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## Right to a Speedy Trial, Supreme Court, Appellate Division, Second Department: People v. Coplin

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# RIGHT TO A SPEEDY TRIAL

U.S. CONST. amend. VI:

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . .*

N.Y. CONST. art. II, § 12:

*In all criminal prosecutions, the accused has a right to a speedy and public trial . . . .*

## SUPREME COURT, APPELLATE DIVISION

### SECOND DEPARTMENT

People v. Coplin<sup>1</sup>  
(decided Feb. 18, 1997)

Defendant, Anthony Coplin, moved to dismiss his indictment on the basis that the People of the state of New York failed to give defendant a speedy trial under the Federal Constitution<sup>2</sup> and New York Constitution.<sup>3</sup> Moreover, he alleged that the state failed to respect his statutory right to a speedy trial under section 30.30 of New York's Criminal Procedure Law because the prosecutor failed to exercise due diligence in searching for him.<sup>4</sup>

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<sup>1</sup> 654 N.Y.S.2d 150 (2d Dep't 1997).

<sup>2</sup> U.S. CONST. amend. VI. The Sixth Amendment provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." *Id.*

<sup>3</sup> N.Y. CONST. art. II, § 12. The provision states in pertinent part: "In all criminal prosecutions, the accused has a right to a speedy and public trial. . . ." *Id.*

<sup>4</sup> *Coplin*, 654 N.Y.S.2d at 150. See N.Y. CRIM. PROC. LAW § 30.30 (McKinney 1992). Section 30.30 provides for a speedy trial in the following manner: In computing the time which the people must be ready for trial. . . the following periods must be excluded:

The period of delay resulting from the absence or unavailability of the defendant or, where the defendant is absent or unavailable and has either escaped from custody or

Defendant was indicted on November 3, 1993 and the district attorney of Westchester County announced on that same day that the state was ready to prosecute.<sup>5</sup> After hearings, May 31, 1994, was assigned as the day for defendant's trial.<sup>6</sup> Shortly thereafter, before the date his New York trial was to begin, defendant fled to Roxbury, Massachusetts, and claimed it as his new residence.<sup>7</sup>

When defendant did not appear for his trial in New York, the judge issued an arrest warrant for defendant and ordered that his bail be forfeited.<sup>8</sup> On February 9, 1996, defendant was arrested for an unrelated crime in Massachusetts and was held in custody in Boston, pursuant to the outstanding arrest warrant.<sup>9</sup> Subsequently, the defendant was returned to New York on April 15, 1996 after waiving extradition.<sup>10</sup>

Defendant argued that the district attorney had defendant's address, and did not use due diligence in apprehending him.<sup>11</sup> The Westchester County Court agreed,<sup>12</sup> reasoning that dismissal was required when the People have defendant's address, which gives rise to "an affirmative duty, even after they have announced their readiness for trial, to search for the fugitive

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has previously been released on bail or in his own recognizance, the period extending from the day the court issues a bench warrant pursuant to section 530.70 because of defendant's failure to appear in court when required, to the day the defendant subsequently appears in the court pursuant to a bench warrant or voluntary or otherwise. A defendant must be considered absent whenever his location is unknown and he is attempting to avoid apprehension or prosecution, or his location cannot be determined by due diligence. A defendant must be considered unavailable whenever his location is known but his presence for trial cannot be obtained by due diligence.

*Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 150-51.

<sup>8</sup> *Id.* at 151

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Coplin*, 654 N.Y.S.2d at 151.

<sup>12</sup> *Id.*

defendant, using such address as the starting point.”<sup>13</sup> Accordingly, the county court held “that the People’s failure to prove their exercise of due diligence in fulfillment of this duty warranted dismissal of the indictment pursuant to CPL 30.30.”<sup>14</sup>

On appeal, the Appellate Division, Second Department reversed the lower court’s decision and remanded the matter for further proceedings.<sup>15</sup> The court explained that the county court’s reliance on the New York Court of Appeals case, *People v. Bolden*,<sup>16</sup> was incorrect in that it did not apply to the facts at bar.<sup>17</sup> In *Bolden*, the defendant was accused of first degree robbery and other related offenses.<sup>18</sup> He was released on his own recognizance several days later.<sup>19</sup> The defendant was indicted but he did not appear at his arraignment, and a bench warrant was issued for his arrest.<sup>20</sup> 143 days after the bench warrant was issued, the defendant returned to court.<sup>21</sup> “The People did not declare their readiness on the record at any point during this period.”<sup>22</sup> The defense counsel argued that the case should be dismissed under section 30.30 of the Criminal Procedure Law because “there had been a total of 198 days unexcused days of delay attributable to the People and that, consequently, the People had failed to satisfy the statutory six-month readiness requirement.”<sup>23</sup> Additionally, the defense argued that during this period when defendant was absent, the People were in possession

