



## CRIMINAL DISCOVERY: SELECTED 2023 TRIAL COURT DECISIONS

### General Mandatory Disclosure

#### ***People v Gutierrez***

The defendant moved to invalidate the People's COC and dismiss the charges because the People failed to disclose materials related to a ShotSpotter activation. Bronx County Supreme Court granted the motion. The People argued that ShotSpotter materials are not automatically discoverable because they are generated and maintained by an agency not under their control. However, the NYPD has wide access to ShotSpotter records—making them within the People's custody and control and automatically discoverable. The Legal Aid Society of NYC (Kyla Wells, of counsel) represented the defendant.

[People v Gutierrez \(2023 NY Slip Op 23022\)](#)

#### ***People v Simmons***

The defendant moved to invalidate the People's COC and SOR because they failed to disclose the complaints, case summaries, and other underlying materials for the complainant's criminal convictions. Bronx County Supreme Court denied the motion, concluding that the People complied with CPL 245.20 (1) (p) by disclosing the list of criminal convictions, which included the date of conviction, Penal Law section, county in which the conviction was obtained, and docket or indictment number.

[People v Simmons \(2023 NY Slip Op 23016\)](#)

### Good Faith and Due Diligence Requirements

#### ***People v Bay***

The defendant appealed from a Cortland City Court judgment convicting him of 2<sup>nd</sup> degree harassment after a nonjury trial. Cortland County Court affirmed. The People's SOR was not illusory even though they did not disclose a 911 recording, a DIR, and a police report until after their speedy trial time had expired. After repeated defense requests, the People discovered missing items and provided them soon thereafter. City Court properly found that the People's failure to timely disclose the missing items did not invalidate the COC, but warranted the sanction of precluding the 911 recording at trial. The People were found to have acted in good faith and with due diligence. [NOTE: The Court of Appeals granted leave to appeal on Feb. 15, 2023 (39 NY3d 1077)]. The Cortland County Public Defender (Kayla Hardesty, of counsel) represented the appellant.

[People v Bay \(2022 NY Slip Op 22413\)](#)

#### ***People v Cummins***

The defendant moved to strike the People's COC and SOR as invalid and illusory. Albany City Court granted the motion. Two weeks after the People stated readiness—just before the scheduled suppression hearings—they filed a supplemental COC disclosing two police officers as additional witnesses. These officers had signed the Bill of Particulars, arrest reports, and accusatory instruments; their identities and involvement were known

to the People. The People did not explain their belated disclosure or describe any efforts to ascertain the existence of these witnesses. Their efforts were not made in good faith and were unreasonable. The Albany County Public Defender (Richard A. Burger, of counsel) represented the defendant.

[People v Cummins \(2023 NY Slip Op 30780\[U\]\)](#)

### ***People v Diallo***

Bronx County Criminal Court invalidated the People's COC and SOR and dismissed the information on speedy trial grounds, rejecting the People's argument that, although they failed to provide discovery within the statutory timeframe, they had exercised due diligence. They did nothing to obtain the discovery for the first 76 days of the prosecution, and their efforts thereafter were passive at best. Furthermore, they could have requested an extension, but failed to do so. Because there were at least 102 days chargeable to the People, dismissal was required. The Legal Aid Society of NYC (Benjamin R. Williams, of counsel) represented the defendant.

[People v Diallo \(2023 NY Slip Op 50255\[U\]\)](#)

### ***People v McGee***

The People requested an extension based on good faith to provide discovery to the defense pursuant to CPL 245.70 (2). The defendant cross-moved for dismissal. Kings County Criminal Court granted the People's motion. The People demonstrated due diligence in obtaining outstanding discovery based on emails detailing their efforts. Their failure to start trying to obtain discovery until 72 days after arraignment did not invalidate their COC or SOR.

[People v McGee \(2023 NY Slip Op 50380\[U\]\)](#)

### ***People v Rafoel***

The defendant moved to invalidate the People's COC and SOR and dismiss the charges because the People failed to make diligent, good faith efforts to ascertain the existence of police reports and a controlled call until seven weeks after discovery was due. Queens County Criminal Court found that the COC and SOR were invalid. The People improperly withheld police disciplinary records and provided only summary letters. Because 152 days were chargeable to the People, dismissal was required. The Legal Aid Society of NYC (Alisha Babar, of counsel) represented the defendant.

