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COURT OF APPEALS

STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

No. 10

GANESH RAMLALL,

Appellant.

20 Eagle Street
Albany, New York
January 9, 2020

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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1 CHIEF JUDGE DIFIORE: Next appeal on the calendar
2 is appeal number 10, the People of the State of New York v.
3 Ramlall.

4 (Pause)

5 CHIEF JUDGE DIFIORE: Good afternoon, counsel.

6 MS. REA: Good afternoon. May it please the
7 court. Natalie Rea of the Legal Aid Society for Mr.
8 Ramlall. If I may reserve two minutes for rebuttal,
9 please?

10 CHIEF JUDGE DIFIORE: Yes, you may.

11 MS. REA: The question here is whether the 971-
12 day delay - - -

13 JUDGE GARCIA: Counsel, looking at that delay, is
14 the question for us to apply the Taranovich factors here
15 and just do the standard Taranovich analysis that the court
16 would do, and now this court's going to do, based on what I
17 think you're about to recount is a very long and tortured
18 history regarding a traffic infraction; that's what we are
19 going to do here, right?

20 MS. REA: I believe so, and I think that the
21 Taranovich factors, and your clarification of them in
22 Wiggins, apparently are worth repeating because we go on
23 and - - -

24 JUDGE FEINMAN: But so let me ask you this. You
25 would agree, then, that based on the majority writing in



1 Wiggins that the problem of prosecutorial readiness
2 addressed by C.P.L. 30.30 and the constitutional speedy
3 trial right are not analogous - - -

4 MS. REA: Absolutely, they're not - - -

5 JUDGE FEINMAN: So they're not.

6 MS. REA: No.

7 JUDGE FEINMAN: So we're not going to be looking
8 at all that calculation that went into the 30.30 time for
9 the misdemeanors that got dismissed?

10 MS. REA: No, but the - - - no, those - - - the
11 way those computations were made don't apply to 30.20, but
12 the delays that took place between - - - between the
13 complaint and the 30.30 dismissal count, which the - - -
14 the People are no longer counting. There were, I believe,
15 200 - - -

16 JUDGE FEINMAN: So let's look at the factors, if
17 we can, for a second.

18 MS. REA: Yes.

19 JUDGE FEINMAN: The second factor, would you
20 measure it in relative terms or absolute terms? In other
21 words, are the People - - - is their contribution - - - you
22 know, to the extent that they are responsible for the
23 delay, is there some sort of, you know, relative balancing?
24 You know, because some of these requests were made by the
25 defendant, some were, you know - - -



1 MS. REA: Well, I think that they - - -

2 JUDGE FEINMAN: - - - court congestion. I mean,
3 how do we - - -

4 MS. REA: Okay. So I think that - - -

5 JUDGE FEINMAN: - - - look at that second factor?

6 MS. REA: I think that this court and the Supreme
7 Court have kind of said, you know, if - - - if there's real
8 - - - that court congestion may not be as - - - you know,
9 as weighty as, you know, really bad faith by the People.
10 But good faith - - -

11 JUDGE FEINMAN: So is there any real bad faith
12 here?

13 MS. REA: But good faith doesn't excuse the
14 People. I don't know if there's bad faith, but there is
15 some very serious negligence, and I would like the court to
16 decide whether it's bad faith or not. But when you're
17 ordered - - - they were ordered to provide discovery on
18 June 8th, 2012, and they satisfied part of it in October,
19 and they fully satisfied the request in May - - - in May of
20 2013, I will say it's grossly negligent. They sat on that
21 information. But it all counts. They're not exc - - -

22 JUDGE STEIN: Is that also a factor if we're to
23 look at the fact that obviously there were numerous
24 requests for adjournments by the defendant here. So does
25 the fact that some of those may have been necessitated by



1 the discovery - - - lacking discovery, does that - - - is
2 that something that factors into the analysis?

3 MS. REA: Well, I think yes, of course it should.
4 But even if we - - - you didn't, I have counted that there
5 were 771 days that were not - - - had nothing to do with
6 the defendant. And even being generous and saying, well,
7 maybe - - -

8 JUDGE FEINMAN: How does it factor in that
9 somehow, whenever the People were ready, the defendant
10 never was.

11 MS. REA: I don't think "never" is the issue.
12 When the People asked for - - -

13 JUDGE FEINMAN: I mean, I agree - - -

14 MS. REA: No, no, I think - - -

15 JUDGE FEINMAN: - - - it's never an issue under a
16 30.30 analysis, because a 30.30 analysis is about the
17 prosecutor's obligation. But we're not talking about
18 30.30.

