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COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Appellant,

-against-

NO. 54

CARLOS GALINDO,

Respondent.

27 Madison Avenue
New York, New York
May 18, 2022

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN

Appearances:

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1 CHIEF JUDGE DIFIORE: The next appeal on this
2 afternoon's calendar is appeal number 54, the People of the
3 State of New York v. Carlos Galindo.

4 Good afternoon, Counsel.

5 MR. WASHER: Good afternoon, Your Honor, may it
6 please the court. Eric Washer for the Office of the Queens
7 County District Attorney, Melinda Katz. Can I reserve two
8 minutes of rebuttal time, please?

9 CHIEF JUDGE DIFIORE: You may, sir.

10 MR. WASHER: When the Appellate term dismissed
11 defendant's convictions of two traffic infractions on
12 speedy trial grounds, they relied on the statutory
13 provision that took effect six years after the defendant's
14 arrest and nearly four years after his trial. The court
15 concluded that the extensive amendments to the criminal
16 procedure law that took effect in January 2020 had brought
17 traffic infractions within the ambit of the 30.30 statute,
18 but that conclusion was wrong.

19 Section 30.30(1)(e) did no such thing, but even
20 if it had done what the Appellate term thought it did, the
21 - - - that court's conclusions that the Pepper factors
22 mandated applying that statute retroactively were mistaken,
23 since the result in this case was that a statutory
24 provision that was supposedly new was applied to
25 proceedings that had taken - - - that had concluded years



1 earlier.

2 There are really two issues in this case, and the
3 first one is what did Section 30.30(1)(e) do, if anything,
4 and two, if it brought traffic infractions within the ambit
5 of 30.30, and should it be applied retroactively?

6 JUDGE RIVERA: Well, before you get to that,
7 Counsel - - - I'm on the screen. I'm wondering why it's so
8 necessary to do that in the order that you're going to
9 describe. I'm concerned about the retroactivity. I'm not
10 sure that we need to concern ourselves with retroactivity.
11 If the court were to conclude, contrary to your argument,
12 that 30.30(1)(e) was intended for honest face to mean the
13 traffic infractions are offenses for purposes of 30.30, and
14 if the court concludes that's exactly what it - - - what
15 the statute meant before, why do we need to really do any
16 retroactivity analysis?

17 MR. WASHER: Well, Your Honor - - -

18 JUDGE RIVERA: Don't we come out in the same
19 place if we decide that the statutes pre-amendment and
20 post-amendment, that statute covers traffic - - - traffic
21 infractions, excuse me, as offenses for purposes of the
22 statute?

23 MR. WASHER: Well, Your Honor, I don't - - - I
24 don't think the court can affirm on that basis because that
25 really wasn't preserved below. The argument that's being



1 advanced here is that when traffic infractions are charged
2 along with a greater offense that's subject to 30.30, then
3 in that case - - - but not when they're - - - not when
4 they're charged standing alone, but in that case, that they
5 should be dismissed, but when the greater charge has
6 exceeded its speedy trial time.

7 But that really wasn't litigated below and it
8 really should have been, because at the time, the Appellate
9 term's cases were completely to the contrary, so that
10 really wasn't brought to the attention of - - - of the - -
11 - of the criminal court - - -

12 JUDGE RIVERA: Well, no, but what's litigated is
13 whether or not the motion to dismiss the indictment also
14 includes these traffic infractions, so the analysis is
15 whether or not the statute applies. My question was only
16 if the court - - - I'm not saying we would. I'm just
17 saying, if the court were to decide that the pre- and post-
18 amendment versions of the statute function exactly the
19 same, we don't have to do a retroactivity analysis.

20 We can just figure out whether or not indeed they
21 are, as the Appellate term concluded, a statutory mandate
22 that if the misdemeanors, right, if the people exceeded the
23 time for the prosecution of this criminal action because
24 you exceeded the time on the misdemeanors, does the traffic
25 infractions also have to go because the entire instrument



1 goes?

