

People v Smith
2022 NY Slip Op 31224(U)
April 28, 2022
City Court, Westchester County
Docket Number: CR 2781-21
Judge: Joseph L. Latwin
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CITY COURT : CITY OF RYE
WESTCHESTER COUNTY

PEOPLE OF THE STATE OF NEW YORK,

CR 2781-21

Plaintiff,

-against-

DECISION AND ORDER

DAVID B. SMITH,

Defendant.

Appearances:

People by George Kobakhidze, Assistant District Attorney (Miriam E. Rocah,
District Attorney, Purchase, NY

Defendant by Dennis W. Light, Esq., Raneri, Light & O'Dell, PLLC, White Plains,
NY

On October 17, 2021, at 1:25 a.m. defendant was issued two simplified traffic informations. One charged defendant with violating VTL 1192.3 (Driving While Intoxicated); the second charged defendant with violating VTL 1180B (Speeding) by traveling 90 miles per hour in a 55 miles per hour zone while northbound on I-95. The defendant refused to submit to a Breath Alcohol Analysis test.

It is beyond cavil that drunk driving is a serious problem in the United States. It is a threat to everyone, regardless of age, gender, or class. As its name implies, drunk driving is the act of driving a vehicle after consuming enough alcohol to impair one's motor skills and mental capacity. The impairment to one's motor skills and mental capacity are just two of the reasons why drinking *alcohol and driving* is such a great problem. It also affects a driver's perception, reaction time, coordination, judgment, and general ability to pay attention to what is happening on the road. Failure to have command of any of these skills can result in a crash and/or the injury of others on the road, including other drivers and their passengers, bicyclists, and pedestrians. Not only are drunk drivers a threat to others on the road, but they are also a threat to themselves and to

any passengers who may be in the vehicle with them. While driving drunk is an obvious danger to human life, it is also very costly in other ways. When an intoxicated individual gets behind the wheel of a car, they are potentially destructive to the environment and structures within a community as well.

The Center for Disease Control states in the *Motor Vehicle Safety* section of its website that there is a drunk-driving-related death every 51 minutes in the United States and 29 people die each day in automobile accidents that involve a drunk driver. Thirty-five percent of people killed in auto accidents are alcohol-impaired, according to the *Insurance Information Institute*. The estimated annual cost of crashes involving alcohol impairment is \$37 billion.

According to NHTSA, more than a quarter (25%) of all traffic-related deaths are the direct result of alcohol impairment. Around 800 people per day are injured in a drunk driving crash and 30 people die. In 2017, 32% of people who died in alcohol-related car crashes were passengers.

In 2018, there were 307 alcohol impaired fatalities in New York and the fatality rate was 1.6 per 100,000 people.

Accordingly, New York has enacted several laws prohibiting driving while intoxicated or impaired. *E.g.*, VTL 1992. It has also funded enhanced local enforcement of the DWI laws. *E.g.*, STOP-DWI – “Special Traffic Options Program for Driving While Impaired”.

On the November 16, 2021, return date, the defendant appeared with his then attorney, Warren Roth. Defendant was arraigned, and the Court temporarily suspended his driving privileges in New York. The matter was adjourned at defendant’s request to December 21, 2021. A Consent to Change Attorneys from Warren Roth to Dennis Light was later filed. The case was further adjourned to January 11, 2022, with the time being charged to the People.

At Common Law, there was no discovery in criminal case. *People ex rel. Lemon v. Supreme Court of the State of New York*, 245 NY 24 [1927]. In *Rex v. Holland*, 4 T. R. [Durnford & East] 691 [King’s Bench 1792] the Court said, “[t]here is no principle or precedent to warrant [discovery and inspection]. Nor was such a motion as the present ever made; and if we were to grant it, it would subvert the whole system of criminal law.” “The practice on common law indictments, and on informations on particular statutes, shews it to be clear that this defendant is not entitled to inspect the evidence, on which the prosecution is founded till the hour of

trial.” The possibility of any discovery rested with the equity powers of the Court. This would remain the law for over 140 years.