19 MS. REA: We're not, but we are talking about the
20 prosecution's burden. They bring the charge, they have to
21 make it - - - they have to bring it in a speedy manner.
22 And when they're asking for two days and the court says,
23 okay, let's give it three - - - and we say we'd like a
24 little more time, and then the adjournment is fifty days,
25 let's say, the prosecutor never objected, which the



1 prosecutor did in Wiggins. In Wiggins, the prosecutor
2 started thinking, oh, wait a second, this is - - - there's
3 a little too much delay here.

4 Here our position is also, once the 30.30 was
5 granted, everybody should have been on notice that this
6 case there was delay. And these - - - the court has also
7 an obligation to make sure to maintain the - - - the
8 confidence of the People in not having cases last two-and-
9 a-half years.

10 JUDGE FEINMAN: So - - - well, that problem's
11 going to be solved going forward because of the amendment
12 and the statute.

13 MS. REA: Going forward.

14 JUDGE FEINMAN: So we won't have that issue.
15 We'll be able to clear these out when we clear out the
16 misdemeanors.

17 But if we're looking at all these factors, and -
18 - - and you want us to clarify factors, let's talk about
19 the third factor for a minute, which goes to the nature of
20 the offense. What do you think that means, as we've
21 articulated it in the past, and as it applied here, is it
22 the fact that it's just an infraction or is it, as some of
23 the decisions, I think, have talked about in this case, the
24 fact that it's a drunk-driving case and - - - and People
25 are concerned about drunk driving? Is that was what



1 serious means? What - - - what does it mean?

2 MS. REA: Well, I think that the court here has
3 made it clear that it's not simply the - - - the serious,
4 like it's a murder or it's a misdemeanor; that's not the
5 end of the conversation. The - - - the right to a speedy
6 trial takes into account the complexity of the case. So if
7 this were in incredibly complicated DWAI case, maybe you
8 could have more time. But the highly relevant factor - - -

9 JUDGE FEINMAN: So here, sticking with that,
10 because there was a blow here, right? I know that he's not
11 being prosecuted based on that statute because that got
12 dismissed, but if they wanted to introduce that evidence to
13 prove the DWAI, don't you have to get all the calibration
14 records and all of that in order to lay the foundation to
15 get those readings in?

16 MS. REA: What I don't - - -

17 JUDGE FEINMAN: Complex?

18 MS. REA: And they were com - - - well, there
19 were extreme delays in providing that information to the
20 defense. And I don't think that's - - - you can say it's
21 complex, but if - - - if that is a level of complexity,
22 then it could be taken into account; it still doesn't
23 excuse the - - -

24 JUDGE RIVERA: Did the prosecutor ever raise
25 those concerns?



1 MS. REA: Of getting - - -

2 JUDGE RIVERA: Did the prosecutor ever raise
3 those concerns - - -

4 MS. REA: Of - - -

5 JUDGE RIVERA: - - - that it needed time, given
6 the complexity, given the needs - - -

7 MS. REA: One day - - -

8 JUDGE RIVERA: - - - as Judge Feinman has
9 described?

10 MS. REA: No. No. And one day, when they were
11 ready for the hearing, for the machine, they were not ready
12 for that. So it's complex, but it's not complex in the
13 sense that it's a very complex prosecution.

14 So as in Wiggins, if in Wiggins, where the
15 defendant was facing life, five-and-a-half-year delay is
16 too much. In this case, where my client is facing fifteen
17 days, two-and-a-half years is really excessive, and the
18 seriousness of the crime can't - - - that factor can't
19 weigh, or maybe you want to weigh it less than I do, in
20 favor of the People, but - - -

21 JUDGE STEIN: Given the fact that he was not
22 incarcerated, what - - - what do - - - what do we have to
23 look at to determine whether he was prejudiced by the delay
24 at all?

25 MS. REA: I think that the prejudice - - - I



1 think these are two separate - - - may I?