2 MR. WASHER: Well, you wouldn't - - - you
3 wouldn't do a retroactivity analysis if you found that
4 previously, in a pre-January 1st, 2020, that this law
5 included traffic infractions, but of course, I think this
6 is a much easier case based for us on the language at the
7 time. Traffic offenses were not mentioned at all at that
8 point, so (1)(e) does mention traffic offenses for the
9 first time, but previously, it didn't, so - - -

10 JUDGE RIVERA: But traffic infractions have
11 always been offenses. I mean, that has not changed.

12 MR. WASHER: They've always been offenses, but
13 pre-January 2020, there was no mention of them in the 30.30
14 statute. Therefore - - -

15 JUDGE RIVERA: But why would you need to if
16 they're offenses? If they're already within the category,
17 why would you need to?

18 MR. WASHER: Because you can't dismiss an account
19 on speedy trial grounds unless there's a speedy trial time
20 period associated with it, and - - -

21 JUDGE RIVERA: Well, this is what - - - okay, and
22 I want to ask you about this because I found this very
23 confusing in the briefing. As I understand the statute,
24 the instrument is what's dismissed. It's not count by
25 count, because you're looking at the top grade, right?



1 MR. WASHER: No, no.

2 JUDGE RIVERA: So if you had up to six months,
3 right, because there's a felony. If you had up to six
4 months and the court concludes it's exceeded beyond the six
5 months, it's not like the misdemeanors can stay, correct?

6 MR. WASHER: No - - - well, no, the misdemeanors
7 can't stay because they are - - - they have their own
8 speedy trial times, so if you've exceeded six months,
9 you've exceeded ninety days or sixty days, but I don't
10 agree that the statute mandates dismissal of the entire
11 accusatory instrument - - -

12 JUDGE RIVERA: Okay, so let me understand - - -
13 let me just understand the way you - - - this is very
14 helpful to me. The way you view the statute to work, that
15 if you've got the felony - - - let's just say a felony and
16 a misdemeanor, and the time for the misdemeanor is
17 exceeded, then you can make a motion at that point, right?

18 You don't have to wait the full six months on the
19 felony. You can just wait for the time period which is of
20 course less time on the misdemeanor and make that motion
21 for just the misdemeanor. Am I understanding you
22 correctly?

23 MR. WASHER: I think - - - yes, but I think as a
24 practical matter, you wouldn't do it because you would - -
25 - you would then - - - then one of the exceptions to the



1 speedy trial time would kick in, and you'd be - - - you
2 wouldn't - - - you wouldn't keep - - - you would stop the
3 clock as to the felony, so I don't think as a practical
4 matter, people would do that, but yes, I think - - -

5 JUDGE RIVERA: So then how could it possibly
6 function the way you say? I mean, the statute is intended
7 to avoid the delay by prosecutors, which is to the benefit
8 obviously of the defendant, so how can it possibly function
9 the way you argue as opposed to the way they argue, which
10 is you count from the highest grade?

11 MR. WASHER: Well, you - - -

12 JUDGE GARCIA: Counsel, can I - - - can I
13 interrupt here for a second?

14 MR. WASHER: Yeah.

15 JUDGE GARCIA: I have a question. It seems to me
16 that the way the statute works is it inflates the lower,
17 lesser crime to the higher statute of limitations, so if
18 you have a misdemeanor and a felony, you get the six months
19 for the felony, when you make a motion under 30.30, you're
20 referred to 170 or the other procedural vehicle, you'd
21 dismiss the instrument in that case because the lower
22 statute has necessarily been subsumed, right?

23 MR. WASHER: Yeah.

24 JUDGE GARCIA: So if you blow by the six months
25 speedy trial time, you've blown by the thirty days for the



1 misdemeanor, right?

2 MR. WASHER: Yes.

3 JUDGE GARCIA: So it elevates that statute, the -
4 - - the 30.30 time for the lower crime?

5 MR. WASHER: Right.

6 JUDGE GARCIA: My understanding is for traffic
7 infraction then and now, there is no speedy trial clause?

8 MR. WASHER: Yes, so that - - -

9 JUDGE GARCIA: So when the motion gets made under
10 170, let's say it's tied to a misdemeanor, you dismiss the
11 misdemeanor, but there's no - - - still no speedy trial
12 clock for the traffic infraction?