[People v Rafoel \(2023 NY Slip Op 50076\[U\]\)](#)

### ***People v Sanders***

The defendant filed a CPL 30.30 motion challenging the validity of the People's COC and supplemental COC. New York County Criminal Court granted the motion. The People failed to disclose all records related to unsubstantiated and substantiated misconduct of their police witnesses. The People's request for these items—made on the last day of chargeable time and one minute before they filed their COC and SOR—did not demonstrate good faith or due diligence. The Legal Aid Society of NYC (Shana Knizhnik, of counsel) represented the defendant.

[People v Sanders \(2023 NY Slip Op 50190\[U\]\)](#)

### ***People v Taveras***

The defendant moved to invalidate the People's COC and SOR based on their failure to disclose allegations of misconduct filed with the NYC Civilian Complaint Review Board ("CCRB"), court rulings, and officer testimony in a prior case where the officer was found incredible. Bronx County Criminal Court granted the motion. While the CCRB and court records were not in the People's actual or constructive possession, the prosecution did not make the required diligent, good faith efforts to verify the existence of these records and make them available to the defendant. But only 78 days were chargeable to the People so dismissal was denied. The Bronx Defenders (Marissa Balonon-Rosen, of counsel) represented the defendant.

[People v Taveras \(2023 NY Slip Op 50074\[U\]\)](#)

### ***People v Torres***

The defendant moved to dismiss the charges against him pursuant to CPL 30.30. Queens County Criminal Court granted the motion. Defense counsel notified the People that bodycam audit logs stored on Evidence.com were missing from the discovery. In response, the People asserted that they did not have login credentials for the website. The court ordered a hearing. Prior to the hearing, the People conceded that their office had access to Evidence.com, but line-level ADAs did not. The court held that the logs were in the People's possession, and their policy regarding access did not show due diligence. Further, the logs were discoverable, and the reasons given for not disclosing them demonstrated a lack of good faith. The Legal Aid Society of NYC (Shane Ferro, of counsel) represented the defendant.

[People v Torres \(2023 NY Slip Op 50532\[U\]\)](#)

## **Service and Filing of COC and SOR**

### ***People v Broccolo***

The defendant moved to strike the People's COC and SOR based on improper and untimely service and to dismiss the sole charge on 30.30 grounds. Suffolk County First District Court granted the motion. The People improperly served the defendant himself with the COC and SOR when he was represented by Legal Aid. The discovery statute states that the People "shall serve [the COC] upon the defendant." Where the defendant is represented, service must be made upon counsel (see Rules of Prof Conduct rule 4.2 [a]; CPLR 2103). Suffolk County Legal Aid Society (Bradley Kaufman, of counsel) represented the defendant.

[People v Broccolo \(2023 NY Slip Op 23040\)](#)

### ***People v Chen***

The defendant moved to dismiss the charges on speedy trial grounds. New York County Criminal Court granted the motion. The People timely filed their COC and SOR with the court, but they sent the documents and discovery to an invalid email address for defense counsel. On his notice of appearance, counsel had provided the correct email address, which the People had previously used. But when the email was "bounce[d] back," the People responded to the wrong address to inquire whether there was a problem. They made no further inquiries before the 30.30 clock expired. There is no good faith exception to the service requirements for the COC and SOR and the automatic discovery materials.

Even if there were, it would not apply here. Addabo & Greenberg (Todd Greenberg, of counsel) represented the defendant.

[People v Chen \(2023 NY Slip Op 50212\[U\]\)](#)

### ***People v Middleton***

The defendant moved to dismiss misdemeanor charges pursuant to CPL 30.30. New York County Criminal Court denied the motion. The People filed their COC and SOR after 5 p.m. on the 90<sup>th</sup> day. The defendant argued that the documents should be deemed filed on the 91<sup>st</sup> day. The court disagreed. Other court parts remain open after 5 p.m., and midnight e-filing times are widely accepted. Further, although the People inadvertently failed to disclose documents that were turned over weeks after they filed their initial COC, their prompt filing of a supplemental COC when providing the documents demonstrated diligence.

[People v Middleton \(2023 NY Slip Op 23106\)](#)

### ***People v Nichols***

The defendant moved to dismiss misdemeanor charges because the People's COC was invalid. Bronx County Criminal Court upheld the COC and denied the motion to dismiss. Defense counsel claimed that several discovery items were missing. Because of technical issues, a 250-page document that was served electronically was not accessible to counsel until shortly after 5 p.m. on the 90th day. This service was timely; defining the "close of business" as 5 p.m. is an anachronism where electronic filings and email confirmations have replaced in-person filings.

