought up the issue of gamesmanship, because while it's true that in People v. Brown, the specific, you know, concern with respect to gamesmanship was with respect to these off-calendar statements of readiness. However, I would submit, you know, it's a widely known and much criticized practice for the people to continually request short adjourn dates, knowing full well that, due to court congestion concerns that are all too common in our state, if they request a seven-day adjournment, they're going to get a month and a half. And I think that's precisely what the record suggests may have happened here - - -

JUDGE SINGAS: But suppose they really need a seven-day adjournment?

MR. PERBIX: And if they really need a seven-day adjournment, that should be in the assigned assistance file. And when the defense challenges the existence, the validity, the truthfulness of that adjournment, the people should have no trouble putting - - -

JUDGE TROUTMAN: What is a sufficient challenge by the defense to that readiness?

MR. PERBIX: I'm sorry?

JUDGE TROUTMAN: What is a sufficient challenge to the people's readiness? Is it just saying, you're not, or do you have to show more?

MR. PERBIX: Well, typically there's going to be something in the record to show that the representation does not represent the actual - - - the people's actual readiness at the time the representation was made pursuant to Brown.

JUDGE TROUTMAN: And the defense would put that forward to the court?

MR. PERBIX: So - - - so in - - - in - - - in general, it could be some later representation that belies the original representation. So for example, in People v. Sibblies, everyone agreed that the problem there was that the people later admitted they were actually still looking at - - - I think it was for medical records.

In Brown, and also in Kennedy, but not in Young, what called into doubt the people's representations of their off-calendar statement of readiness was solely their subsequent unreadiness at, yes, the immediate next court date.

What the court pointed out in Young, by the way, is that, you know, by explaining the admittedly quite bizarre pattern of ready, not ready short adjournment requests, the ADA in Young actually provided a very detailed explanation and so satisfied their burden.

But here, as in Kennedy and Brown, what we have are not just one subsequent instance where the people were

not ready for trial in the post-readiness context, but we have three in a row. And critically, it's not - - - it's not just on any dates, it's on the first three dates that the case was set over for trial.

I do want - - - just want to briefly go back to the people's statement that there was no off-calendar statement of readiness here. We - - - the defense below and our briefs before this court, we did challenge the illusoriness of the initial off-calendar statement of readiness, which in this case was filed a mere seventeen days after arraignment. And while this was only a misdemeanor, so I'll allow that it is certainly possible that the assigned could have done everything that was required to bring the case to the point where it may have - - - be tried, at that point, on December 28th of 2017, I think it was, you know, there - - - there is a concern that maybe all that was done was they got a supporting deposition from the officer whose - - - whose car was struck in this case. And - - - and then - - -

JUDGE SINGAS: But then you have a remedy for that. You can say, I'm ready too. Let's go.

MR. PERBIX: Yes. But we look to the intervening court dates. And what are they on for? They're on for discovery - - - for conversion, for getting that supporting deposition, for discovery, for pre-trial suppression

hearings. And then, lo and behold, we come to the - - - the first three court dates in a row, eight months later - - -

JUDGE SINGAS: Well, right, that's the key, right? It's eight months later. It's not the first three in a row after the statement of readiness. They're ready for eight months, and then they come in and say, we're not ready today.

MR. PERBIX: Right. But if the people really had spoken to all the witnesses they needed to speak to, gotten all the documents they needed - - -

JUDGE TROUTMAN: But isn't it unrealistic that in that eight months things didn't change, there are new ADAs that touch the file, that one might be given it just before they're coming to court, not know the reason, witnesses come and go with respect to their job and life obligations. Eight months, as Judge Singas has pointed out, that - - - that is something that should be considered. Do you - - - don't you think so?

MR. PERBIX: Certainly, it's a factor, and I'll concede that it weighs against the defense in this particular analysis. But what I would submit is that, you know, of course there are reasons. Reasons come up. I mean, the rule - - -

JUDGE HALLIGAN: Can that reason be given

subsequently?

MR. PERBIX: Yes. Yes.