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<sup>13</sup> *Id.* (citing *People v. Bolden*, 81 N.Y.2d 146, 613 N.E.2d 145, 597 N.Y.S.2d 270 (1993); *People v. Anderson*, 66 N.Y.2d 529, 488 N.E.2d 1231, 498 N.Y.S.2d 119 (1985); *People v. Roberts*, 176 A.D.2d 1200, 576 N.Y.S.2d 698 (4th Dep’t 1991)). See also *People v. Davis*, 205 A.D.2d 697, 613 N.Y.S.2d 668 (2d Dep’t 1994); *People v. Torres*, 88 N.Y.2d 928, 669 N.E.2d 1112, 646 N.Y.S.2d 790 (1996).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 150.

<sup>16</sup> 81 N.Y.2d 146, 613 N.E.2d 145, 597 N.Y.S.2d 270 (1993).

<sup>17</sup> *Coplin*, 654 N.Y.S.2d at 150.

<sup>18</sup> *Bolden*, 81 N.Y.2d at 148, 613 N.E.2d at 146, 597 N.Y.S.2d at 271.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 149, 613 N.E.2d at 146, 597 N.Y.S.2d at 271.

<sup>23</sup> *Id.*

of defendant's address, and could have apprehended him had the state exercised due diligence.<sup>24</sup> The Court of Appeals stated:

CPL 30.30 (4) (c) excludes certain periods during which the defendant is 'absent' or 'unavailable' from the time in which People must otherwise become ready for trial. In 1984, the Legislature amended that paragraph to expand the scope of its exclusion (L 1984, ch 670). The issue in this appeal is whether the previously existing requirement that the People must exercise 'due diligence' in locating an 'absent' defendant or obtaining an 'unavailable' defendant's presence applies to cases arising under the amendment. We hold that, far from exempting such cases the 'due diligence' requirement, the amendment expressly incorporates it. Accordingly, the People cannot obtain the benefit of the exclusion in these circumstances without satisfactorily demonstrating their compliance with that precondition.<sup>25</sup>

The Second Department distinguished *Bolden* from the instant matter, explaining that the prosecution in *Bolden* did not announce the state's readiness for trial at any point during the period of defendant's absence.<sup>26</sup> However, in *Coplin*, the state announced its readiness for trial, and the *Coplin* court concluded that the due diligence requirement of CPL 30.30(4)(c) is not applicable when the People have announced their readiness for trial and the defendant subsequently flees.<sup>27</sup> "[T]his court has consistently stated that the due diligence requirement of CPL 30.30 (4) (c) does not apply in the case of a defendant who flees after the People have announced their readiness for trial."<sup>28</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *People v. Coplin*, 654 N.Y.S.2d 150, 150-51 (2d Dep't 1997).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* (citing *People v. Williams*, 229 A.D.2d 603, 603, 646 N.Y.S.2d 142, 143 (2d Dep't 1996)) (stating "Once the People have announced their readiness for trial, there is no requirement that they exercise due diligence to

Thus, the courts of New York make a crucial distinction between a case that involves a “pre-readiness” delay, when the state did not declare its readiness for trial at any time during the relevant period, and a “post-readiness” delay when the state has already announced its readiness for trial.<sup>29</sup>

In determining whether or not a defendant has received a speedy trial in compliance with his or her constitutional rights, the Second Department explains that it depends on whether or not there is a post-readiness or pre-readiness delay.<sup>30</sup> If the state has announced its readiness for trial and a delay or absence occurs that is attributable to defendant then due diligence is not required by the state.

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locate the defendant when he has voluntarily absented himself from the proceedings, since the People did not contribute to the delays.”); *People v. Cropper* 202 A.D.2d 603, 605, 609 N.Y.S.2d 288, 290 (2d Dep’t 1994) (holding that a defendant was not denied his constitutional right to speedy trial because the eleven year disappearance was attributable to the defendant, and occurred after the people announced their readiness for trial). *See also* *People v. Cephas*, 207 A.D.2d 903, 616 N.Y.S.2d 668 (2d Dep’t 1994); *People v. Myers*, 171 A.D.2d 148, 575 N.Y.S.2d 152 (2d Dep’t 1991); *People v. Lopez*, 170 Misc. 2d 278, 648 N.Y.S.2d 231 (N.Y.C. Crim. Ct. Kings County 1996).

<sup>29</sup> *Id.*

<sup>30</sup> *Coplin*, 654 N.Y.S.2d at 151.

