

DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT CRIMINAL PART 3

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THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff(s)

DOCKET NO. NA [REDACTED]

Present:

against

Hon. SUSAN T. KLUEWER

[REDACTED]
Defendant(s)
-----X

The following named papers numbered 1 to 4
submitted on this motion on July 13, 2010

	<u>papers numbered</u>
Notice of Motion and Affidavits Annexed	1-2
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	3
Reply Affidavits	4

Defendant's motion for an order dismissing the accusatory instrument as facially defective, and on account of violation of her right to a speedy trial, is granted to the extent that the accusatory instrument is dismissed as facially defective. So much of Defendant's application which is for dismissal of the accusatory instrument on account of a violation of her right to a speedy trial is marked withdrawn.

Defendant is accused, by four simplified traffic informations filed together under this docket, of aggravated unlicensed operation of a motor vehicle in the third degree, reckless driving, following too closely, and changing lanes unsafely (see Vehicle and Traffic Law § 55[1], 1212, 1129[a], 1128[a]). All charges stem from an incident that is alleged to have occurred on January 4, 2010. By the appearance ticket (see CPL Article 150) issued by a state trooper in connection with the simplified traffic informations, Defendant was directed to appear in this court on January 18, 2010, a court holiday. The parties tacitly agree that "the ticket" was unilaterally, and serially, "amended" — apparently by the Nassau County Police Department — so that "the appearance date changed," first from January 18, 2010 to April 12, 2010, and then from April 12, 2010 to April 26, 2010. The court file reflects that the People did not file the accusatory instrument

until April 26, 2010, that Defendant appeared on that date, that she was arraigned on that date, and that the court (Janowitz, J.) released on her own recognizance. The file contains no written demand for supporting depositions pursuant to CPL 100.25, and there is no notation that any such demand was made.

Insofar as she seeks dismissal of the accusatory instrument for facial insufficiency, Defendant asserts that, through her attorney, she made written demand for supporting depositions. As proof, she submits a copy thereof. It bears the ticket number of each of the four simplified traffic informations ultimately filed under this docket and is endorsed with counsel's name and address. It is also endorsed with the court's "receipt stamp," which, in turn, reflects that Criminal Term received the demand on April 1, 2010 at "4:10." Defense counsel attests that he has received no supporting depositions, and urges that, because more than 30 days have elapsed since service of the demand, dismissal is required. Defendant also addresses her request for dismissal pursuant to CPL 30.30.

In opposition to that prong of Defendant's motion which is for dismissal on account of facial insufficiency, the People note that the court file does not reflect that any demand was made, and that the copy of the demand Defendant submits on the motion does not bear a docket number, "which may have prevented the Court from properly filing the demand." They posit that a demand served on April 1, 2010 would have in any event been untimely because not served within 30 days of January 18, 2010, the date she was directed to appear by the appearance ticket issued to her. They also address Defendant's arguments premised on CPL 30.30, including urging that, notwithstanding their assertion that the demand for supporting depositions was untimely made, the action, in accordance with CPL 30.30(5)(b), must be deemed to have commenced on April 26, 2010, the date they claim Defendant first appeared.

Defendant in reply urges that, because her appearance date was serially amended, the time to serve a demand should run from April 26, 2010. She also urges that even if the time were properly measured from January 18, 2010, her demand is timely because she is charged with misdemeanors as well as infractions, thereby affording her 90 days within which make the demand. And

she submits a special affirmation of service by her attorney, who thereby specially attests that he served a demand for supporting depositions on April 1, 2010 by personally delivering a copy thereof to the clerk of this court. Finally, by her reply, Defendant withdraws so much of her motion as is for dismissal pursuant to CPL 30.30.