[People v Nichols \(2023 NY Slip Op 50591\[U\]\)](#)

### **Giglio Materials, Disciplinary Records**

#### ***People v Amissah***

The defendant challenged the validity of the People's SOR and moved to dismiss the charges pursuant to CPL 30.30. Bronx County Criminal Court found the COC and SOR invalid and illusory and granted the motion. The People's filing of a supplemental COC 60 days after late disclosure of *Giglio* materials rendered the COC and SOR illusory. The belated filing precluded a determination regarding the reasonableness of the People's delay in providing *Giglio* materials. The Bronx Defenders (Marissa Balonon-Rosen, of counsel) represented the defendant.

[People v Amissah \(2023 NY Slip Op 23105\)](#)

#### ***People v Critten***

The defendant moved for an order deeming the People's COC invalid and dismissing the information pursuant to CPL 30.30. New York County Criminal Court granted the motion. Documents relating to substantiated allegations of police misconduct were discoverable under CPL 245.20 (1) (k). The People's failure to disclose them invalidated their COC. They made no effort to obtain the documents, even after defense counsel informed them of the omission, and they made no application for a protective order nor a claim of "special circumstances."

[People v Critten \(2022 NY Slip Op 51315\[U\]\)](#)

### ***People v Eleazar***

The defendant challenged the validity of the People's COC and moved to dismiss the charges pursuant to CPL 30.30. New York County Criminal Court granted the motion. The People disclosed letters summarizing police officers' misconduct records, but disclosure of the underlying documents related to both substantiated and unsubstantiated misconduct was required. Moreover, once the People indicate that an officer will be a witness, they may not declare that they are no longer going to call that officer to avoid disclosure of misconduct records and invalidation of their COC. The Legal Aid Society of NYC (Robert Jereski, of counsel) represented the defendant.

[People v Eleazar \(2023 NY Slip Op 50316\[U\]\)](#)

### ***People v Figueroa***

The defendant moved to dismiss the charges pursuant to CPL 30.30, arguing that the People's SOR was illusory because they never disclosed police witnesses' misconduct records held by the NYPD. Queens County Criminal Court granted the motion. Summaries of police misconduct records did not fulfill the People's discovery obligations. Contrary to the People's argument that they did not constructively possess the misconduct records held by the NYPD, their statutory duty extended to information known to the police. Queens Defenders (Jordan Nicole Coyne, of counsel) represented the defendant.

[People v Figueroa \(2023 NY Slip Op 50149\[U\]\)](#)

### ***People v Guzman***

The defendant moved pursuant to CPL 30.30 to dismiss accusatory instruments charging him with misdemeanor offenses, asserting that the People's COC and SOR were invalid. New York County Criminal Court granted the motion. The People's Disclosure Advisory Forms—which summarized the contents of records related to allegations of misconduct by two police officers involved in the case—were not sufficient substitutes for the records themselves. Neighborhood Defender Service of Harlem (Anjuli Branz, of counsel) represented the defendant.

[People v Guzman \(2023 NY Slip Op 50023\[U\]\)](#)

### ***People v Hooks***

The defendant moved to invalidate the People's COC and SOR because they failed to disclose *Giglio* material, activity logs, bodycam video for all responding officers, and a statement made by the complainant to law enforcement. Kings County Criminal Court granted the motion and dismissed the charges. The People belatedly disclosed certain materials after filing the COC and SOR. They never filed a supplemental COC and failed to provide an adequate explanation for the delay or their failure to provide the outstanding items. As more than 90 days of time chargeable to the People had elapsed without a valid COC or SOR, dismissal was required. The Legal Aid Society of NYC (Nicholas Raskin, of counsel) represented the defendant.

[People v Hooks \(2023 NY Slip Op 23019\)](#)

### ***People v Howard***

The defendant moved to dismiss the charges pursuant to CPL 30.30, arguing that the People's COC and SOR were illusory because the People had not provided *Giglio* material for Co-op City police officers. Bronx County Criminal Court denied the motion.

The People must provide any *Giglio* material related to the officers that was in their possession, custody, or control. However, Co-op City police records are not deemed to be within the prosecution's possession and control. Those officers are designated as peace officers by CPL 2.10 (27) and are not members of a "police or law enforcement agency" for the purposes of CPL 245.20.

