

2018 WL 3553300

Unreported Disposition

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**Criminal** Court,  
City of New York.

The People of the State of New York, Plaintiff,

v.

Tridesh Ramcharran, Defendant.

2016QN032325

|

Decided on July 19, 2018

#### Attorneys and Law Firms

Appearances of Counsel:

[Ariel Adams](#), Esq.

The Legal Aid Society

718-286-2103

Yannick Wood

Assistant District Attorney

Office of the Queens District Attorney

718-286-6474

#### Opinion

David J. Kirschner, J.

\*1 Defendant is charged by a superseding misdemeanor information with public lewdness (Penal Law § 245.00), endangering the welfare of a child (Penal Law § 260.10 [1]) and harassment in the second degree (Penal Law § 240.26 [2]). By motion filed on May 17, 2018, defendant moves to dismiss the accusatory instrument pursuant to [CPL 200.70](#) and [30.30](#), claiming that the People improperly amended the location of the offense in the superseding information and that defendant's statutory speedy trial rights were violated. The People oppose. After a review of the motion papers filed by both parties and their respective

arguments, as well as other documents on file with the court, this Court granted defendant's motion to dismiss the accusatory instrument by decision and order dated June 6, 2018. This expands that decision.

#### I. Background and Procedural Posture

On June 27, 2016, defendant was charged with one count of public lewdness (Penal Law § 245.00), after the complainant, Erica Peralta, a 12-year-old girl, allegedly observed defendant at the southeast intersection of Northern Boulevard and 106th Street seated in his vehicle manipulating his penis in an upward and downward motion within public view.

Approximately 10 months later, on May 8, 2017, the People filed a superseding information and statement of readiness that added the charges of endangering the welfare of a child (Penal Law § 260.10 [1]) and harassment in the second degree (Penal Law § 240.26 [2]). Again, the location of occurrence identified in the superseding information was the southeast intersection of Northern Boulevard and 106th Street. The time of occurrence, however, had been changed to reflect a range between 6:30 PM on June 17, 2016 to May 5, 2017.

On July 18, 2017, after defendant objected to the statement of readiness on the grounds that the range for the **crime** was overly broad, the court directed the People to file a bill of particulars.

On July 21, 2017, the People filed a bill of particulars along with a statement of readiness, in which they clarified the time of the incident as having occurred on June 17, 2016, at approximately 6:30 PM, but once again listed the location of the alleged incident as the southeast intersection of Northern Boulevard and 106th Street.

On August 17, 2017, a *Wade/Dunaway* hearing was held in front of Judge Ushir Pandit-Durant. At no time before, during, or after the hearing, did the People move to amend the location of the alleged incidents.

It was not until April 25, 2018, after both parties announced their readiness for trial, that the People informed defendant that the complainant had indicated a new theory of the alleged incident. Instead of that which was indicated in both the superseding information

and the bill of particulars, the complainant informed the prosecution that she initially observed defendant at 97th Street and Astoria Boulevard and followed her in his van for ten blocks to the BP Gas Station located at 107th Street and Astoria Boulevard. Thus, it was at this location that the complainant alleges she observed defendant manipulating his penis in an upward/downward motion.

## \*2 II. Discussion

To be facially sufficient, an accusatory instrument must specify the offense(s) charged and contain factual allegations of an evidentiary nature that tend to support them (*see* CPL 100.15 [2], [3]). Such factual allegations, together with any supporting depositions or other accompanying documents, must consist of non-hearsay allegations that provide reasonable cause to believe that the defendant committed the offense(s) charged, which if true, establish each and every element of those charges (*see* CPL 100.40 [1]; *People v Henderson*, 92 NY2d 677, 679 [1999]). Sufficiency of an accusatory instrument is a non-waivable jurisdictional defect that requires dismissal if not satisfied (*see* *People v Alejandro*, 70 NY2d 133 [1987]).

Essentially, a facially sufficient accusatory instrument, or information, must provide reasonable cause that the defendant committed the charged offenses, and establish a prima facie case against him. Not surprisingly, it is the People who bear the burden of satisfying these requirements by doing so in the text of the information (*see* *People v Jones*, 9 NY3d 259, 261 [2007]). To be sure, this requirement is neither synonymous with the People's burden at trial, which requires proof beyond a reasonable doubt, nor rises to the level of evidence sufficient to survive a motion for a trial order of dismissal (*People v Kalin*, 12 NY3d 225, 230 [2009]).

In reviewing and evaluating whether the pleaded allegations establish reasonable cause to believe that a person has committed an offense, the court must do so in the light most favorable to the People (*see* *People v Williams*, 84 NY2d 925 [1994]; *People v Contes*, 60 NY2d 620 [1983]). Moreover, the information 'should be given a fair and not overly restrictive or technical reading' (*People v Casey*, 95 NY2d 354, 360 [2000]). Reasonable cause exists when 'evidence or information which appears reliable discloses facts or circumstances . . . of such weight and persuasiveness as to convince a person of ordinary intelligence . . . that it is reasonably likely

that such offense was committed and that such person committed it' (CPL 70.10 [2]).