13 MR. WASHER: Yes, and - - - and that's - - -
14 that's exactly our point, so notwithstanding the fact that
15 traffic infractions have always been offenses, you know,
16 the Appellate terms has always held that - - -

17 JUDGE GARCIA: They just never had a speedy trial
18 clock.

19 MR. WASHER: Correct.

20 JUDGE GARCIA: And they still don't.

21 MR. WASHER: And they still don't, so as - - - as
22 to your point, it doesn't make sense to say that traffic
23 infractions are subsumed within the speedy trial analysis
24 for the greater offense because they don't have a speedy
25 trial time by design.



1 JUDGE GARCIA: Now, let me ask you this. If you
2 had a misdemeanor DWI and you just charge it an
3 information, and you go by whatever the clock is for that
4 under speedy trial. Let's say it's three months, whatever,
5 and it gets dismissed, can you bring a traffic infraction
6 based on the same facts and circumstances that underlie the
7 misdemeanor count?

8 MR. WASHER: If it hadn't been charged initially
9 in the information?

10 JUDGE GARCIA: No, like, you charged it in the
11 information but you lost it on speedy trial grounds as a
12 misdemeanor. Can you charge a traffic infraction based on
13 the same conduct?

14 MR. WASHER: I - - - well, as - - - yes, if it's
15 in the same accusatory instrument, that we could proceed as
16 to the infraction - - -

17 JUDGE GARCIA: No, but let's say you just never
18 charged it as a traffic infraction?

19 MR. WASHER: I'm - - - I'm not sure that you
20 could in a misdemeanor. I think there are felony scenarios
21 when - - - where there's been a dismissal on speedy trial
22 grounds where you could - - - you could bring another
23 accusatory instrument, but I'm not sure that you could do
24 it in your situation.

25 JUDGE GARCIA: Okay.



1 MR. WASHER: I see my light's almost on, but I do
2 want to address retroactivity. I think that there are a
3 few procedural rules that are more ill-suited to
4 retroactivity and retroactive application than speedy trial
5 provisions, because essentially, when you have a new speedy
6 trial provision for a class of offenses that never existed,
7 basically, what's going to happen is as the date - - - the
8 effective date comes, then you're going to have dismissals
9 of any cases that - - - that don't meet the speedy trial
10 requirements that never existed.

11 So when you think about retroactivity and
12 reliance interests, and it just doesn't make any sense to
13 do what the Appellate term held here, and I think that
14 there's really no legislative history that would suggest
15 that's what the legislature intended. It's an irrational
16 result that there was - - - of course, there was an eight-
17 month delay, here - - -

18 JUDGE RIVERA: What's - - - Counsel, what's the
19 test that's applied? Is it Pepper or something else?

20 MR. WASHER: It's not Pepper because (1)(e) is -
21 - - is a statutory amendment, so we're looking at the rules
22 of statutory interpretation. We're trying to determine
23 what the legislature intended. Pepper is a set of rules
24 that this Court uses when it's trying to determine whether
25 its own new rules apply retroactively, but that's a very



1 different analysis than trying to discern what the
2 legislature has done, here.

3 And I think there's essentially agreement between
4 - - - between myself and my adversary that the legislature
5 history here is not clear, and you would expect that when a
6 new speedy trial provision was going to apply
7 retroactively, if that's what the legislature intended, and
8 we don't think that it is, that there would be very clear
9 legislative history and a statement of legislative intent.
10 That's - - -

11 CHIEF JUDGE DIFIORE: Thank you, Counsel.

12 MR. WASHER: Thank you.

13 CHIEF JUDGE DIFIORE: Counsel?

14 MS. GLADSTEIN: Good afternoon, may it please the
15 court. Hannah Gladstein for the defendant/respondent, Mr.
16 Galindo. The plain language of CPL 30.30 then and now
17 designates one time limitation for one criminal action.