In 1933, New York opened the door to discovery in criminal cases but in a very limited way. “Where a witness in a criminal case testifies to having made such a statement, and the statement is in court and an inspection of it by the presiding judge reveals contradictory matter, its use for cross-examination on the question of credibility may and usually should be permitted. ‘The State has no interest in interposing any obstacle to the disclosure of the facts, unless it is interested in convicting accused parties on the testimony of untrustworthy persons.’” *People v Walsh*, 262 NY 140, 149-50 [1933]. In 1944, when it was a foreign concept for the State to furnish a criminal defendant with any facts, a new federal rule, FRCP Rule 16 permitted a defendant the post-complaint, pretrial right to inspect any of his things the government had impounded. Later, the United States Supreme Court held that a defendant ‘is entitled to inspect’ any statement made by the Government's witness which bears on the subject matter of the witness' testimony. *Jencks v. United States*, 353 US 657, 667, 668, 77 SCt 1007, 1013 [1957]. By 1961, the New York Court of Appeals was “persuaded that a right sense of justice entitles the defense to examine a witness' prior statement, whether or not it varies from his testimony on the stand. As long as the statement relates to the subject matter of the witness' testimony and contains nothing that must be kept confidential, defense counsel should be allowed to determine for themselves the use to be made of it on cross-examination. *People v Rosario*, 9 NY2d 286, 289, 213 NYS2d 448 [1961] *overruling in part People v Walsh, supra*.

By L. 1970, c. 996, the Legislature codified a statutory scheme for discovery in criminal cases. CPL Art. 240. The criminal discovery procedure embodied in article 240, adopted in substance Rule 16 of the Federal Rules of Criminal Procedure. Judicial Conference Report on the CPL, Appendix B, McKenna, Memorandum and Proposed Statute Re Discovery, McKinney's 1974 Session Laws of New York, pp 1860, 1868. CPL Art. 240 “evinces a legislative determination that the trial of a criminal charge should not be a sporting event where each side remains ignorant of facts in the hands of the adversary until events unfold at trial. Broader pretrial discovery enables the defendant to make a more informed plea decision, minimizes the tactical and often unfair advantage to one side, and increases to some degree the opportunity for an accurate determination of guilt or innocence.” *People v Copicotto*, 50 NY2d 222, 226, 428 NYS2d 649 [1980].

As recently as 2009, discovery was strictly limited to those items specified in CPL 240.20. “With respect to the principles of fundamental fairness

which govern pre-trial discovery in criminal cases in this State, the Court notes that there is no general constitutional right to discovery in criminal cases under either the United States Constitution (*see, Weatherford v. Bursey*, 429 US 545) or the New York State Constitution (*see, Matter of Miller v. Schwartz*, 72 NY2d 869, 870). Moreover, it is beyond cavil that the courts possess no authority derived from the common law to order discovery (*see, People v. Colavito*, 87 NY2d 423, 426). Indeed, it is now well-settled law in this State that the exclusive authority of the courts to order discovery in criminal proceedings is governed by the terms of CPL Article 240 (*People v. Copicotto*, 50 NY2d 222, 225), that specifically identifies that material that is subject to discovery by the defense prior to trial to the exclusion of that material which is not identified therein from the scope of discovery (*see, People v. Colavito, supra*, at 427; *Matter of Brown v. Grosso*, 285 AD2d 642, *lv. denied* 97 NY2d 605; *Matter of Pittari v. Pirro*, 258 AD2d 202; *Matter of Pirro v. LaCava*, 230 AD2d 909). Stated succinctly, the courts do not possess the authority to grant pre-trial discovery in a criminal case where no statutory basis is provided in CPL Article 240 (*Matter of Sacket v. Bartlett*, 241 AD2d 97; *Matter of Pirro v. LaCava, supra*, at 910).” *People v. Denham*, 25 Misc3d 1216(A), 901 NYS2d 909 (Table)[Sup Ct, Westchester County, 2009]. The discovery regime under CPL 240 was among the most restrictive in the country. See generally, Alex Karambelas, Bargaining Without The Blindfold: Adapting Criminal Discovery Practice To A Plea-Based System, 94 St. John’s Law Review, 529, 531 [2021].

Under CPL 240, discovery began with the demand of the defendant to produce property. This procedure led to many defendants serving boilerplate demands not tailored to the particulars of the case. The savvy counsel asked for items beyond those listed in CPL 240.20. That placed the burden on the People to move for a protective order. CPL 240.50. Unfortunately, the laundry list of permitted discovery was soon outpaced by advances in electronics and biology. Digital data garnered from computers, cell phones, video cameras, electronic surveillance became ubiquitous. Use of DNA and biometric devices came into more common usage. New police investigatory techniques, methods, and devices came into existence. The Legislature did not keep up with the changing times and did not amend the list in CPL 240.20 to include these new items. Additionally, some discovery was delayed. While at a hearing, the defendant had the right to those portions of written statements of testifying witnesses that relate to the subject matter of their pretrial testimony, that statutory right applied only after the direct testimony of the witness. See, Jenny Roberts, Too Little, Too Late: Ineffective Assistance of Counsel, the Duty to Investigate, and Pretrial Discovery in Criminal Cases, 31 Fordham Urban Law Journal 1097 at 1124 *et seq.* [2004]. For all