JUDGE HALLIGAN: And - - - and so if there is some incident where, for whatever reason, you know, the ADA doesn't have her file, isn't sure what's going on, and defense counsel challenges the reason for the adjournment, that's something that could be provided later on by the ADA; is that your view?

MR. PERBIX: Absolutely. And I think that's perfectly consistent with the rule in Brown.

CHIEF JUDGE WILSON: And could that be - - - could that reason be provided in response to the 30.30 motion?

MR. PERBIX: It could. And that's exactly what this court said in Brown. The people ultimately must explain the reason for their change in readiness status. They could, but they're not required to do so on the record. In all events, the people must establish a valid reason - - - a valid reason - - - for their unreadiness in response to a defendant's CPL 30.30 motion.

I did - - - you know, presumably this would be done by an affirmation of an assistant who's reviewed the file, who was present at the time, someone with some - - - some basis of knowledge for why the request was made.

I do just want to briefly point out that, with

respect to the - - - the post-readiness rule in general, just getting away from the Brown analysis and the question of whether or not a readiness request could be illusory, the - - - the post-readiness rules really presume the existence of a - - - a reason for - - - for an adjournment request.

Because the speedy trial law is designed to discourage prosecutorial inaction, it only stands to reason that the people would get the benefit of the post-readiness rule where they're not ready on a scheduled trial date for a cognizable reason. And that's a reason that is, you know, temporary.

Without any answer from the people on the calendar call or in response to the CPL 30.30 motion to dismiss, there's simply nothing in the record upon which the court could base its decision to find that the people have not slipped back into unreadiness. And while it's true that the court could have acted differently in this case, you know, put the case down for the requested date of September 17th, or told the people that they were being charged to a statement of readiness and didn't do that, the fact of the matter is that the presiding judge may have presumed that, well, the people don't have their file today. And so, you know, I'm going to wait and see how this all shakes out. Maybe they'll be ready in the next

court date, and this won't be an issue down the road. But the point here is that, at the end of the day, the court deciding the motion has to have a basis to conclude that the people have not slipped back into post-readiness status. And if the people are not - - -

JUDGE SINGAS: Pre-readiness status.

MR. PERBIX: - - - oh, excuse me - - - have not slipped out of post-readiness into pre-readiness.

JUDGE SINGAS: So - - - so are you then saying that once the people announce ready, it - - - because before pre-readiness, all adjournments would be charged to them. Post-readiness, only what they ask for. Do you generally agree with that, or no?

MR. PERBIX: Provided that when challenged they give a reason, yes, I agree.

JUDGE HALLIGAN: So are you suggesting - - - I'm not sure I heard you correctly - - - that in the post-readiness context, if there is a request for an adjournment and no reason is given, that the adjournment cannot be granted, or that if the - - - or are you saying instead - - - which I take it to be more - - - a slightly more modest position - - - that if the defendant challenges that, including in a context of a 30.30, that - - - that then the people may be required to provide an explanation for the adjournment and the duration that they're requesting?

MR. PERBIX: The latter. Of course, the court may grant the adjournment regardless of whether or not they're satisfied with the - - - the reason.

JUDGE HALLIGAN: Okay. I just wanted to make I understood.

MR. PERBIX: Yes. No. The point is that in all events, as in Brown, the people have to explain why - - - why they needed that specific request. Otherwise, the rule really devolves into the people asking - - - you know, telling the court how much time they're going to be charged with without ever having to give any account for why they're making these specific short requests.

JUDGE TROUTMAN: But you could be given account - - - there have been judges that have - - - when the people say the people have spoken to their witnesses and the people are ready for trial, judge says, call your first witness. That - - - that is the ultimate test right then and there. When you say you're ready, you can call your witnesses.

MR. PERBIX: Surely. Surely. But at - - - at - - - you know, we - - - and I do just want to go back to Kennedy briefly. You know, we - - - we all know exactly why the people weren't ready in March of 2011. It's because the ADA was on trial. Standing here today, we have no idea why the assigned assistant was not ready on

September 5th of 2018 - - -

JUDGE TROUTMAN: But the point is, the time that the people asked for, they - - - they were going to be charged with that particular time; and they should be, correct?

MR. PERBIX: Correct.