18 JUDGE GARCIA: But I have trouble understanding
19 that because 30.30 doesn't provide anything in way of
20 procedure for dismissing. It just says the motion under a
21 different statute should be granted, but in example 170.25
22 I think it is for informations and complaints, that
23 provides for dismissal of individual counts, so when the
24 ordinary time - - - if you don't have a traffic infraction,
25 if you blow by the higher speedy trial time, by necessity,



1 everything else is gone, so you do dismiss the instrument.

2 But when you have a traffic infraction, it's
3 viable because there is no time limit on it. It's not - -
4 - to me it seems that the traffic infraction gets a shorter
5 time limit because it's married with more serious charges.
6 It still doesn't have any time limit.

7 MS. GLADSTEIN: Well, as to the idea that we can
8 make count-by-count motions to dismiss based on 170.35,
9 it's our position that that's a statute of very general
10 applicability that governs motions to dismiss for a host of
11 grounds, many of which you would want to go count by count.
12 Facial sufficiency of a misdemeanor accusatory instrument.

13 However, that general statute, which is external
14 to 30.30, cannot sort of overwrite the internal logic - - -

15 JUDGE GARCIA: But then why did they refer to it?
16 They could have just said shall be dismissed. They
17 referred to the mechanism in the other statute.

18 MS. GLADSTEIN: I think that there are timing
19 procedures in the - - - in the other - - - the other
20 statute just sort of authorizes the motions. I think that
21 30.30 contains its own language designating specific time
22 limitations attached to a criminal action as a whole and
23 applicable to all of the offenses therein. The People's
24 construction of 30.30, where even if an offense is joined
25 in an action with other - - - with other offenses that are



1 subject to a time limitation, that simply because there's
2 no - - - they're grafting in this requirement that's not
3 there in the statute, that it only applies to the - - -

4 JUDGE SINGAS: Well, aren't you doing the same
5 thing, Counsel, because you keep saying, treat it as a
6 whole, but the statute itself treats it separately
7 depending on whether it's a felony, a misdemeanor, a
8 violation. So the statute's not treating it as a whole.
9 The statute, as Judge Garcia says, references 170.30 which
10 specifically talks about individual charges, so aren't you
11 really making the same assumption, just the other way?

12 Can't we at least say that perhaps it's
13 ambiguous?

14 MS. GLADSTEIN: Well, I think that where - - -
15 where we all agree is that traffic infractions are
16 offenses, and when you look at the language of the statute,
17 it says a criminal action must be dismissed within, let's
18 say, ninety days for - - -

19 JUDGE GARCIA: But it doesn't say that; it
20 doesn't say that. It says a motion shall be granted,
21 right?

22 MS. GLADSTEIN: It says a motion to dismiss must
23 be granted when they're not - - -

24 JUDGE GARCIA: Under statute 170.30.

25 MS. GLADSTEIN: Right.



1 JUDGE GARCIA: Which provides for count by count.

2 MS. GLADSTEIN: Well, so let's - - - so as to the
3 question that was posed before about whether then the
4 defense could just file serial motions at thirty days,
5 sixty days, ninety days, the People say that practically,
6 that's not going to happen, but it - - - it might. Like,
7 let's say for example, that a defendant who has a long
8 history of convictions for 220.03, the class A misdemeanor
9 of drug possession, picks up another one of those cases but
10 also is charged in the same accusatory instrument with the
11 B misdemeanor of sex abuse 3, which carries tremendous
12 consequences, SORA registration.

13 That person will have a real interest in getting
14 rid of that B misdemeanor at the earliest possible time, so
15 there are these instances where a person will file that
16 motion at sixty days and then there will be another one - -
17 -

18 JUDGE GARCIA: But I think you would lose - - - I
19 think you would lose that motion all the time under the
20 statute because the lower statute for the lesser crime,
21 although it may have different consequences, but as defined
22 here, the lesser crime is elevated. It's inflated to the
23 greater, so if you marry that misdemeanor with a - - - with
24 a felony, you get six months before you can make your
25 motion under 30.30, right?



1 MS. GLADSTEIN: Well, I think that - - - I think
2 that there is a sort of practical sense in which that is
3 what ends up happening, but that's because they are joined
4 in the criminal action, and it's not because 170.30
5 authorizes count-by-count treatment of the accusatory
6 instrument.