practical purposes, defendants were kept blind of the evidence against them until the trial. The laudable goals expressed in *People v Copicotto, supra*, that the trial of a criminal charge should not be a sporting event where each side remains ignorant of facts in the hands of the adversary until events unfold at trial, enabling a defendant to make a more informed plea decision, minimizing the tactical and often unfair advantage to one side, and increasing the opportunity for an accurate determination of guilt or innocence, were not achieved. However, many District Attorney's offices adopted an "open file discovery" policy under which a defendant could view the contents of the People's file with some limitations, such as identification of confidential informants and the prohibition of making copies. The limitation on making copies was obviated by the ability to take pdf pictures on cell phones. As a result, discovery under CPL 240 was a disappointment to many.

As a result of elections, one political party took control of the State Senate, Assembly, and Governorship. Both Houses introduced and passed, and the Governor signed bills repealing CPL 240 and replacing it with a new CPL 245.

Part of the impetus for discovery reform was due to the inability to promptly adjudicate cases in New York City. There were cases where poorer defendants unable to post often modest amounts of bail were incarcerated for years unable to see the strength of the People's case, unable to intelligently weigh the wisdom of taking a plea, and unable to go to trial. Some defendants chose to take a plea despite their claims of innocence simply to avoid pre-trial incarceration for periods that might exceed the permissible post-conviction sentence.¹ Bail laws were reformed to limit the number of cases in which bail could be set. The least restrictive means to assure a defendant's return to Court was required. As a result, fewer defendants would be incarcerated pending trial. Additionally, CPL 245 was tied into the speedy trial statute, CPL 30.30, so that a failure to make prompt discovery could lead to a violation of the speedy trial statute. Thus, the period before trial was also limited. Of course, since prosecutions were not generally State obligations, but rather County duties, the State initially did not fund the needed personnel nor equipment needed to comply with CPL 245. It was simply an unfunded mandate thrust upon the Counties.

¹ Kalief Browder (May 25, 1993 – June 6, 2015) was an African American youth from The Bronx, New York, who was held at the Rikers Island jail complex, without trial, between 2010 and 2013 for allegedly stealing a backpack. During his imprisonment, Browder was in solitary confinement for over 17 months. Two years after his release, Browder hanged himself. See, Jennifer Gonnerman, Kalief Browder, 1993–2015 at <https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015> [Jun 07, 2015].

CPL Article 245 substantially expanded the disclosure requirements of the People, as well as the defendant. The People are obligated to provide “automatic” disclosure to the defendant of the items listed in CPL 245.20(1). Unlike the former CPL 240.20, a defendant is not obliged to “demand” discovery; rather, the People are obligated to provide the “automatic” disclosure of the listed items regardless of a defense “demand,” and they must do so normally within a short period after arraignment on an accusatory instrument. In addition to items that are normally in a prosecutor's file, CPL 245.20(2) requires the prosecutor to make a “diligent, good faith effort” to ascertain the existence of information subject to “automatic discovery” and to “cause” that information to be disclosed “where it exists but is not within the prosecutor's possession, custody or control.” The “certificate of compliance” that the prosecution must file upon fulfilling the “automatic discovery” requirements must contain a statement that the prosecution has fulfilled its obligations “after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery.”²

If a defendant is not in custody, the People's “initial” disclosure must be “as soon as practicable” but not later than within 35 calendar days after arraignment on any accusatory instrument [CPL 245.10(1)(a)(ii)].

Seeing the deficiencies of CPL 245, perhaps including those caused by the rush to enact the unvetted law, the Legislature amended CPL 245. L. 2022, c.56. Among the changes are:

- The requirement that a party aware of a potential defect or deficiency in a certificate of compliance must notify or alert the other party as soon as practicable. CPL 245(4)(B); &
- When material is discoverable but is disclosed belatedly, the Court shall impose a remedy that is appropriate and proportionate to the prejudice suffered by the party entitled to the disclosure. CPL 245.80 (2)(a).