JUDGE TROUTMAN: Whether they give a reason or not, that time is properly chargeable to them.

MR. PERBIX: Correct. And so if - - - I apologize if I misunderstood Your Honor's question, but I would just say that if the point is that the court could put it over for the date they request, and that's the ultimate test, unfortunately, the reality in - - - in the courts is often that that date simply isn't available.

JUDGE TROUTMAN: No - - -

MR. PERBIX: So you request a two-day adjournment. You've - - - the people have successfully obtained - - - under the proposed rule of my counterpart, - the people who have obtained, you know, a one-and-a-half-month adjournment for only two days of chargeable time.

JUDGE TROUTMAN: So this is a new rule that you're asking for in that, in addition to the time that they actually need, if they're getting more than, that time is chargeable to them.

MR. PERBIX: No, I don't think this is a new rule

at all in that context. I would point the court to People v. Betancourt, the First Department case from 1995. I - - - I think - - - I think we're in agreement that, you know, the intermediate appellate court started saying, you know, people are chargeable with the time they ask for in about the early 90s in the First Department by and large - - -

JUDGE CANNATARO: Counsel, I appreciate your argument that that - - - that that could be a form of gamesmanship, but - - - you know, asking for a five-day adjournment because you know you're going to get a five-week adjournment from the court when you do that. But I mean, there's always the possibility that the request is actually a legitimate one, you know, attorney scheduling, witness availability, whatever - - - whatever the multi - - - the many factors that go into readiness might be in a post-readiness context.

And - - - and it also occurs to me that if the court gets to pick the date, irrespective of - - - of the assistance calendar, that next date selected by the court may be just as inconvenient as the one for the appearance. So how do you - - - how do you equitably weigh the possibility that it might be gamesmanship, but it very well may not be gamesmanship?

MR. PERBIX: Well, I would point the court in this case to the people's representation at the September

5th appearance in which the court actually asked them, is October 18th - - - does that work for the people, and they said yes.

So if - - - and I see my red light is on, if I could just complete - - -

CHIEF JUDGE WILSON: Finish, yes.

MR. PERBIX: If - - - if there existed a valid reason, you know, under pursuant to which the people could have been ready on September 17th that they asked for, but then something came up that prevented them from being ready on the date, October 18th, that the court actually put it over for, sure, something might have happened that made it more inconvenient for them. There's simply no real additional burden of requiring the people to say, in response to the 30.30 motion, what - - - what that particularly is.

CHIEF JUDGE WILSON: So what - - - what if the assistance - - - what if the assistant accepted the October date, and then the reason that was provided later was, I accepted without knowing if the trial attorney was actually going to be available that date, and it turned out he or she had a trial scheduled for that very day. Would that - - -

MR. PERBIX: Well, that sounds like a fine reason that could be given at the subsequent calendar call or in

response to the motion.

CHIEF JUDGE WILSON: Yeah. Okay.

MR. PERBIX: Yes.

JUDGE RIVERA: I just wanted to clarify because I may have misunderstood. I understand what you're arguing regarding clarifying in this example why you're not ready on the - - - the date that the court had given you. Are they then supposed to also establish that they were ready every single day between the day that they had wanted and could not get, and the day that the court gave them that they agreed to? Or are the only points the day you requested and couldn't get and the day you agreed to? Those are the only two points. We don't care about in between. We only care about these two.

MR. PERBIX: It - - - it - - - it - - - I think the answer depends on what specifically the defense is asserting in their motion is illusory. If we're in the post-readiness context and what's - - - what the defense is saying is that the request - - - let's just use this case - - - the request for a twelve-day adjournment, to the extent that it constituted a representation that the people would be ready for trial in twelve days, if the defense is saying that representation is not true, you know, either because they were subsequently unready, they said - - - whatever the case may be, then I think the argument is, they don't

get the benefit of the post-readiness rule. They're back in the pre-readiness posture, and they get charged with the whole adjournment.

But if what we're talking about is an - - - an on-calendar readiness statement, maybe several court dates previously, it - - - it - - - it - - - the answer just may depend on the exact contours of the defense's challenge.