7 I mean, if - - - if that's - - - if that's where
8 we end up, then I think we do wind up in this universe
9 where you can - - -

10 JUDGE GARCIA: I think that one of the purposes
11 of 30.30, though, seems to me - - - yes, it sets the time
12 limits, and the People have to be ready, and that burden is
13 on them, but because the different counts may have
14 different time limits, instead of doing this where, okay,
15 you're not ready in three months. On the misdemeanor,
16 we're going to move to dismiss, and then two months, we're
17 going to move to dismiss on the lesser misdemeanor, it
18 gives the People then six months to be ready on anything
19 that had a lesser 30.30 time.

20 So you can't make a motion against the
21 misdemeanor under 30.30 because that statute, that time,
22 that 30.30 time has been inflated to six months.

23 MS. GLADSTEIN: Well, I - - - what the statute
24 says is that they have six months to be ready on the
25 criminal action and the offenses joined therein. I - - - I



1 - - -

2 JUDGE GARCIA: I don't think it says that.

3 JUDGE RIVERA: Well, Counsel, let me - - - let me
4 ask you this while you're looking at that, because I cannot
5 read it as clearly perhaps, and I may be missing your
6 conversation and your colloquy with Judge Garcia. It does
7 seem to me that each one is - - - is exclusive because it -
8 - - A applies if there's a felony; B applies if there is
9 not a felony, so it - - - no, you can only look at A if
10 you've got something that has a felony. It's not that one
11 is subsumed in the other.

12 Each of them applies through a different kind of
13 criminal action and D applies when nothing is a crime, so I
14 - - - I - - - I'm having difficulty, and perhaps when
15 you're answering Judge Garcia, you can address that also.

16 JUDGE GARCIA: D applies when one is a violation,
17 I thought, but my point is just that you need to have the
18 two, but where you have the two, you have a misdemeanor and
19 a felony, you elevate the misdemeanor speedy trial time to
20 six months because you don't want these motions saying
21 you're not ready on the misdemeanor, dismiss that, but you
22 still have six months on the felony.

23 MS. GLADSTEIN: I - - - I disagree that that's
24 how this statute reads. It's ninety days for the action.
25 It does not provide for separate clocks - - -



1 JUDGE GARCIA: But it doesn't say action, right?

2 MS. GLADSTEIN: Ninety days - - -

3 JUDGE RIVERA: It does say action. It says
4 criminal action.

5 MS. GLADSTEIN: Yes.

6 JUDGE RIVERA: And D does say, not a crime.

7 MS. GLADSTEIN: It says - - -

8 JUDGE GARCIA: It says ninety days from the
9 commencement of the criminal action, but it's not tied to
10 what the charges are, there.

11 MS. GLADSTEIN: Well, I would - - - I would then
12 go back to this court's decision in People v. Cooper, which
13 analyzed - - - in that instance, the question was, what was
14 the effect of the reduction from an A to a B, and the court
15 was very clear in that case that there is one clock for one
16 criminal action that begins on the date of commencement,
17 and that date of commencement only changes under the very
18 narrow circumstances delineated in what was then 30.30 sub
19 5.

20 It is now 30.30 sub 7, so Cooper actually does
21 hold that it - - - it does go by the action. There, the
22 reduction from an A to a B, this court held didn't change
23 the complexion of the case because - - - because the - - -
24 there - - - it was not one of the 30.30 sub 5
25 circumstances, so there - - - there was - - - the court was



1 very clear that there was one clock for the action.

2 So Cooper, I think, is instructed in this case.
3 I do want to address presentation and reviewability since
4 the People did raise that. This court - - - well, the
5 issue was - - - was preserved in the criminal court by Mr.
6 Galindo's motion which sought dismissal of the entire
7 accusatory instrument, and the motion court expressly ruled
8 that 30.30 did not apply to traffic infractions, and then
9 because of the posture in which this case reaches this
10 court, 470.35(2)(a) squarely puts this case within this
11 court's purview.