Here, defendant was arrested on October 29, 2021. On October 29, 2021, the People sent a law enforcement agency request to the arresting agency, New York State Police, seeking discoverable information. Defendant was arraigned on November 16, 2021, and the case was adjourned at defendant's

² The People's statement of “ready for trial” pursuant to CPL 30.30 must be accompanied or preceded by a “certification of good faith compliance with the ‘automatic discovery’ requirements of CPL 245.20”. “The certificate of compliance shall state that after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery the prosecutor has disclosed and made available all known material and information subject to discovery. It shall also identify the items provided.” CPL 245.20(1).

request to December 21. On November 19, 2021, the People sent discovery material to defendant's then attorney, Mr. Roth, via the Westchester District Attorney's Office Portal. With defendant not being in custody, the November 19 discovery production was within 35 days of arraignment and would be timely.

On December 21, defendant appeared with his new attorney, Mr. Light who said he did not receive all the required discovery. The Assistant District Attorney determined that day, there had been a technical processing error in the portal system since Mr. Roth was not registered in the portal system and could not receive the discovery. The discovery materials were then sent via the portal to Mr. Light that same day with a certificate of readiness. On January 6, 2022, the discovery materials were resent to Mr. Light.

On January 11, 2022, defendant claimed there was no production of body camera videos and personnel files. However, the discovery index dated October 29, 2021, consented to inspection of body camera video and both the December 21 and January 6 productions included the resumes of Troopers Fogarty and Grant. The body camera video was sent on January 11.

A supplemental certificate of compliance was filed on January 13, 2022.

This Court set a motion schedule. Defendant made this motion to strike the People's Certificate of Compliance pursuant to CPL 245.80 (2) based on the non-compliance with the discovery obligations of CPL 245.20(1) and the continuing duty to disclose under CPL 245.60.

The People sent "police witness 1(K)" forms to the State Police. Before the enactment of CPL 245.20, as a part of their preparation for trial, members of the Westchester County District Attorney's Office engaged in the practice of asking each of their police officer witnesses a series of questions in what they referred to as the "Garrett inquiry," named after the obligations imposed upon them in *People v. Garrett*, 23 NY3d 878, 994 NYS2d 22 at fn. 1 [2014]]. See, *Matter of Certain Police Officers to Quash a So-Ordered Subpoena Duces Tecum*, 67 Misc3d 458, 461 [Westchester County Court 2020]. The *Garrett* inquiry forms were sent to and responded by the State Police and contained certain personnel information. The information was provided to the defendant in the discovery.

Defendant now complains that the discovery forms related to the Troopers were dated January and November of 2020 – at best a year old before the discovery was produced. Defendant claims these responses were stale. Defendant also complains that Trooper Grant's resume includes 3 substantiated personnel

complaints and 3 censure letters but the People only produced one censure letter. While the People do have the “duty to learn of favorable evidence known to those acting on the government's behalf” this applies to information that “directly relates to the prosecution or investigation of the case” (*People v. Garrett*, 23 NY3d 878, 994 NYS2d 22 [2014]).

Examining the substantiated personnel complaints, the Court sees nothing related to this case nor that would discredit the Trooper’s credibility.³ The first complaint concerns the Trooper sleeping on duty. The second involved allegations of the failure to safeguard a prisoner. The third involved the taking of a defendant into custody after a DMV refusal hearing and transporting the defendant to the barracks for fingerprinting because the originally taken fingerprint were rejected.

In *People v Mauro*, 71 Misc3d 548, 554, 143 NYS3d 511 [Westchester County Court 2021], the court held that, pursuant to CPL § 245.20(2), once the prosecution discloses the existence of police disciplinary records, they have satisfied their discovery obligations related thereto. *See also*, *People v Gonzalez*, 68 Misc3d 1213(A), 130 N.Y.S.3d 262 [Sup Ct Kings County 2020]. The People’s discovery here disclosed not only the existence of police disciplinary files, both substantiated and unsubstantiated, but provided the officers’ resumes disclosing the substance of those files. Indeed, it goes beyond what is required by CPL 245. Exonerated or unfounded allegations form “no good faith basis for cross-examination by the defendant's counsel.” *People v Montgomery*, 74 Misc3d 551, 159 NYS3d 655 [Sup Ct, New York County 2022]. *See also*, *People v Randolph*, 69 Misc3d 770 [Sup Ct Suffolk County 2020]; *People v Kelly*, 71 Misc3d 1202(A), 142 N.Y.S.3d 788 [Crim Ct New York County 2021]; & *People v McKinney*, 71 Misc3d 1221(A), 145 NYS3d 328 [Crim Ct, Kings County 2021] (unsubstantiated, exonerated, or unfounded allegations not required to be provided in discovery). While underlying documents may be unavailable through discovery, these files may be otherwise accessible.⁴

