

NYS Court of Appeals Criminal Decisions; November 17, 2022

People v. Jimenez

This is a unanimous opinion, authored by Judge Rivera, affirming the AD. The defendant, charged with animal cruelty, claimed to have struck and injured a dog (which ran up to him during a street altercation with another person) to avoid being bitten by the dog. The dog's cheekbone was fractured and was left blind in one eye as a result of the event.

Not every defense must be instructed to the grand jury. Instead the prosecution is only obligated to instruct on exculpatory defenses which, if believed, would result in no criminal liability. *People v. Lancaster*, 69 NY2d 20, 26 (1986). At bar, the trial court did not abuse its discretion in denying the defendant's motion to dismiss the indictment pursuant to CPL 210.35(5) (for failure to comply with CPL article 190 to such a degree that the integrity of the proceedings is impaired and prejudice may result). The People were correct in not instructing the grand jury on the so-called "choice of evils" justification defense. See, PL § 35.05(2) (condoning conduct as necessary where an emergency measure is utilized to avoid an imminent private injury which is about to occur by no fault of the defendant; must also pass balancing test).

Here there was legally insufficient evidence to require this particular (and rarely given) justification instruction, which absolves a defendant of criminal liability where an otherwise criminal act is conducted out of necessity in order to avoid a greater injury. *People v. Craig*, 78 NY2d 616, 618, 620 (1991).

People v. Johnson

This is a unanimous decision authored by Judge Wilson, reversing the AD. The Fourth Department misapplied the pre-trial due process factors set out in *People v. Taranovich*, 37 NY2d 442 (1975), in evaluating a potential deprivation of the constitutional right to a speedy trial. These non-exhaustive factors address: (1) the extent of the delay, (2) the reason for the delay, (3) the nature (*complexity / seriousness*) of the underlying charge, (4) whether there was extended pre-trial detention, and (5) whether the defendant was impaired because of the delay. *Id.* at 445. No one factor is determinative in this holistic framework. Both pre and post indictment delay are analyzed with these factors. See, *People v. Vernace*, 96 NY2d 886, 887 (2001).

Almost eight years passed between the 2006 sexual assault of the 14-year-old victim in Rochester and the 2014 rape charges being filed against the defendant. The young victim could not identify the defendant in the first two photo arrays shown to her. Because of a backlog in cases, it took 13 months before the rape kit was processed. Several years

passed before DNA samples were entered into the CODIS database. More than 3 years passed before a match came up indicating the defendant. Several years passed after that before law enforcement gained the cooperation of the victim. The defendant was then identified by the victim in the third photo array shown to her.

The AD misapplied the second *Taranovich* factor regarding whether the prosecution acted with good faith in delaying the prosecution for further investigation or other sufficient reasons. *See also generally, People v. Singer*, 44 NY2d 241, 254 (1978) (recognizing that good faith deferral will not result in a due process violation even if some prejudice to the defense may result). The AD also failed to provide support for its third factor analysis and misapplied the fifth *Taranovich* factor in erroneously concluding the defense was not impaired by the delay because the defendant only pleaded guilty to statutory rape. Instead, *all* pending counts must be considered in this factor.