SUPREME COURT OF THE STATE OF NEW YORK,
COUNTY OF BRONX: PART H96

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

DECISION AND ORDER
Indictment No. 4134/08

ARJAN MEHILLI, MATEO MEHILLI,
AND MARCELO MEHILLI,

Defendants.

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APPEARANCES:

FOR THE PEOPLE: Robert T. Johnson
District Attorney
Bronx County
198 E. 161ST Street
Bronx, NY 10451
By: Raymond Valerio, Esq.
Assistant District Attorney
Of Counsel

FOR All DEFENDANTS: Stoll, Glickman & Bellina, LLP
475 Atlantic Avenue
Brooklyn, New York 11217
By: Andrew B. Stoll, Esq.
Of Counsel

ANN DONNELLY, J.:

On October 12, 2008, Arjan Mehilli and his sons Mateo and Marcelo Mehilli were arrested in Bronx County for assaulting a neighbor. The defendants were arraigned in criminal court, and the case was adjourned to October 17, 2008, for Grand Jury action. The People had not presented the case to the Grand Jury as of that date. However, agents from the U.S. Immigration and Customs Enforcement Agency (hereinafter "ICE") were in the courtroom to arrest the defendants on immigration violations. All three defendants were taken into ICE

custody where, according to defense counsel, they were held continuously until they were deported to their native Albania.

On November 7, 2008, a Bronx County grand jury indicted the defendants, and the case was adjourned to January 26, 2009 for Supreme Court arraignment. In the interim, on December 5 and 8, 2008, the People filed and served Certificates of Readiness. However, it does not appear that the People made any effort to produce the defendants so that they could be arraigned. In fact, on January 26, 2009, when the case was called before the Honorable George Villegas, defense counsel reported that Arjan Mehilli had already been deported to Albania (the official transcript reads "Armenia") on December 28th, while Mateo and Marcelo were in ICE custody in Tennessee awaiting deportation. The People did not dispute this representation, but nonetheless requested extensions of the orders of protection, and announced that they were ready. Judge Villegas asked, "Ready for what?" The People responded that "if circumstances did change in some way we would be ready to proceed at trial." Judge Villegas adjourned the case to March 3, 2009 to Part 50 for Supreme Court arraignment, or for the People to "make a decision." The court observed that the People "will probably end up dismissing" the case. (1/26/09 Transcript, pp. 3-4).

At the March 3, 2009 appearance in Part 50, defense counsel informed the Honorable Nicholas Iacovetta that Arjan Mehilli had been deported, and Mateo and Marcello were awaiting deportation in Oakdale, Louisiana. Defense counsel asked whether the People were planning to produce the defendants, and maintained that the time should be chargeable for speedy trial purposes. The People did not respond. Judge Iacovetta ruled that the People had to decide whether they were going to dismiss the indictments or "make a diligent effort to produce each

defendant" on the next court date. (3/3/9 Transcript, pp. 2-3). The case was adjourned to May 4, 2009.

On that date, the People advised this Court that all three defendants had been deported, and requested bench warrants in the event that the defendants ever returned to the jurisdiction. Defense counsel opposed, since the defendants' absences were not voluntary. Having no information about the history of the case – including the People's failure even to attempt to produce the defendants from federal custody – the Court issued bench warrants for all three defendants.

According to defense counsel, after Marcello Mehilli was deported to Albania, he was stopped for a traffic infraction in Canada, and held by Canadian immigration authorities on the warrant from this case. After about two months the Canadian authorities released him, since the United States and New York authorities declined to extradite him.

The defendants now move for dismissal pursuant to CPL § 30.30. They argue that because the People made no effort to produce them at any point while they were still in this country, the statements of readiness are illusory. The defendants also argue that since their absence from the jurisdiction is involuntary the Court can decide the motion in their absence.