12 This is a question of law decided adversely to
13 Mr. Galindo in the criminal court. He was the appellant
14 below and he is the respondent here. This Court can reach
15 this issue even if the Appellate - - - the Appellate term
16 had not touched it at all, and under 470.35(2)(a), this
17 court can affirm the decision of the Appellate term while
18 substituting its own reason, which is what we would propose
19 because we agree with the Appellate term in its
20 construction of 30.30 and how it treats traffic infractions
21 when joined with misdemeanors.

22 However, where we part company with the Appellate
23 term is its holding that (1)(e) somehow worked a change in
24 the statute. It's our position that that's how it always
25 was. This Court does not even need to reach the



1 retroactivity issue that - - -

2 JUDGE SINGAS: Well, Counsel, how could it be
3 that it always was, because is the placement significant
4 putting (1)(e), that language now under 30.30 and using the
5 language that's specifically the antithesis of Gonzalez
6 certainly indicates some legislative intent. Do you agree?

7 MS. GLADSTEIN: Well, I - - - yes, I think that
8 (1)(e) was pretty clearly intended to aggregate Gonzalez.
9 It's very directly responsive to this idea that the
10 legislature, had they not intended traffic infractions to
11 be covered, would have used the term, petty offenses, which
12 is a position that the People don't even adopt. They
13 disclaimed that in their leave letter to this court.

14 So what they were - - - the addition of (1)(e)
15 left A through D entirely untouched, and (1)(e) was simply
16 meant to clarify that when a traffic infraction is one of
17 the offenses joined in a criminal action in a - - - that is
18 governed by A through D, it must also be dismissed, so - -
19 -

20 JUDGE GARCIA: But Counsel, if the - - - if the
21 statute - - - let's just assume, meant what the Appellate
22 terms had interpreted it to mean before the amendment,
23 right? Let's assume that it did just for now. How did
24 (1)(e) change the meaning?

25 MS. GLADSTEIN: Well, I'm not sure I'm - - -



1 JUDGE GARCIA: Because let's assume the Appellate
2 terms were right. They were interpreting it correctly,
3 that the traffic infractions didn't get dismissed the way
4 this was written. How does (1)(e) change that?

5 MS. GLADSTEIN: Well, I think that there is no -
6 - - I think that if this court is going to abide by the
7 maxim of statutory interpretation that instructs this court
8 to give meaning to a legislative enactment and not assume
9 superfluity, then we really have to read it as an - - - an
10 abnegation of Gonzalez and that line of cases. Otherwise -
11 - -

12 JUDGE GARCIA: And I understand that would be
13 kind of the purpose of what they were doing, but as a
14 practical matter in terms of changing the mechanics of the
15 statute, how would it affect the analysis?

16 MS. GLADSTEIN: It - - - in what sense?

17 JUDGE GARCIA: Because they were always offenses,
18 so if before, then the Appellate term was right, assume,
19 and that it didn't apply to traffic infractions as written.
20 How does the change in (1)(e) change the mechanics of that
21 analysis other than - - - I understand your point, the
22 intent of the legislature was to change it. I accept that
23 position for this purpose, but what changed mechanically?

24 MS. GLADSTEIN: Well, I - - - if you assume - - -
25 it - - - it's kind of a paradoxical question or maybe I'm

1 not understanding it, but if you assume that the - - - if
2 you assume that the Appellate terms were correct before,
3 then what you're assuming is that the legislature intended
4 - - - it should have used the term, petty offense, which
5 (1) (e) is - - -

6 JUDGE GARCIA: Well, there are a lot of ways they
7 could have done it to make it clear but they chose this,
8 and I'm just saying, put aside their intent. If I just
9 look at that language, and offenses always meant traffic
10 infractions, what practical effect would that have on the
11 operation of the statute?

12 MS. GLADSTEIN: Well, if traffic infractions
13 always meant offenses, then what that means is that when
14 you reach the time limitation for a criminal action that a
15 traffic infraction is joined in, then it would be dismissed
16 along with the rest of the offenses. I see that my time is
17 up.