2 CHIEF JUDGE DIFIORE: Um-hum.

3 MS. REA: - - - two separate factors. I mean,
4 they can go together when there is incarceration,
5 obviously.

6 JUDGE STEIN: Well, that's often part of the
7 prejudice. So - - -

8 MS. REA: It is. It is.

9 JUDGE STEIN: So absent that what I'm saying is
10 what do we look to for - - -

11 MS. REA: Well, I think you've said, in previous
12 cases, what to look for, not only - - -

13 JUDGE STEIN: What do we look for here? What is
14 there in the record here?

15 MS. REA: Okay. Here - - - here there's, in this
16 weird world we were in before, where here you have the
17 30.30, the misdemeanors were dismissed, the idea that this
18 survived seems to be a bit of a prejudice, part of the
19 prejudice. The 971 days may be the kind of length - - -

20 JUDGE FEINMAN: 971 or 917?

21 MS. REA: 971 - - - 971, I believe.

22 JUDGE FEINMAN: Okay.

23 MS. REA: But I'm not - - - I think that - - -
24 yeah, it's 971.

25 JUDGE FEINMAN: Whatever it is.



1 MS. REA: Yeah, it - - -

2 JUDGE FEINMAN: It's more than 900.

3 MS. REA: It's over 950.

4 JUDGE STEIN: What if he only had to make five
5 appearances within that whole time and he was otherwise
6 going - - - going along with his life? Would that maybe -
7 - -

8 MS. REA: Except that he made twenty-nine
9 appearances, Your Honor, twenty-nine.

10 JUDGE FEINMAN: Well, did you ever request to
11 have him excused?

12 MS. REA: Excuse me?

13 JUDGE FEINMAN: Did the defendant ever request to
14 have his appearance excused?

15 MS. REA: Yes, and there's - - -

16 JUDGE FEINMAN: There were times where he was - -
17 -

18 MS. REA: And the only time he asked to waive his
19 presence, the court said no. And the only time, in twenty-
20 nine times, where he came in late, an hour-and-a-half late,
21 out of twenty-nine sessions, when the DA kept arriving and
22 saying they're not prepared, the one time the district
23 attorney didn't keep their client - - - their witness
24 there, and there was a thirty-day delay. He came in
25 twenty-nine times. That's six weeks of work for a person



1 of - - - of very little means. This is an incredible - - -
2 it is prejudice, and it's part of the prejudice analysis.
3 So if you put the 971 days, or say, presume the 30.30
4 dismissal of the greater charges and - - - and on his
5 person, I think we've established that.

6 CHIEF JUDGE DIFIORE: Thank you.

7 MS. REA: Thank you. I'll keep - - - thank you.

8 CHIEF JUDGE DIFIORE: Thank you.

9 Counsel?

10 MS. BORDLEY: Good afternoon. My name is Ann
11 Bordley, and I represent the respondent, the People of the
12 state of New York.

13 Defendant's claim should be rejected for two
14 reasons. First, the Sixth Amendment right to a speedy
15 trial should not apply to traffic infractions. The Supreme
16 Court has indicated that the Sixth Amendment privileges do
17 not apply in all cases. For example, the Sixth Amendment
18 right to a jury trial does not apply to petty offenses,
19 which are defined as offenses for which you could - - - for
20 which you can get six months or less. And in this case,
21 applying the right to a speedy trial to a traffic
22 infraction doesn't serve the primary purposes of the Sixth
23 Amendment right. The primary purpose of this right is to
24 prevent oppressive pre-trial incar - - -

25 JUDGE FEINMAN: Doesn't it seem odd to you that,



1 you know, we're - - - we're using - - - the fact that it's
2 a traffic infraction, and require the person to come back,
3 you know, over two-and-a-half years twenty-nine times?

4 MS. BORDLEY: I think it's a concerning fact, but
5 I don't think that goes to the question about whether it's
6 a constitutional violation. I think that's a separate
7 question. But we concede it was an extremely long time.

8 JUDGE FEINMAN: Right. So let's say the court
9 takes the view, well, you know what, we don't really need
10 to decide whether it's a constitutional violation - - -

11 MS. BORDLEY: Very well then, Your Honor - - -

12 JUDGE FEINMAN: - - - then what?

13 MS. BORDLEY: Well, then we'd argue that the
14 trial court in the Appellate Term correctly concluded that,
15 applying the Taranovich factors, there wasn't a violation.
16 Now, unquestionably, there was a very long delay in this
17 case, but a significant portion of this delay was
18 attributable to the defense.

