

STATE OF NEW YORK
COUNTY COURT COUNTY OF RENSSELAER

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

MARCEL HART-YOUNG,

Defendants.

DECISION AND ORDER

Rensselaer County Court
Hon. Debra J. Young, County Judge
Indictment No. 21-1096 Index No. 269911

Appearances:

Hon. Mary Pat Donnelly
Rensselaer County District Attorney
(William Andrews, Esq., of Counsel)
For the People
Rensselaer County Courthouse
Troy, New York 12180

Joel Abelow, Esq.
For the Defendant
1702 Central Avenue
Albany, New York 12205

Young, J.:

The above-named defendant is charged with Attempted Assault in the First Degree, a class C felony (Penal Law §§ 110, 120.10 [1]); Assault in the Second Degree, a class D felony (Penal Law § 120.05 [2]); and Criminal Possession of a Weapon in the Fourth Degree, a class A misdemeanor (Penal Law § 265.01 [2]). Defendant filed an omnibus motion and the People filed an affirmation in opposition, together with the grand jury minutes and exhibits. Defendant filed a Reply Affirmation and the People filed a Sur Reply Affirmation. The Court issued a Decision and Order directing the parties provide the Court with certain discovery related information. The parties have now done so and defendant has filed a further motion to vacate the Certificate of Compliance and the People oppose the application.

Defendant seeks to invalidate the People's Certificate of Compliance dated November 9, 2021 alleging that it was illusory and not filed in good faith. Defendant asserts that much of the discovery materials turned over on November 8, 2021 and November 19, 2021 were in existence at the commencement of the case on May 14, 2021 when the felony complaint was issued. Defendant continues to maintain that the People have not provided the grand jury testimony to date. Defendant argues that without the testimony a defense cannot be prepared and thus he is prejudiced and that the case should be dismissed as a sanction for the People's failure to comply with discovery laws. The People have not controverted the assertion that grand jury testimony has not been turned over. Defendant also asserts that the Certificate was not filed until November 19, 2021, well after the statutorily required time frame. The People have argued that while they prepared the Certificate and disclosure on November 9, 2021, they did not file it until the 19th when there was a scheduled appearance and assert that the time between arraignment and the

scheduled court appearance is excludable under the circumstances. The People do not explain their failure to disclose the grand jury minutes and have yet to disclose the grand jury minutes.

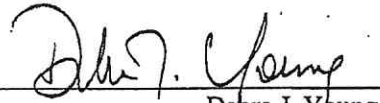
CPL 245.20(1) mandates that the grand jury minutes be disclosed as a part of automatic discovery and also allows for an automatic thirty (30) day extension of time within which to disclose those minutes due to the limited availability of transcription resources. Review of the Court's file reveals that the People had in their possession the grand jury minutes on December 14, 2021¹ and inexplicably failed to disclose them to defense counsel. The People provide no explanation for this failure, have not filed a Supplemental Certificate of Compliance nor have they sought an extension of time within which to disclose those minutes. Due diligence and good faith cannot be presumed from an empty record.

Failure to provide discovery may result in sanctions provided defendant articulates prejudice resulting from that failing (CPL 245.20 [5]; CPL 245.80). Here, defendant has asserted that he has not been able to prepare his defense² due to the People's failure to comply with CPL 245.20(1)(b). Given the unexplained failure to date to provide some of the automatic discovery materials and the failure to timely comply with automatic discovery warrants the drastic remedy of dismissal of this case (CPL 245.80 [2]). Accordingly, it is hereby

ORDERED that the case is dismissed.

This shall constitute the Decision and Order of the Court.

DATED: Troy, New York
April 27 2022


Debra J. Young
County Judge

¹ The People provided the grand jury minutes to the Court on December 14, 2021. Defense counsel is not included on the correspondence and avers that he has yet to receive those minutes.

² It should be noted that defense counsel has diligently litigated this case by filing multiple timely motions challenging the People's Certificate of Compliance and did not sit idly by waiting for the speedy trial clock to expire.