18 CHIEF JUDGE DIFIORE: Thank you, Counsel.

19 Counsel, your rebuttal?

20 MR. WASHER: I just want to quickly address the
21 last point that Judge Garcia was asking about. If the
22 legislature had intended to abnegate this long line of
23 Appellate term decisions, it didn't do the one thing that
24 it needed to do, which was to assign a speedy trial time to
25 traffic infractions.



1 That which was the basis for the Appellate term's
 2 decisions for all of those years. It wasn't that traffic
 3 infractions weren't offenses. Of course they were. They
 4 always have been. That's clear, but the Appellate term's
 5 basis for excluding them from 30.30 was that they didn't
 6 have a speedy trial time, so therefore, you cannot dismiss
 7 them simply because a greater offense has exceeded its
 8 speedy trial time.

9 There was also some conversations about
 10 170.30(1)(e) that really does control, here. That allows
 11 for the dismissal of the entire accusatory instrument or
 12 any count thereof. That's of course referenced in 30.30
 13 subdivision e, and so that's - - - that's what happens in
 14 these cases, and that's the other statute the Appellate
 15 terms relied on when they found that you could - - - you
 16 could have an offense, a misdemeanor being dismissed on
 17 speedy trial grounds, but the traffic infraction would
 18 still remain.

19 Lastly, I do think that we have to - - -

20 JUDGE RIVERA: But can you - - - Counsel, can you
 21 address - - - I'm sorry, I'm on the screen. Address the
 22 argument regarding sort of the - - - the general - - - the
 23 generalness of those two cross references and because the
 24 title of both is a motion to dismiss, and it's sort of the
 25 entire accusatory instrument. It's not to dismiss counts.



1 It's in the description, absolutely, but it does say the
2 instrument or any count thereof, and defense counsel argues
3 that's because some of them of course make sense.

4 One could do it by count, but given the structure
5 of 30.30, which is the specific statute, it could not be by
6 count. It has to be by dismissal of the entire instrument.
7 What - - - why is she wrong about that?

8 MR. WASHER: I think she's wrong about that
9 because it makes sense in this specific circumstance.
10 Traffic infractions do not have a speedy trial time, so
11 therefore, in the specific case where you have any other
12 offense that is covered by subdivisions (1)(a) through (d),
13 then those counts are subject to dismissal on 30.30
14 grounds, but the traffic infraction is not.

15 So it makes sense that 170.30(1)(e) allows for,
16 in some cases, the dismissal of the entire accusatory
17 instrument, and in some cases, some of the counts, but not
18 all of the counts, particularly traffic infractions because
19 they're not governed - - -

20 JUDGE RIVERA: But - - - but let me ask you this.
21 I mean, look, a traffic infraction is civil, correct?

22 MR. WASHER: Yes, it's not a crime.

23 JUDGE RIVERA: Okay. Yeah, so it's not a crime.
24 It may be included in these instruments with these other
25 crimes, with the crimes, or with the violation that says



1 none of which is a crime. That's letter D.

2 MR. WASHER: Right.

3 JUDGE RIVERA: So it certainly makes sense given
4 that it's not criminal, not the seriousness of it, but
5 you're not necessarily finding a reason to include a time
6 because the time is only relevant really if you're going to
7 have just two infractions. Otherwise, the other times
8 would fit, right, because they're each exclusive to one
9 another. That's my point.

10 A is if you have a felony.

11 MR. WASHER: Right.

12 JUDGE RIVERA: B applies if there is no felony,
13 right? So I mean, that's the way that works. They're
14 exclusive to one another. They're cabined.

15 MR. WASHER: Right, but - - -

16 JUDGE RIVERA: So the entire instrument falls
17 because you're always looking to the highest grade.

18 MR. WASHER: Right, and that certainly is - - -
19 is ordinarily the case, but it couldn't be the case when
20 you have something like a traffic infraction that has no
21 speedy trial limitation to it, and you know - - -

22 JUDGE RIVERA: Well, I don't - - - that's what
23 I'm saying. I'm not sure I understand that, because the
24 point is the criminal action fails.