19 You know, in the beginning of the case the People
20 did not answer promptly to the first speedy trial motion,
21 and that was ultimately, generally speaking, the cause of
22 the dismissal of the misdemeanor counts. But at that point
23 we started announcing ready, in fact we announced ready the
24 next three times. After the dismissal of the misdemeanor
25 counts, we in fact announced ready on ten different



1 occasions. Seven of those occasions, the defense requested
2 an - - - requested the adjournment.

3 JUDGE RIVERA: At what point did you comply with
4 all of the discovery requirements?

5 MS. BORDLEY: We - - - we - - - you know, we
6 actually provided some discovery from the - - - at the
7 arraign - - -

8 JUDGE RIVERA: No, but when did you completely
9 comply with all of the discovery requirements?

10 MS. BORDLEY: There was an accident report that
11 we did not get until very late, and we turned it over as
12 soon as we got it, but that was shortly before the
13 suppression hearing. That was late. But the assistant
14 district attorney said, you know, here's this accident
15 report I didn't even know existed, and I'm providing it now
16 because this is the first I've seen or heard of it. We
17 provided other discovery much earlier. And - - - and - - -

18 JUDGE RIVERA: I guess the question is: given
19 all of the factors, why should things like that fall on the
20 shoulders of the defendant?

21 MS. BORDLEY: Well, I think you have to consider
22 the Taranovich factors. I think you have to consider that
23 at least portions of this delay are - - - are attributable
24 to the defense. And the Supreme Court has said those are
25 considered waived for purposes of this issue. I - - - I



1 think you can also take into account that the - - - the
2 trial court thought that the defense was trying to sort of
3 engineer a speedy trial dismissal. They thought that their
4 claims of prejudice were wrong, and it is kind of
5 interesting. So after the speedy trial - - - excuse me,
6 the 30.30 dismissal of the misdemeanor counts, then we come
7 into court and we announce we're ready several times.

8 And the first time the defense attorney is
9 saying, well, I need an adjournment because I haven't
10 gotten the medical records yet and - - - and because I want
11 to get the fire department file. And then they get the
12 fire department file, and after that they start asking for
13 adjournments for these witnesses, right? And this is on
14 August - - -

15 JUDGE FAHEY: Let me ask this on that issue.

16 MS. BORDLEY: Yeah.

17 JUDGE FAHEY: Did the court offer to sign a
18 subpoena to - - - to - - -

19 MS. BORDLEY: Yes, they did. They said - - -

20 JUDGE FAHEY: Explain that to the court. Explain
21 what was going on there.

22 MS. BORDLEY: Well, the - - - the defense - - -
23 the defense was saying one - - - they said that the fire
24 department had been very helpful. At a certain point they
25 said the fire departments are very helpful but they did not



1 - - - won't give us her home address. And so the trial
2 court was, like, well, that's fine, oh, I'll be quite happy
3 to sign a subpoena ordering the fire department to give you
4 the home address so you can serve a subpoena and get this
5 case moving.

6 JUDGE FAHEY: Was that ever done?

7 MS. BORDLEY: No, not as far as we can tell.

8 They never actually did serve a subpoena. And - - -

9 JUDGE FEINMAN: I have a question on this issue
10 of the subpoena. I - - - I don't know how it is in - - -
11 in Brooklyn, but it used to be that there was just a basket
12 in every AP part, and defense counsel would just drop their
13 subpoenas in there to be signed by the judge, and then you
14 pick them up at the end of the day. Is that - - -

15 MS. BORDLEY: That did not happen here. And - - -
16 - and again, they started ask - - - no, it wasn't clear,
17 exactly until their speedy trial motion, when they
18 explained that they were looking for these two EMTs. But
19 they were looking, as early as August 13th, to try to - - -
20 to find these witnesses, and that's, like, fourteen months,
21 until the speedy trial motion, that they're either asking
22 for adjournments because they're looking for them or
23 because they're trying to subpoena them. And - - - and - - -
24 - and so there's - - - they weren't seriously trying to get
25 a speedy trial. They were trying to get a speedy trial



1 dismissal here.