Finally, while mere conclusory allegations are **insufficient** (*People v Dumas*, 68 NY2d 729 [1986]), an information sufficient on its face need not articulate every fact necessary to prove the charged allegations (*see* *People v Mills*, 1 NY3d 269 [2003]; *People v Bello*, 92 NY2d 523 [1998]; *People v Mayo*, 36 NY2d 1002 [1975]). It must, however, at a minimum, provide an accused with adequately detailed factual allegations of an evidentiary nature sufficient for a defendant to prepare a defense, and prevent him from being tried twice for the same offense (*People v Kasse*, 22 NY3d 1142 [2014]; *Kalin*, 12 NY3d at 230 [internal citations and quotations omitted]).

Here, the accusatory instrument is, and has been, **insufficient** since the inception of this case. Both the original and superseding informations contain a location for the offense that the People acknowledge is incorrect. The bill of particulars also failed to list the correct address. Not until April 25, 2018, after the case had been pending for nearly two years and sent weeks earlier to a trial part, did the People notify defendant that the incident allegedly occurred at a different location. Indeed, the People have ostensibly yet to settle on a specific address of the alleged offense. Notwithstanding their insistence throughout the pendency of this case that it allegedly occurred on Northern Boulevard, they represented on April 25, 2018, that it occurred on Astoria Boulevard. Worse, they now claim that while the alleged incident began in the 'vicinity of 107th street and Astoria Boulevard,' the complainant observed defendant masturbating at 97th street and Astoria Boulevard. In essence, the People, on the eve of trial, informed defendant for the first time of two new locations at which he was alleged to have committed **criminal** acts. In this context, it is axiomatic that he was not provided with notice sufficient to prepare a defense. Thus, both the original and superseding informations fail, and are therefore facially **insufficient**. Consequently, the People's statements of readiness prior to April 25, 2018, are illusory (CPL 30.30 [1] [b]; *People v Sibblies*, 22 NY3d 1174 [2014]).

\*3 Any argument made by the People alleging that an amended accusatory instrument should be allowed is without merit. **Criminal Procedure Law 200.70 (1)** permits the amendment of an indictment or information at any time during or before trial so long as the amendment 'does

not prejudice the defendant on the merits' (*see People v Clapper*, 123 AD2d 484, 485 [3d Dept 1986] [finding that an amendment to an indictment alleging that the defendant committed his **crime** at Route 30 instead of Route 7 was insignificant since the defendant was aware of the People's intention to allege his **crimes** occurred at Route 30]). Here, the circumstances surrounding the amended information are significantly different from *Clapper*, and the prejudice to defendant is clear. Unlike in *Clapper*, where the court found that the amendment to the indictment was insignificant because the defendant was still aware he was being charged for actions that occurred at Route 30, here defendant had no such knowledge. Both defendant and his counsel were placed on notice that the charged offenses allegedly occurred at 97th Street and Astoria Boulevard. The superseding information, however, purportedly alleges it occurred at a BP gas station on 107th Street and Astoria Boulevard, ten blocks away from that which was alleged in the original information.

Furthermore, in *People v Iannone* (45 NY2d 589, 594 [1978]), the court held that the purpose of an indictment is 'to provide the defendant with fair notice of the accusations . . . so that he will be able to prepare a defense.' As defendant notes, in order to properly prepare for trial, the correct location of defendant's alleged actions must be conveyed in the information. The misinformation provided by the People in this case compromised defendant's ability to conduct a timely and thorough investigation at either location. Defendant was, for example, unable to seek any video footage of the incident that may have existed or canvass for possible witnesses.

On the contrary, in *People v Cruz* (61 AD3d 1111, 1112 [3rd Dept 2009]), the court upheld an amendment that changed the location of an indictment from 'at or in the vicinity' of a certain building to the vicinity of a building across the street because such a slight change of location neither altered the prosecution's theory nor prejudiced the defendant (*id.*). Additionally, the People quickly realized that the original indictment was correct and, within four days after the amendment was granted, sought to amend it back to the place initially stated (*id.*). Here, however, the People delayed for nearly two years, from defendant's September 9, 2016, arraignment until just before commencement of trial on April 25, 2018, before seeking to amend the information to reflect the

correct location of the alleged incidents. As noted, the correct location was neither reflected in the superseding information nor the bill of particulars, even as the People clarified the time of occurrence in that same bill of particulars. Further, and perhaps most significantly, the revised locations of 107th Street and Astoria Boulevard and 97th Street and Astoria Boulevard are not 'near or in the vicinity' of the initial alleged location; rather, they span a distance of ten blocks. Such a significant theory change violates CPL 200.70 (1) because it substantially prejudices defendant by severely compromising his ability to conduct a thorough investigation and reasonably prepare a defense for trial.

While the People contend that they have yet to file a second superseding information containing an accurate location, and intend to do so by filing a prosecutor's information, this argument misses the point. A 'prosecutor's information must rely on some other source (e.g., a previously filed accusatory instrument) to establish every element of the charged offense' (*People v Thomas*, 4 NY3d 143, 146 [2005]), and thus cannot supplement the facts already alleged. After having declared in open court that the accusatory instrument contains incorrect information, the amendment of which would cause substantial prejudice to the People, the People cannot engage in procedural juggling to remedy their previously defective ones, particularly given that doing so would be well beyond their statutory obligation to have timely done so (CPL 30.30 [1] [b]).

#### \*4 II. Conclusion

This Court finds that, given the People's failure to provide defendant with accurate notice of the alleged offenses, as well as their failure to properly and timely amend the information accordingly, defendant's motion to dismiss the information is granted.

This constitutes the decision and order of the Court.

Dated: July 19, 2018

E N T E R

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David J. Kirschner, J.C.C.

**All Citations**

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