DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT: CRIMINAL PART 1

---x

THE PEOPLE OF THE STATE OF NEW YORK,

INDEX NO. [redacted]

Plaintiff

Present:
Hon. Sondra K. Pardes

against

[redacted]

Defendant.

---x

The following papers were submitted on this Notice on June 11, 2010

	papers numbered
Notice of Motion and Affidavits Annexed	1-2
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	3
Reply Affidavits	

The defendant is charged with violating Penal Law §140.10(B) (Criminal Trespass in the Third Degree).

The defendant now moves for an order dismissing the accusatory instrument pursuant to CPL §§100.115, 100.40, 170.30, 170.35 and 30.30(1)(c).

The defendant's omnibus motion is decided as follows:

SPEEDY TRIAL

With respect to the defendant's motion to dismiss pursuant to CPL §30.30, the defendant argues that inasmuch as the People failed to file a facially sufficient information within 60 days "the People could not have been ready for trial and must be charged the entire time period."

The People, in their opposition, assert, in conclusory fashion, that the adjournments from March 6, 2010 to March 26, 2010 and March 26, 2010 to May 6, 2010, were requested by the defendant to give him the opportunity to retain counsel. The notes that the notations on the court file appear to support the People's position. The People, however, failed to submit transcripts of the proceedings to verify these assertions and the notations on court file alone are not dispositive with respect to this issue.

The court, therefore, is unable to make an accurate determination with respect to the amount of time, if any, that should be excluded pursuant to CPL §30.30.4.

Accordingly, this branch of the defendant's motion is DENIED without prejudice, and with leave to renew as provided below.

FACIAL SUFFICIENCY

With respect to the defendant's motion to dismiss the information based on facial insufficiency, CPL §100.40 provides that an information is facially sufficient if: 1) it conforms to the requirements of CPL §100.15; 2) the non-hearsay facts stated in the information, together with any supporting depositions, establish reasonable cause to believe that the defendant has committed the crime alleged in the accusatory portion of the information; and 3) the non-hearsay allegations of the factual portion of the information and/or any supporting deposition establish each and every element of the offense charged, and the defendant's commission thereof. CPL §100.15 provides that every accusatory instrument must contain two separate parts: 1) an accusatory portion designating the offense charged; and 2) a factual portion containing evidentiary facts which support or tend to support the charges stated in the accusatory portion of the NY2 instrument. The facts set forth must provide reasonable cause to believe that the defendant has committed the crime alleged in the accusatory portion of the accusatory instrument. (***People v. Dumas***, 68 NY2d 729; ***People v. Strafer***, 10 Misc 3d 1072[A]) When these requirements are met, the information states a *prima facie* case and is sufficient (***People v. Alejandro***, 70 NY2d 133).

On a motion to dismiss for facial insufficiency, the Court's review is limited to whether or not the People's allegations, as stated in the accusatory instrument, are facially sufficient. The facts alleged need only establish the existence of a *prima facie* case, even if those facts would not be legally sufficient to prove guilt beyond a reasonable doubt (***People v. Jennings***, 69 NY2d 103). In assessing the facial sufficiency of an accusatory instrument, the court must view the facts in the light most favorable to the People (***People v. Mellish***, 4 Misc 3d 1013(A); ***People v. Gibble***, 2 Misc 3d 510). The allegations only need make out a *prima facie* case and need not establish the defendant's guilt beyond a reasonable doubt. (***People v. Henderson*** 92 d 677)

On a motion to dismiss an accusatory instrument, the Court must confine its analysis to the allegations contained in the complaint and in any depositions filed in support of it (*see, People v. Pelt,* 157 Misc 2d 90, 92, 569 NYS2d 301 [Crim. Ct. Kings Co. 1933]; *People v. Fink,* NYLJ, May 22, 1992 at 23, col 4 [Crim. Ct. NY Co.]).

The defendant is charged with criminal trespass in the third degree.

Penal Law §140.10(B) provides, in pertinent part:

A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property where the building is utilized as an elementary or secondary school or a children's overnight camp as defined in section one thousand three hundred ninety-two of the public health law or a summer day camp as defined in section one thousand three hundred ninety-two of the public health law in violation of conspicuously posted rules or regulations governing entry and the use thereof.

The arresting officer, Police Officer Michael A. Maloney attests as follows:

TO WIT: Your deponent states on the aforesaid date, time and place of occurrence the arrestee did knowingly enter and remain unlawfully in a building located at 1 Wagner Ave Roosevelt, NY 11575, used as the Roosevelt Senior High School, in violation of conspicuously posted rules/signs regulations governing entry and use thereof.
The statement of Mason Rahyns is attached hereto and made a part hereof.

The supporting deposition of Mason Rahyns reads as follows:

I am On the 13th day of February 2010 at about 10:00 pm I was notified by Scarsdale Alarm company the Motion alarm was set off at the gh School. I drove to the highschool and were met by the police and we entered the school. I walked into the gym and saw three light skinned males sitting on the bleachers. I immediately told them to stay where they are and that the police were here. They then ran out the gym doors on to the schools field outside. Police proceed to go after them outside and I stayed and searched the building and found that nothing was broken or missing. These three individuals are now known to me as and Acting as Roosevelt night security guard I do not give these individuals permission to enter the school and remain unlawfully and I wish for an arrest to be made.

[redacted] is writing this statement for me and I have read it and it is the truth.

One element of the crime charged in this case is that there be CONSPICUOUSLY POSTED RULES OR REGULATIONS GOVERNING ENTRY AND USE OF THE PROPERTY.

The defendant argues that the supporting deposition is facially insufficient in that there is "no non-hearsay allegation that conspicuously posted signs actually existed, or what they said."

In opposition the People assert, rather cavalierly, that "(t)his formulaic language is not necessary." They go on to argue that "A fair reading of the plain language of Officer Maloney's accusatory instrument is that he observed the defendant at the school and that he observed the posted signs." The People failed to explain why, if in fact that was true, the officer did not state that he observed the posted signs, where they were posted and what they said. The officer's conclusory assertion that there were "conspicuously posted signs" is insufficient to satisfy the requirements that there be non-hearsay allegations to support each and every element of the crime charged.

Accordingly, the defendant's motion to dismiss the accusatory instrument, as facially insufficient, is **GRANTED**; and it is further

ORDERED , that in the event the People commence a new action charging the defendant with instant offense, the defendant has leave to renew his motion to dismiss pursuant to CLP §30.30.

This constitutes the order and decision of this court.

SONDRA K. PARDES
D.C.J.

Dated: July 30, 2010

cc: Kathleen M. Rice, District Attorney for Nassau County
Sharifov & Russell, LLP, Attorney for Defendant

SKP:rad