2 But in addition, there's the other factors.
3 defendant was not incarcerated pre-trial for a very long
4 time. Defendant was released on the day of his arraignment
5 in criminal court. There was - - - there is the - - - the
6 seriousness of this crime. This court has already
7 considered driving while intoxicated to be a serious
8 offense. And while - - -

9 JUDGE STEIN: But isn't it about the complexity
10 of the case? Since we're talking about how long you have
11 to bring a case to trial, isn't the seriousness of the case
12 really about how long it takes to prepare the case for
13 trial?

14 MS. BORDLEY: I think you can consider the
15 complexity of the case, and actually, I think driving-
16 while-intoxicated cases can be, actually, kind of
17 complicated because you have to have this - - -

18 JUDGE STEIN: But you announced ready at
19 arraignment, didn't you?

20 MS. BORDLEY: Correct.

21 JUDGE STEIN: All right.

22 MS. BORDLEY: Because usually at that point, when
23 everything is new and fresh, and your officers are all
24 available, you - - - you can be ready very early on in the
25 case. But then things happen and you lose some of your



1 witnesses and you have to substitute other witnesses - - -

2 JUDGE STEIN: Did you raise that? Did you raise
3 any of those problems?

4 MS. BORDLEY: In our answer to the - - -

5 JUDGE STEIN: Were they raised in any of these
6 courts?

7 MS. BORDLEY: 30.30 motion?

8 JUDGE STEIN: Yeah.

9 MS. BORDLEY: No, I don't think we did.

10 JUDGE FEINMAN: The 30.30 or the 30.20?

11 MS. BORDLEY: In the - - - I don't think it would
12 have been relevant for the 30.30.

13 JUDGE FEINMAN: Right, no, because you said
14 30.30. That's why I was - - -

15 MS. BORDLEY: I'm sorry.

16 JUDGE FEINMAN: - - - just making it clear.

17 MS. BORDLEY: Oh, I apologize.

18 But to get back to your question, I do sometimes
19 think complexity counts, but I also sometimes think
20 seriousness of the crime counts. Sometimes - - - there are
21 some murder cases that are very simple, that are really
22 simple, but we still get lots of time for murder cases
23 because of the seriousness of the crime and society's
24 interest in making sure we get a correct result.

25 JUDGE FAHEY: To compare - - -



1 JUDGE FEINMAN: There's a - - -

2 JUDGE FAHEY: I'm sorry, Judge.

3 JUDGE FEINMAN: - - - factor, the seriousness
4 factor is just not limited to any one issue - - -

5 MS. BORDLEY: Correct.

6 JUDGE FEINMAN: - - - is what you're saying?

7 MS. BORDLEY: Yeah.

8 JUDGE FAHEY: It seems like this case is almost a
9 straightforward comparison to Wiggins. We have Wiggins,
10 where - - - where a long period of jail time, and it's - -
11 - and it was alleged that the jail time was being coerced
12 to use the defendant in a particular way that the defendant
13 wasn't agreeing to be used for. And the comparison here
14 seems to be more to incompetence than an attempt to force a
15 particular testimony out of a defendant. Does that weigh
16 into this at all?

17 MS. BORDLEY: Yes.

18 JUDGE FAHEY: I guess, how much incompetence
19 crosses the line to become - - -

20 MS. BORDLEY: Well - - -

21 JUDGE FAHEY: - - - actual prejudice.

22 MS. BORDLEY: Well, I would think there's some
23 explanations to made - - - be made about some of the
24 incompetence.

25 JUDGE FAHEY: Well, there always are, but - - -



1 MS. BORDLEY: No, but - - -

2 JUDGE FAHEY: - - - any way you cut it, I think
3 about half this time, at a minimum, maybe about sixty
4 percent has to count against you. So there's a fair amount
5 of incompetence. And - - -

6 MS. BORDLEY: But I would draw your court's
7 attention that there was - - - the arresting officer, who
8 was a necessary witness in this case, suffered a line-of-
9 duty injury. And that was - - -

10 JUDGE FAHEY: No, but that's not my question. My
11 question is is for the Taranovich factors to apply, which
12 they did in Wiggins, there seems to be underlying policy
13 reasons there. And here do those same policy reasons
14 apply, the policy reasons of using incarceration as a
15 coercive means to force particular testimony, that actual
16 prejudice resulted in doing that. Do we have that here?