³ While the determination of what is impeachment material belongs to the defendant, the wisdom of using trivial or marginal impeachment materials is dubious. There are questions of whether underlying materials, such as complaints, would be hearsay. There may be issues whether the police officer would have personal knowledge of the underlying procedures. Raising trivial or unrelated incidents before a jury may lead the jury to view the defense’s case as less than serious. Asking “didn’t your spouse complain that you didn’t take out the garbage” would not likely gain any traction towards impeaching a witness.

⁴ With the repeal of Civil Rights law 50-a, a defendant is at liberty to submit a Freedom of Information Law request for such records to the police officer’s employer. *People v. Williams*, 73 Misc3d 1091, 1106, 137 NYS3d 877, 896 [Supreme Ct, Kings County 2021].

The People are not required “to conduct disciplinary inquiries into the general conduct of every officer working the case” (*People v Garrett*, 23 NY3d 878, 890 [2014]). To do so “would impose an unacceptable burden upon prosecutors that is likely not outweighed by the potential benefit defendants would enjoy from the information ultimately disclosed on account of the People's efforts” (*id.* at 891, quoting *United States v Robinson*, 627 F3d 941, 952 [4th Cir 2010]). The disclosures required by CPL section 245.20(1) are limited to “items and information that *relate to the subject matter of the case*”. This language tracks not only the language but also the spirit of *Garrett*:

“[T]here is a distinction between the nondisclosure of police misconduct ‘which has some bearing on the case against the defendant,’ and the nondisclosure of such material which has ‘no relationship to the case against the defendant, except insofar as it would be used for impeachment purposes.’ In the latter circumstance, the offending officer is not acting as ‘an arm of the prosecution’ when he or she commits the misconduct, and the agency principles underlying the imputed knowledge rule are not implicated.” (*Garrett*, 23 NY3d at 889 [emphasis supplied and citations omitted].) *People v Knight*, 69 Misc3d 546, 550-51, 130 NYS3d 919 [Sup Ct Kings County 2020]. See also *People v Perez*, 73 Misc3d 171, 178, 150 NYS3d 868 [Sup Ct. Queens County 2021] (Because police disciplinary records do not relate to the prosecution of the charge, police personnel records are not deemed, by the statute, to be in the People's control.)

The People argue that they acted in good faith and promptly produced discovery. A good portion of any delay is due in part to the defendant’s attorney that appeared for arraignment not being registered on the District Attorney’s Portal to receive discovery. The People sent discovery but the defendant’s then attorney was not capable of receiving it. Once defendant’s new counsel appeared and let the People know discovery had not been received. The People sent the discovery to the new attorney that same day. When defendant brought up perceived deficiencies in the discovery, the People promptly provided the materials. Good faith, due diligence, and reasonableness under the circumstances are the touchstones by which a certificate of compliance must be evaluated. *People v. Marin* __Misc3d __, 2022 NY Slip Op 22065 [Bronx County Criminal Ct 3033] & *People v. Cajilima*, 2022 NY Slip Op 22104 [Supreme Court Nassau County March 29, 2022]. Here, the People were diligent in providing discovery and responding to any claimed deficiencies in discovery

“Numerous courts have found that belated disclosures should not invalidate a certificate of compliance that was made in good faith after the exercise

of due diligence where the delay resulted from, for example, minor oversights in the production of material, delayed discovery of the existence of certain items, or a good faith position that the material in question was not discoverable. (*See People v Bruni*, 71 Misc 3d 913 [Albany County Ct 2021]; *People v Erby*, 68 Misc 3d 625, 633 [Sup Ct, Bronx County 2020]; *People v Gonzalez*, 68 Misc 3d 1213[A], 2020 NY Slip Op 50924[U], [Sup Ct, Kings County 2020]; *People v Knight*, 69 Misc 3d 546, 552 [Sup Ct, Kings County 2020]; *People v Lustig*, 68 Misc 3d 234, 247 [Sup Ct, Queens County 2020]; *People v Randolph*, 69 Misc 3d 770, 770 [Sup Ct, Suffolk County 2020]; *People v Davis*, 70 Misc 3d 467, 474-480 [Crim Ct, Bronx County 2020].) Indeed, in *People v Erby* (68 Misc 3d at 633), the Court observed:

“As the legislative history of article 245 indicates, and as the article's sanctions and remedies provisions suggest, the new discovery law, designed as it was to be remedial in nature, should not be construed as an inescapable trap for the diligent prosecutor who professionally, assiduously and in good faith attempts to comply with their new and extensive requirements under the discovery statute, but through no fault of his or her own, is unable to comply with every aspect of the automatic discovery rules specified in CPL 245.20.” *People v Perez*, *supra* at 176-177.