But again, the Brown majority rule is that, where the statement is struck as illusory, time is computed as though it - - - it had never been made.

JUDGE SINGAS: Can I ask one more question?

MR. PERBIX: Of course.

JUDGE SINGAS: So is this a fluid sort of concept that you can announce ready and then not be ready, and the remedy isn't just your being charged with a time, you slip back into a pre-readiness stage and the whole thing starts all over again? Or you're always - - - there's a point where there's the first time you announce ready, and everything after that is post-readiness?

MR. PERBIX: So - - - so this post-readiness adjournment request rule that we're talking about, it's - - - it's a pragmatic rule. It says, we understand things come up. Prosecutors don't have their witnesses available. Things - - - things happen. Officers go on vacation. And so long as there is a justification, either on the record

at the calendar call or when challenged on a subsequent 30.30 motion, there's no basis to believe that the prosecution has slipped back into that pre-readiness posture.

What needs to be in the record at some point, and this is ultimately what Brown was concerned about, was ensuring that there's enough information in the record upon which the motion court can make its decision, which is the people's primary obligation. They retain that obligation even in the post-readiness context.

What - - - what - - - what needs to be there is some basis to believe that they're not ready on this - - - this trial date today because of something temporary that's come up, and that there's a reasonable basis to believe that they will be ready on the date that they're requesting.

That's - - - that's what People v. Betancourt said in 1995 when they said, you know, provided that the people must explain why such a limited adjournment is necessary. What that does is it captures the purpose of the rule, which is just to ensure that the record, you know, clearly demonstrates that everyone can have confidence that we're not back in that - - - that pre-readiness posture. The people did everything they needed to do. Something came up. It's limited. It's discrete.

And therefore, they should only be chargeable with the time they're requesting and not with any additional time that may be attributable to the court.

CHIEF JUDGE WILSON: Thank you.

MR. PERBIX: Thank you.

MS. IANNUZZI: Your Honors, I think the first place to begin here is to, again, just reiterate that Brown is not the case that governs this factual scenario, it's Kennedy. And I think that either way you slice it from my opponent's argument, they are, in fact, advocating for a change in the rule because under Brown - - - or using Brown as the framework for this case, this case is essentially overlooking Kennedy. It is putting a burden on the people that the rule does not require.

So ultimately, this comes down to, as I stated on my argument before, the defendant's utter failure to meet their ultimate burden to show why the people could not have been ready on the date that they requested, and why, then they should have been charged with the entire adjournment between the September and October adjourn dates here.

And on these facts, I think you would be hard pressed to find anything to doubt that the people could not have been ready on the date that they requested. There was certainly no history of dilatory behavior up until this first request. The people had announced ready several

times. The people had responded promptly to discovery requests made by defense counsel up until this point.

And as Kennedy is in fact demonstrative of, what happens at the next adjournment, particularly in this case, a month beyond the people's request, is not reason to then look back and charge time. As Kennedy is in fact demonstrative of, that exact point of what happened here, the people are charged with only the date they request.

And simply saying that silence alone for - - - in response to the judge's question as to the why you're not ready renders the people's request illusory is not proper in this case.

CHIEF JUDGE WILSON: Is there a point where a repeated series of not ready would satisfy the defendant's burden?

MS. IANNUZZI: It's certainly an argument that the defendant can raise. But again, under the way Kennedy exists, that can't be the sole reason why you find the request illusory. There has to be something more.

CHIEF JUDGE WILSON: Even - - - even - - - even ten not-readys in a row on court-scheduled dates doesn't get you there?

MS. IANNUZZI: Well, certainly, I think under that more extreme hypothetical, it's certainly something that is going to call things into question. And

ultimately, as I had stated earlier, every time the people state not ready, they are assuming the risk. They are assuming the risk that the court can in fact charge them with all that time.

CHIEF JUDGE WILSON: What I'm really sort of saying, it doesn't matter how many times, the gating factor is going to be, eventually you're going to hit 180 days, eventually.

MS. IANNUZZI: Correct. Thank you, Your Honors.

(Court is adjourned)

C E R T I F I C A T I O N

I, Christian C. Amis, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Patrick Labate, No. 28 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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