17 MS. BORDLEY: No. No, Your Honor, I don't think
18 we do.

19 JUDGE FEINMAN: So there's no bad faith here - -
20 -

21 JUDGE FAHEY: Right.

22 JUDGE FEINMAN: - - - by the prosecution - - -

23 MS. BORDLEY: No, Your Honor.

24 JUDGE FEINMAN: - - - is there?

25 MS. BORDLEY: No, Your Honor.



1 JUDGE FEINMAN: And it would be an extraordinary
2 holding, would it not, to say that any negligence - - -
3 assuming there is negligence, which I'm not saying there is
4 - - - in - - - in complying with discovery obligations now
5 is tantamount and equal to bad faith.

6 JUDGE FAHEY: Or a constitutional violation.

7 JUDGE FEINMAN: That would be an extraordinary
8 holding, wouldn't it?

9 JUDGE FAHEY: Yeah. I see what the judge is
10 saying, even a constitutional violation. Opposing counsel
11 can address that question too when she gets up, so we'll
12 let her do that.

13 JUDGE RIVERA: In any case, to get back to where
14 I started - - -

15 MS. BORDLEY: Yes.

16 JUDGE RIVERA: - - - which is, given that a
17 significant part of the delay is not on the shoulders of
18 the defendant, why then should this extremely long delay,
19 which even you concede, for this kind of a charge, which
20 does carry fifteen days potential of incarceration - - -

21 MS. BORDLEY: Um-hum.

22 JUDGE RIVERA: - - - should fall on the
23 defendant?

24 MS. BORDLEY: Because there was no pre-trial
25 incarceration, which is one of the primary reasons - - -



1 JUDGE RIVERA: Even the misdemeanor, of course,
2 is already dismissed as excessively delayed.

3 MS. BORDLEY: Yeah, under 30.30, which is a
4 readiness rule - - -

5 JUDGE RIVERA: Yes.

6 MS. BORDLEY: - - - but not a - - -

7 JUDGE RIVERA: No, I know that.

8 MS. BORDLEY: - - - constitutional speedy trial
9 rule - - -

10 JUDGE RIVERA: I know that.

11 MS. BORDLEY: - - - because of the - - -

12 JUDGE RIVERA: There is something to be said
13 about that, do you not think?

14 MS. BORDLEY: Yes - - -

15 JUDGE RIVERA: Of course I understand the point.
16 We're talking about a statutory violation versus a
17 constitutional violation. But the statutory violation can
18 certainly inform the analysis of the constitutional
19 violation.

20 MS. BORDLEY: I'm not sure it is as significant
21 for the constitutional speedy trial violation. And at one
22 point - - -

23 JUDGE RIVERA: Well, whether it's significant - -
24 - the weight of that significance is not my question. The
25 question is whether or not it is something for

1 consideration. You may argue that it doesn't - - - it
2 should not weigh against you, but to argue that we should
3 be blind to it, I'm very troubled by that position from the
4 People.

5 MS. BORDLEY: I'm not saying that we are blind to
6 it, and in fact, after those counts were dismissed, I think
7 we tried very hard to be ready, and then the line - - - the
8 arresting officer got injured in the line of duty and - - -
9 and - - - and delays resulted.

10 But I don't think, to the extent that the defense
11 has suggested, that the prejudice prong is - - - is
12 influenced by a 30.30 dismissal. I would think that's
13 incorrect because it's a national rule and nobody else is
14 going to be governed by our 30.30 statute. And because
15 prejudice isn't part of 30.30, it's not even a
16 consideration of 30.30. So you could have 30.30 dismissals
17 where the defense is not prejudiced at all.

18 JUDGE RIVERA: But we've also said you can assume
19 prejudice under the circumstances. So again, what has
20 happened that results in the 30.30 dismissal may be of some
21 concern in the constitutional analysis. You know, I don't
22 really understand why the People reject that that - - -
23 what I think - - -

24 MS. BORDLEY: It could be - - -

25 JUDGE RIVERA: - - - is a very moderated way of



1 thinking about it.