[People v Howard \(2023 NY Slip Op 23069\)](#)

### ***People v Roc***

The defendant alleged that the People's COC and SOR were illusory and moved to dismiss the charges pursuant to CPL 30.30. Queens County Criminal Court granted the motion. In an email accompanying the COC, the People said that they had not produced a police officer's notes. Four days after the speedy trial period ended, they disclosed the notes. The People did not establish that the officer's medical leave constituted special circumstances justifying the delay. Further, the defendant was not required to show prejudice. The Legal Aid Society of NYC (Alisha Babar, of counsel) represented the defendant.

[People v Roc \(2023 NY Slip Op 50024\[U\]\)](#)

### ***People v Jawad***

The defendant moved for an order deeming the People's COC and SOR invalid. Queens County Criminal Court granted the motion. A letter summarizing an officer's disciplinary records does not satisfy the People's discovery obligation—the records themselves must be provided. Even if the People do not intend to call an officer to testify, the officer's disciplinary records must be disclosed because they could assist the defense in other ways. The Legal Aid Society of NYC (Alan Gordon, of counsel) represented the defendant.

[People v Jawad \(2023 NY Slip Op 50244\[U\]\)](#)

### ***People v Rivera***

Following reargument, Queens County Supreme Court adhered to its decision that the People's COC was invalid because they did not exercise due diligence in disclosing all Law Enforcement Officer Witness (LEOW) disclosure letters. Letters for some of the officers did not exist at the time of the initial disclosure, and yet the People took no additional steps to obtain them. Further, they had direct access to the relevant information. The People could not circumvent their discovery obligations by later retracting their designation of these officers as potential witnesses. The court may only consider sanctions for belated discovery if it first determines that the COC was filed in good faith after due diligence. The defendant is not required to show prejudice. Queens Defenders (Kim Barr, of counsel) represented the defendant.

[People v Rivera \(2023 NY Slip Op 50261\[U\]\)](#)

### ***People v Uraga***

The defendant moved to invalidate the People's COC and SOR because they failed to disclose the disciplinary records of a police witness. Queens County Criminal Court granted the motion and dismissed the charges. The People provided only a letter stating that the officer was the subject of unsubstantiated allegations; they knowingly failed to disclose discoverable material in their possession without leave of court or a protective order. More than 90 days of time chargeable to the People had elapsed without a valid

COC or SOR, requiring dismissal. The Legal Aid Society of NYC (Ronald W. Popo, of counsel) represented the defendant.

[People v Uraga \(2022 NY Slip Op 51332 \[U\]\)](#)

### **Facial Sufficiency of Accusatory Instruments**

#### ***People v Matos***

The defendant was charged by information with 4<sup>th</sup> degree CPW, 2<sup>nd</sup> degree obstructing governmental administration (OGA), and failure to obey a traffic control signal. He moved to dismiss the charges under CPL 30.30. Kings County Criminal Court granted the motion. The People's SOR was invalid because the information was facially insufficient as to the OGA charge. They could not be ready for trial unless all charges in an accusatory instrument were facially sufficient (see CPL 30.30 [5-a] [abrogating partial conversion doctrine]). Brooklyn Defender Services (Marshall Guiboa, of counsel) represented the defendant.

[People v Matos \(2023 NY Slip Op 23006\)](#)

#### ***People v Mueller***

The defendant moved to dismiss a two-count information, charging one misdemeanor and one violation on speedy trial grounds based on the People's failure to timely file an information that was facially sufficient as to each count. Queens County Criminal Court granted the motion and dismissed the charges. The information was facially insufficient as to the violation, rendering the People's SOR invalid in its entirety. The Legal Aid Society of NYC (Shane Ferro, of counsel) represented the defendant.

[People v Mueller \(2023 NY Slip Op 50168\[U\]\)](#)

#### ***People v Nieves***

The defendant moved pursuant to CPL 30.30 to dismiss an information charging him with three offenses. Queens County Criminal Court granted the motion. The information was defective. It failed to allege acts establishing every element of two of the offenses and it alleged every subdivision of the third offense—all of which contain different elements—making it impossible to determine the specific crime charged. The People could not validly state trial readiness on a defective information. The Legal Aid Society of NYC (Allen Popper, of counsel) represented the defendant.