25 MR. WASHER: No, the - - -



1 JUDGE RIVERA: So this is an offense that's - - -
2 that's part and parcel of the highest grade.

3 MR. WASHER: Well, no - - - well, on that, you
4 know, I disagree. Going back to 170.30(1)(e), that you
5 don't have to dismiss the entire accusatory instrument, and
6 I think so - - - you know, the argument here is really
7 premised on the idea that it was sort of irrational for the
8 legislature to exclude traffic infractions because they're
9 just another kind of petty offense, but it's not
10 inconceivable that the legislature made a choice not to
11 include them because they're not crimes.

12 They don't have some of the characteristics that
13 animate speedy trial statutes to begin with. Most people
14 will get charged with a traffic infraction at some point.
15 It's not the sort of thing that hangs over your head, and
16 you know, doesn't allow you - - -

17 JUDGE RIVERA: Right, and so I agree with you
18 it's very logical on its own that the legislature might - -
19 - given - - - given all that the legislature has to
20 consider, that might not be something that troubles them,
21 because it's not a crime. It's - - - it's a civil offense
22 and it doesn't have the same stigma attached to it.

23 I assume there are people who get traffic
24 infractions, many people, so - - - but the others, yes,
25 there would be a stigma attached to it and they are a



1 criminal other than that letter D that says nothing is a
2 crime. So in that sense, it's - - - right, if they're - -
3 - if all you have are traffic infractions, you can see why
4 it wouldn't be covered, but there does seem to be logic to
5 the legislature determining that it gives a max amount of
6 time based on the highest grade for the prosecution to
7 declare readiness.

8 We all understand that it actually may exceed
9 this time because you might deduct periods of some delay
10 that are - - - that should not fall on the shoulders of the
11 prosecutor at all, so it should not undermine their
12 prosecutorial and investigatory process, but it - - - if
13 indeed you've got the highest grade and you've exceeded the
14 time for the highest grade, then everything falls, and
15 something that's civil should not be able to continue.
16 Doesn't that make sense? I mean, there's a logic to that,
17 is there not?

18 MR. WASHER: Well, there's a logic to that, but -
19 - - but respectfully, I think there's a logic for excluding
20 them as well for - - - for the reasons that I've stated,
21 that - - - that they don't simply

22 JUDGE WILSON: Well, I thought that your - - - I
23 thought that your principle - - - your first argument was
24 that the legislature intended to do that but failed to do
25 it in the way they wrote the legislation.



1 MR. WASHER: Well, I - - - I think that there's
2 possibly - - - two possible explanations for (1)(e). One
3 is that the legislature tried to do this but they didn't do
4 the thing that they needed to do to accomplish it.

5 Now, there's also some - - - some - - -

6 JUDGE WILSON: And that's the first argument that
7 you made?

8 MR. WASHER: That - - - that is.

9 JUDGE WILSON: Okay.

10 MR. WASHER: But we've also included some
11 materials in - - - in the appendix which show that - - -
12 that, you know, there were drafts of this legislation that
13 were circulated through the codes committee that did make
14 traffic infractions part of (1)(d), and - - - but they
15 didn't end up in the legislation ultimately, and that might
16 be an indication that the legislature - - - the legislature
17 thought about this and ultimately abandoned the idea, and
18 (1)(e) was something that - - -

19 JUDGE WILSON: Yeah, but that depends on - - -
20 that depends on I think the conclusion that the legislature
21 took the trouble of enacting an amendment that had no
22 effect.

23 MR. WASHER: Well, no. I - - - I'm not sure that
24 would necessarily be correct. This was obviously
25 negotiated through the budget process. It was a huge piece



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of legislation, so (1)(e) could have been something that was left in inadvertently. That's also a possible explanation because it really has no effect. It's something - - - it's a redundancy that didn't cure the problem that the defense suggests that it intended to cure.

CHIEF JUDGE DIFIORE: Thank you, Counsel.

MR. WASHER: Thank you, Your Honor.

THE BAILIFF: All please rise.

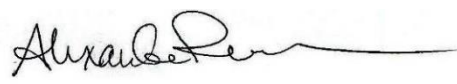
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C E R T I F I C A T I O N

I, Alexander Reaves, certify that the foregoing transcript of proceedings in the Court of Appeals of The People of the State of New York v. Carlos Galindo, No. 54 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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