2 MS. BORDLEY: I think if you're in Kansas and - -
3 - and a defense attorney says you have to consider the fact
4 that they violated 30.30 under New York law - - -

5 JUDGE RIVERA: I'm not talking about Kansas.

6 MS. BORDLEY: Yeah, but - - -

7 JUDGE RIVERA: I'm talking about New York City
8 and whether or not it's a constitutional violation, given
9 the way the case and the prosecution unfolds.

10 MS. BORDLEY: But the constitutional speedy trial
11 right has to be the same in Kansas as it is in New York
12 City.

13 JUDGE RIVERA: Yes, but all I'm saying is, under
14 the 30.30, you're already identifying numerous delays that
15 fall on the prosecution. And - - - and the clock starts
16 not from the 30.30 motion, of course - - -

17 MS. BORDLEY: Yeah.

18 JUDGE RIVERA: - - - although I understand some
19 of that argument.

20 MS. BORDLEY: Yeah.

21 JUDGE RIVERA: It starts from day one.

22 MS. BORDLEY: Yes. Yes.

23 JUDGE GARCIA: But isn't the answer there really,
24 to the extent that anything you've considered in the 30.30
25 motion applies to the constitutional analysis, it's



1 relevant. Under a general constitutional analysis, if it's
2 relevant and it was relevant then, you could look at that.
3 if it's not, it's not. And it - - -

4 MS. BORDLEY: But ultimate - - -

5 JUDGE GARCIA: - - - seems the legislature made a
6 deliberate determination at that time that these weren't
7 subject to 30.30.

8 MS. BORDLEY: Yes, and given all of the
9 circumstances, and considering all of the Taranovich
10 factors, the trial court in this case was correct to
11 conclude that there wasn't a constitutional speedy trial
12 violation, even though the court had concluded that there
13 had been a 30.30 violation earlier in the case.

14 CHIEF JUDGE DIFIORE: Thank you, counsel.

15 MS. REA: Just a few points. One is the
16 substantial delay caused by the defendant amounts to 196
17 days out of these 971 days. And we - - - I agree that
18 those should not count in the - - - in the delay.

19 As far as the policy - - -

20 JUDGE WILSON: Shouldn't we try to look at it a
21 little more holistically? I mean, you, I think, started
22 out by saying we're not really in the counting-days mode.
23 And I have, sort of, you know, less than a year from the
24 car crash, four back-to-back times when the People say
25 we're ready: May 2nd, June 10th, July 11th, August 1st,



1 and the defendant says he's not ready. There are then, you
2 know, a few more times, not long after that, still in the
3 year 2013, where the same thing happens.

4 MS. REA: And yes, but when they say they're not
5 - - - in the holistic approach, when they say, for example,
6 on November 20th that the People want two days and the
7 defense says - - -

8 JUDGE WILSON: I'm not there. I'm not up to
9 November 20th; I'm still back in May and June and July.

10 MS. REA: Of 2012.

11 JUDGE WILSON: 2013. No, May of 2012 is when the
12 incident happens.

13 MS. REA: I have a very handy little chart.

14 JUDGE WILSON: So do I.

15 JUDGE FEINMAN: So do I.

16 JUDGE RIVERA: I think everybody's got a chart.

17 JUDGE GARCIA: So do we all.

18 MS. REA: We all do. Mine is - - - mine has
19 colors.

20 JUDGE RIVERA: We may not have yours.

21 JUDGE WILSON: Mine does too.

22 JUDGE RIVERA: It may not coincide with yours.

23 MS. REA: There's no question that we were
24 responsible for some time. And the thing is - - -

25 JUDGE WILSON: I'm trying to ask you something a



1 little different - - -

2 MS. REA: Yes.

3 JUDGE WILSON: - - - which is aren't you saying
4 we should get away from the just counting days and try to
5 look at what happened here as something organic? And at
6 least to me, there's a portion of time here, that's within
7 a year or just after a year of the incident, of the arrest,
8 when the People are ready, ready, ready, ready, and your
9 client is not.

10 MS. REA: And yes, and maybe we should get away
11 from some of the days, but - - -

12 JUDGE WILSON: And doesn't that count a little
13 more heavily than just a number of days associated with
14 those four events?