A simplified traffic information is a peculiar form of accusatory instrument — an unverified one (see CPL 100.30[1][d]; cf. 15 NYCRR 91.18) — that is authorized in limited, statutorily specified cases as an alternative to prosecution by long form information (see CPL 100.10[2][a]; *People v. Green*, 192 Misc2d 296, 745 NYS2d 656 [Nassau Dist Ct, 2002]; *People v. Quarles*, 168 Misc2d 638, 639 NYS2d 661 [Rochester City Ct, 1996, Byrnes, J.]). Prosecutions by simplified traffic information are governed by somewhat different standards than those applicable to prosecutions by long form information, the most notable being that pleading requirements are far less factually demanding (see *People v. Nuccio*, 78 NY2d 102, 571 NYS2d 693 [1991]; *People v. Baron*, 107 Misc2d 59, 438 NYS2d 425 [App Term, 2d Dept. 1980]; *People v. Green, supra*; *People v. Quarles supra*). The requirements for facial sufficiency of a simplified traffic information thus are merely that the accusatory instrument be in brief, simplified form in accordance with the directives of the commissioner of motor vehicles (see CPL 100.10[2][a], 100.40[2]). But, where a defendant accused by simplified traffic information elects to be put on notice of more factual detail, he or she, upon timely request, is entitled “as of right” to a supporting deposition, *i.e.*, a verified statement containing factual allegations augmenting the statements of the accusatory instrument and which support or tend to support the charge (cf. CPL 100.20, 100.25). The request for supporting depositions is made, not of the People, but of the court, and, upon a timely request, the court “must” order that the issuing officer or trooper serve the supporting depositions within 30 days of the court’s receipt of the request, and that the officer or trooper file with the court the supporting depositions and proof of their service (CPL 100.25[2]; *People v. Brady*, 196 Misc2d 993, 768 NYS2d 157 [Nassau Dist Ct, 2003]). A request is timely if served no later than 30 days *after* the date the defendant is directed to appear in court “as such date appears upon the simplified traffic information and upon the appearance ticket issued pursuant thereto,” except that “[w]hen at least one of the offenses charged in a simplified traffic information is a misdemeanor,”

the court may permit a defendant to request a supporting deposition beyond the "thirty day request period," provided that Defendant seeks leave within 90 days of the date that defendant is directed to appear "as such date appears on the simplified traffic information and upon the appearance ticket issued pursuant thereto" (CPL 100.25[3]). Where a defendant is represented by counsel, the supporting deposition is to be served, not on that defendant personally, but on his or her counsel (*see* CPL 100.25[2]). Failure to timely and properly serve a supporting deposition in accordance with a timely demand renders the simplified traffic information for which it was demanded defective, and although the People are free to commence a separate action by filing a long form information (*see People v. Nuccio, supra*), the court is divested of jurisdiction to proceed with the prosecution by the simplified accusatory documents (*People v. Nuccio, supra; People v. Titus*, 178 Misc2d 687, 682 NYS2d 521 [App Term, 2d Dept. 1998]; *People v. Aucello*, 146 Misc2d 417, 558 NYS2d 436 [App Term, 2d Dept. 1990]; *People v. Green, supra*). Moreover, because what is at issue is a defendant's absolute right to timely receive the factual detail provided a by timely demanded supporting deposition, court errors in directing that supporting depositions be supplied do not undo that loss of jurisdiction (*see People v. Titus, supra; People v. Furst*, 1 Misc3d 654, 765 NYS2d 753 [White Plains City Ct, 2003, Hansbury, J.]; *People v. Brady*, 196 Misc2d 993, 768 NYS2d 157 [Nassau Dist Ct, 2003]; *see also People v. Mazzeo*, nor, 2005 NYSlipOp 51945U [Nassau Dist Ct, 2005]).

The People do not seriously dispute that, notwithstanding that the court file does not reflect it, Defendant did serve a demand for supporting depositions on April 1, 2010. Indeed, defense counsel's attestations and the court's "received" stamp on the copy of the demand she submits on the motion amply demonstrate that she did. The People's somewhat ironic argument that she served the demand late is without merit. Apart from the fact that Defendant served the demand within 90 days after the date she was initially directed to appear in a prosecution wherein she is charged with two misdemeanors (*see* CPL 100.25[3]; *People v. Brady, supra*), in this case, the People's agents serially notified Defendant that her "ticket" was amended to reflect a change in the appearance date. Under these circumstances, they cannot claim that the "ticket" reflects any date other than April 26, 2010, the final "amended" appearance date. April 26, 2010 is thus the date from which Defendant's time to serve a demand is measured (*see* CPL 100.25[2]), and since she served the demand *before* the

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appearance date specified on appearance ticket, her demand is timely (see *People v. Tyler*, 1 NY3d 493, 776 NYS2d 199 [2004]). Also ironic is the People's attempt to fault Defendant for failing to include a docket number — a number that is assigned by the clerk upon the filing of an accusatory instrument — on her demand, a happenstance that arises precisely because of the People's agent's failure to file the simplified traffic informations with the court until some three months after the state trooper issued them. Defendant was entitled to serve the demand when she did (*id.*), and the court's failure to order that the issuing state trooper serve and file the supporting depositions does not undo either Defendant's entitlement to supporting depositions, or the divestiture of jurisdiction to proceed on simplified traffic informations that arises because she did not get them. The accusatory instrument must thus be dismissed.

So Ordered:



DISTRICT COURT JUDGE

Dated: August 25, 2010

CC: Honorable Kathleen Rice, District Attorney
Sharifov & Russell, LLP

STK:blm