The People remain largely silent as to the factual history of this case. Notably, they make no sworn allegations of fact regarding what, if any, efforts they made to produce the defendants from federal custody, nor do they respond to the defense claim that they declined to extradite the Marcello Mehilli from Canada. Rather, they assert that the motion is "premature" because bench warrants have been issued, and "no provision exists in the CPL that allows a defendant to move the Court to vacate a bench warrant without their presence in the jurisdiction." People's

Aff. at p. 3. They also argue that they announced their readiness for trial on December 5 and 8, 2008, and January 26, 2009. Accordingly, they argue that they should be charged only from October 12, 2008, through December 5 and 8, 2008.

The People have six months from the filing of the accusatory instrument in a felony case to be announce their readiness for trial. Readiness means actual readiness, not a prediction or expectation of future readiness. People v. Kendzia, 64 NY2d 331, 337 (1985). Thus, the People's statement on January 26, 2009 that they would be ready "if circumstances did change in some way" is clearly not a statement of readiness. Moreover, although the People may announce their readiness before the defendant is arraigned on the indictment, as they did here, that statement of readiness is effective only if it is possible for the defendant actually to be arraigned within the six month period. People v. Carter, 91 NY2d 795 (1998); People v. Gross, 87 NY2d 792 (1996); People v.England, 84 NY2d 1 (1994).

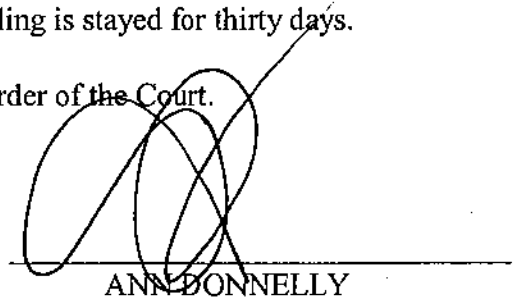
Where the People know that a defendant is being held in another jurisdiction, they must exercise due diligence to produce him before the local court. Failure to make diligent efforts to return the defendant to the local court will result in those delays being charged to the People. People v. McLaurin, 38 NY2d 587 (1976). If the defendant is in federal custody, failure to follow the procedures set forth in CPL § 580.30 will cause the delay to be charged to the People. People v. Scott, 242 AD2d 478, *lv denied* 91 NY2d 836 (1997).

As a threshold matter, this Court rejects the People's argument that the defendants' motion is "premature" because the defendants are not physically present before the court and therefore not subject to the court's mandate. The People have known since October 17, 2008, that the defendants were involuntarily absent from the jurisdiction because they were arrested by

ICE officials and placed in federal custody. The People have done nothing to produce the defendants even when they had an opportunity to do so. Indeed, as demonstrated by Marcello Mehilli's Canadian adventure, New York State authorities declined to extradite the defendant back to the Bronx. The Court of Appeals has recognized that a deported defendant's "perceived inability to obey the mandate of the court" does not preclude a court's decision on the merits of a motion prosecuted by counsel. People v. Ventura, 17 NY3d 675 (2011).

As for the People's statements of readiness, the record is clear that they were both *pro forma* and meaningless. The transcripts of the proceedings in this case amply demonstrate the People's awareness of the defendants' whereabouts, as well as the repeated inquiry by defense counsel and the court regarding the People's efforts to produce the defendants. They made none, and as noted, apparently declined to extradite one defendant from Canada. Accordingly, I find that the People are charged with all of the time from October 14, 2008, which appears to be the day after the filing of the accusatory instrument, People v. Stiles, 70 NY2d 765 (1987), to August 14, 2012, the date the defendants filed this motion.[1] The defendants' motion to dismiss is therefore granted. The indictment is dismissed, sealing is stayed for thirty days.

This opinion constitutes the Decision and Order of the Court.



ANN DONNELLY
JSC

DATED: January 8, 2013
Bronx, New York

[1]Indeed, speedy trial time had run as of the date the Court issued bench warrants.