15 MS. REA: Except that the delay is cause - - - of
16 the defense is caused by the People who never provided
17 discovery for over a year. So if we look at it in a
18 holistic way, it becomes more difficult to weigh.

19 It also becomes, unlike Wiggins, where - - -
20 where the - - - the prosecution objected when the court
21 said that it's adjourned for thirty days, here there never
22 was - - -

23 JUDGE WILSON: So on May 2nd of 2013, what was
24 the discovery that you had previously asked for that you
25 hadn't received by that point in time?



1 MS. REA: Okay. Excuse me, which day did you
2 want?

3 JUDGE WILSON: May 2nd of 2013.

4 MS. REA: Okay. May 2nd, 2013, by then, that day
5 they produced the 9 - - - the 911 tape, that day.
6 Therefore, from there we identified some witnesses, and
7 then we caused some delay, and I could see - - -

8 JUDGE WILSON: And then on that day you asked for
9 an adjournment to July 11th.

10 MS. REA: Yes.

11 JUDGE WILSON: And the court didn't give you
12 that; it gave you June 10th.

13 MS. REA: Yes.

14 JUDGE WILSON: And you were not ready then, even
15 though the People were.

16 MS. REA: Yes. Your Honor, absolutely.

17 JUDGE WILSON: And then you got the July 11th,
18 which is what you'd asked for before. The People were
19 again ready, and you weren't.

20 MS. REA: Yes.

21 JUDGE WILSON: And you asked for an adjournment
22 to August 1st, you got one until August 1st. The People
23 were ready again, and you weren't, and you asked for
24 September 24th.

25 MS. REA: Yep.



1 JUDGE WILSON: Was there discovery missing during
2 that period?

3 MS. REA: WE were trying to get, though, the
4 witnesses. These were delays. And we move on to September
5 24th, the People are not ready.

6 JUDGE FEINMAN: Yeah, but why is your inability
7 to get the witness something that should go against them?

8 MS. REA: Well, under - - - first of all, I've
9 counted, it's 196 days for the People. We have to have
10 some balance here. If we're going to look at every time -
11 - - only at every time we're not ready, it is the People's
12 obligation to bring this case to - - - in a speedy manner.

13 JUDGE FEINMAN: Right. But it's - - -

14 MS. REA: And that's the difference with 30.30 -
15 - -

16 JUDGE FEINMAN: But they're saying, you know, in
17 four or five consecutive adjournments, we're ready, we're
18 ready, we're ready, and - - -

19 MS. REA: And they count - - -

20 JUDGE FEINMAN: Look, delay is the defendant's
21 friend; everybody knows it. The - - - the guy's out and -
22 - -

23 MS. REA: And the policy - - -

24 JUDGE FEINMAN: And I think that, ultimately,
25 when you do this kind of a 30.30 analysis, the reason it



1 doesn't really inform it is because it doesn't take a
2 holistic approach.

3 MS. REA: But we're not doing - - - that's the
4 problem is that the court below does a 30.30 analysis and
5 they should be a 30.20 analysis.

6 And as far as the policy - - - excuse me, going
7 back to Wiggins, where he's in prison and they're trying to
8 get - - - there is a policy behind these delays, Your
9 Honor. It's to get a plea. And after two-and-a-half years
10 and twenty-nine times in court, they got the plea. And
11 that's the policy here that has to end.

12 JUDGE FAHEY: So you - - -

13 CHIEF JUDGE DIFIORE: Thank you - - -

14 JUDGE FAHEY: So you think here that there was a
15 coercive attempt to get a plea on a violation? That's kind
16 of - - - of a stretch, isn't it?

17 MS. REA: That's what happens. Once the - - -

18 JUDGE FAHEY: Or you're saying that's business?

19 MS. REA: I'm just saying once the misdemeanors
20 are gone, nobody cares except my client, who has to come
21 into court twenty-nine times, and at the end, they get a
22 plea, and that's how it goes. And it shouldn't be that
23 way. It's their obligation, and it's the obligation of the
24 court to maintain some - - - thank you.

25 JUDGE FAHEY: I see. Well, I understand that.



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Anyway, thank you.

MS. REA: Thank you very much.

JUDGE FAHEY: Okay.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the court of Appeals of Matter of People of the State of New York v. Ganesh Ramlall, No. 10, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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