The statutory scheme itself does not impose hard and fast rules. The CPL “clearly contemplated situations where not every single item of discovery would be turned over prior to the filing of a certificate of compliance.” *People v. Henry*, ___ Msc3d ___, 2022 NY Slip OP 50265 [Supreme County Richmond County April 11, 2022] CPL 245.60 says should the prosecution learn of additional material or information that it would have been required to disclose pursuant to CPL 245.20, “it shall expeditiously notify the other party and disclose the additional material and information as required for initial discovery under this article.” CPL 245.50(1) permits supplemental certificates of compliance. That section also says, “No adverse consequence to the prosecution or the prosecutor shall result from the filing of a certificate of compliance in good faith and reasonable under the circumstances; but the court may grant a remedy or sanction for a discovery violation as provided in section 245.80 of this article.” If the Legislature wanted strict and complete discovery, it could have easily said so. It did not.

CPL 245 was designed to be remedial in nature. It should not be construed as an inescapable trap for the diligent prosecutor who professionally, assiduously and in good faith attempts to comply with their new and extensive requirements under the discovery statute, but through no fault of his or her own, is unable to comply with every aspect of the automatic discovery rules specified

in CPL 245.20. *People v Erby*, 68 Misc 3d 625, 633, 128 NYS3d 418 [Supreme Court, Bronx County 2020]. The Legislature did not replace a regime of discovery that kept the defendant blind with another regime that will set the guilty free based on hyper-technicalities beyond the prosecutor's actual control despite good faith efforts to comply. Here, the affidavit of the Assistant District Attorney articulates the efforts he undertook to comply with CPL 245.20 and to secure and promptly deliver discoverable material to the defendant's attorney. He made reasonable inquiries. He acted with diligence and in good faith. He acted reasonably under the circumstances. *See, People v. Kheir*, 74 Misc3d 712, 162 NYS3d 897 [Just Ct, Town of Greenburgh 2022]. We should not go from the "sporting event" described in *People v Copicotto, supra*, to a game of gotcha. It is unclear whether there is anything properly subject to discovery that was not already been provided to the defendant before this motion was made.

CPL 245.80 authorizes the court to impose sanctions for noncompliance with discovery, but only "if the party entitled to disclosure shows that it was prejudiced" (CPL 245.80 [1]). Here, defendant does not specify any prejudice from any potential failure to disclose. Defendant does not identify, or even speculate as to, the substance of what is in any disciplinary files nor what is on the body camera video (which he would presumably know, since it was disclosed before this motion was made) or how they may impact on his case. Any delay in receiving the disclosure was minimal and, since a trial has not been scheduled, it does not preclude defendant from properly preparing or presenting his defense. *See, People v Aquino*, 2022 NY Slip Op 22079 [Supreme Court, New York County March 17, 2022]. Accordingly, there is no sanction properly sought or to be granted.

Given the seriousness of drunk driving, the defendant having received the information to which it is entitled, and the ability to prepare and conduct a trial, the just way to resolve this case is through a trial on the merits – not by hyper-technical motions.

Accordingly, the People properly filed a Certificate of Compliance and a Supplemental Certificate of Compliance and defendant's motion to strike the Certificate of Compliance and Supplemental Certificate of Compliance are denied.

IT IS HEREBY ORDERED and ADJUDGED that the defendant's motion to strike the Certificate of Compliance and Supplemental Certificate of Compliance be and hereby is DENIED, and it is further

ORDERED that the parties shall appear in this Court on May 10, 2022, at 9:00 a.m. for a pre-trial conference at which time defendant shall, among other things, either request or waive a jury trial.

Dated April 28, 2022

JOSEPH L. LATWIN

Papers

1. Affirmation of Dennis W. Light dated February 23, 2022, and the exhibits annexed thereto;
2. Affidavit in Opposition of George Kobakhidze sworn to March 25, 2022, and the exhibits annexed thereto; &
3. Reply Affirmation of Dennis W. Light dated April 7, 2022, and the exhibits annexed thereto.