[People v Nieves \(2023 NY Slip Op 50182\[U\]\)](#)

#### ***People v Ventura***

The defendant moved to invalidate the People's entire COC and SOR on multiple accusatory instruments after some instruments were deemed facially insufficient. Suffolk County District Court denied the motion. The facial insufficiency of some accusatory instruments did not render the COC and SOR invalid as to the sufficient accusatory instruments. The People were therefore not required to file a supplemental COC and SOR as to the remaining charges. [NOTE: *cf. People v Matos*, 2023 NY Slip Op 23006 (Crim Ct, Kings County 2023) (“it is a pre-requisite to a valid statement of readiness that an accusatory instrument is facially sufficient as to all charges not dismissed by the People”)].

[People v Ventura \(2023 NY Slip Op 23021\)](#)

## **Defense Obligation: “As Soon as Practicable”**

### ***People v Lanfair***

The defendant moved to invalidate the People’s COC and SOR because they failed to disclose street camera and police station footage. The defendant notified them of the deficiencies more than two months after the People filed the COC and SOR, although the street camera footage had been referenced in the People’s timely CPL 710.30 Notice. The defendant’s failure to alert the People “as soon as practicable” forfeited his challenge to the street camera footage (see CPL 245.50 [4]). But the defense had no prior knowledge of the police station footage. The challenge to the omission of this footage was timely and nullified the COC and SOR. However, Cohoes City Court accepted the People’s corrected supplemental notices after the footage was disclosed.

[People v Lanfair \(2023 NY Slip Op 23011\)](#)

### ***People v Seymour***

The defendant challenged the validity of the People’s SOR and moved for dismissal of the charges pursuant to CPL 30.30. Suffolk County District Court denied the motion. The defendant did not notify the People of the deficiencies in their COC prior to filing his motion, in violation of CPL 245.50 (4) (b) and CPL 245.35 (1). Further, the motion was filed 72 days after the COC and SOR were filed—not “as soon as practicable.”

[People v Seymour \(2023 Slip Op 23120\)](#).

## **Reasonable Delay**

### ***People v Marling***

The defendant moved pursuant to CPL 30.30 to dismiss an appearance ticket charging him with the misdemeanor offense of driving while impaired by drugs. Ogden Town Justice Court granted the motion. The People’s COC was invalidated when they later filed a notice stating that they were not ready for trial because the arresting officer was unavailable for unstated reasons. Information subsequently provided by the People did not sufficiently establish that the officer could not testify; he had thumb surgery more than a month before the original trial date.

[People v Marling \(2022 NY Slip Op 22397\)](#)

### ***People v Moore***

The defendant moved to dismiss two counts of 2<sup>nd</sup> degree CPW on statutory speedy trial grounds. Bronx County Supreme Court granted the motion. The People never filed a COC and SOR concerning the charges. CPL 30.30 (4) (d) provides, in relevant part, that a reasonable period of delay should be excluded when the defendant is joined for trial with a codefendant as to whom the time for trial has not run. This defendant was joined for trial with a codefendant who was charged with murder and as to whom readiness mandates did not apply, pursuant to subdivision (3) (a). However, the period of delay as to the defendant was unreasonable.

[People v Moore \(2023 NY Slip Op 30472\[U\]\)](#)



## **Protective Orders**

### ***People v Payne***

The People provided redacted Internal Affairs Bureau (IAB) logs concerning named NYPD officers based on Bronx County Criminal Court's disclosure order and explained that they had not been provided with the unredacted records. The court ordered the People to provide the unredacted records or file a motion for a protective order. Upon the filing of the People's motion, relief was denied. Their primary assertions—that the redacted information was irrelevant and nondiscoverable and that some of the allegations investigated were unfounded—did not provide a good cause basis to issue a protective order. The impeachment value of such material is for defense counsel, not the People or IAB, to determine. The Bronx Defenders (William John, of counsel) represented the defendant.

[People v Payne \(2023 NY Slip Op 23101\)](#)

## **Compelling Disclosure of Materials Not Subject to Automatic Discovery**

### ***People v Hirsch***

The defendant, charged with 2<sup>nd</sup> degree CPW, moved pursuant to CPL 245.30 (3) to compel the prosecution to turn over materials obtained during the search of her husband's apartment and vehicle in relation to a murder investigation. Queens County Supreme Court granted the motion. While the materials were not subject to automatic discovery, the court exercised its discretion and ordered their disclosure. The items—including photographs and video from the searches and documentation of items recovered—were reasonably likely to be material to the defendant's contention that she did not knowingly possess the firearms recovered from her residence. Mark Bederow represented the defendant.

[People v Hirsch \(2023 NY Slip Op 23185\)](#)

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