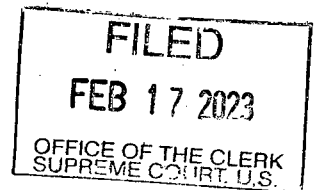


No. 22-6871

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



AHMED KHALIL — PETITIONER
(Your Name)

vs.

THE PEOPLE OF THE STATE OF NEW YORK — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION - THIRD DEPARTMENT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ahmed Khalil
(Your Name)

Altona Correctional Facility 555 Devil Den Road
(Address)

Altona, NY 12910
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Did the people timely prosecute Petitioner where the prosecutor acknowledged that additional Felony and misdemeanor charges existed, yet delayed in seeking such an indictment for nearly one year after commencement of this action?

Answer below: the lower Court denied the Speedy Trial motion.

2. Was the Verdict supported by legally sufficient evidence where all charges stemmed from incredible testimony from complainant and witnesses?

Answer: the jury acquitted petitioner of one count of PETT larceny but convicted on all remaining charges.

3. Was the

4. Was the

Answer (A) YES

5. Was the

6. Was the

7. Was the

8. Was the

9. Was the

10. Was the

11. Was the

12. Was the

13. Was the

14. Was the

15. Was the

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
People v. England 84 NY 2d 1,4 [1994]	11
People v. Iomax 50 NY 2d 317,356 [1980]	11
People v. Anderson 66 NY 2d 529,535 [1985]	11
People v. Sinistay 67 NY 2d 236,240 [1986]	11
Banker v Wingo 407 US 514,530,92 S.Ct. 282,33 L.Ed. 2d 101,117 (1972)	11
Klaffer v. North Carolina 386 U.S. 213,221-22,87 S.Ct. 988 1992-93, 18 L.Ed.2d 1,7 (1967)	11
People v. Garrenard 57 Misc 3d 1207 [A],2017 NY Slip Op 51219 [U], * 2 [Crim Ct, Kings County 2017]	12
People v. Babcock, 86 AD 2d 979, 979 [4th Dept 1982]	12
STATUTES AND RULES	
PL § 120.60	4
PL § 135.05	4
PL § 120.15	4
PL § 240.26	4
PL § 155.30	4
PL § 145.00	4
PL § 155.25	4
CPL 530.12	4
CPL 530.13	
OTHER	
6th Amendment Right To Speedy Trial	11

CASES

PAGE NUMBER

People v. Delgado, 209 AD2d 218, 219 [1st Dept 1994]	12
People v. McCaffery, 78 AD2d 1003, 1003 [4th Dept 1980]	12
People v. Suppe, 224 AD2d 970, 970 [4th Dept 1996]	13
People v. Matteson, 166 AD3d 1300, 1302 [3rd Dept 2018]	13
People v. Smith, 82 NY 2d 676, 678 [1993]	13
People v. Murray, 224 AD2d 968, 969-70 [4th Dept 1996]	13
People v. Jahason, 174 AD3d 1510, 1511 [4th Dept 2019]	14
People v. Waring, 206 AD2d 329, 330 [1st Dept 1994]	14
People v. Ahmad Khalil, 206 AD 3rd 1300	15
People v. Cokos, 242 AD 2d 962, 963 [4th Dept 1997]	15
People v. Contes, 60 NY 2d 620, 621 [1983]	17
Jackson v. Virginia, 443 US 307, 319 [1979]	17
People v. Danielson, 19 NY 3d 342, 349 [2007]	17
People v. Cahul, 2 NY 3d 14, 62 [2003]	17
People v. Bleakley, 69 NY 2d 490, 491 [1987]	17
People v. McFarland, 181 AD2d 1007 [4th Dept 1992]	18
People v. Colon, 28 NY 2d 1, 11 [1971]	18
People v. Delamata, 18 NY 3d 116, 17	18
People v. Oberlander, 94 AD3d 1460	18
People v. Steeter, 118 AD3d 1287, 1288 [4th Dept 2014]	18
People v. Fuller, 50 NY 2d 628, 634-35 [1980]	18
Oral Nicholas Hillary v. St. Lawrence County et al 2019 WL 9777876	19
Oral Hillary v. Village of Potsdam 2015 WL 902930	19

STATUTES AND RULES

CPL 1, 20.11

10, 11

STATUTES AND RULES

PAGE NUMBER

CPL 30.20	10
CPL 30.30	11
CPL 40.20	13
CPL 40.30	13
CPL 170.20	14
PL 265.02	15
PL § 155.3	17
PL § 155.05	17

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	20
CONCLUSION.....	21

INDEX TO APPENDICES

APPENDIX A Decision of Supreme Court Appellate Division 3rd Dept.

APPENDIX B Decision of State Trial Court

APPENDIX C Decision of State of New York Court of Appeals

APPENDIX D Order of State of New York Court of Appeals Denying Reconsideration

APPENDIX E

APPENDIX F

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☒ reported at 206 A.D.2d 1300; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the State of New York Appeals court appears at Appendix C to the petition and is

- ☒ reported at 2022 WL 10183405; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was November 30, 2022.
A copy of that decision appears at Appendix D.

☒ A timely petition for rehearing was thereafter denied on the following date: November 30, 2022, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FOURTEENTH Amendment "Deprive[ing] any person of life, liberty, or property, without due process of law."

5TH Amendment "No person shall be... deprived of life, liberty, or property, without due process of law"

6TH Amendment right to Speedy Trial

STATEMENT OF THE CASE

1. PRELIMINARY STATEMENT

PETITIONER Mr. Ahmed Khalil, appeals from the judgment of The ST. Lawrence County Court, entered on June 29, 2020, with the Judge Kelly S. McKeighan presiding. The judgment, upon a jury trial, of stalking in the first degree (Penal law ["PL"] § 120.60 [13]), unlawful imprisonment in the second degree (PL § 135.05), menacing in the third degree (PL § 120.15), harassment in the second degree (PL § 240.26 [13]), PETIT larceny (PL § 155.25), grand larceny in the fourth degree (PL § 155.30 [43]), and criminal mischief in the fourth degree (PL § 145.00 [43]). The jury acquitted Mr. Khalil of the sixth count of the indictment, an additional count of PETIT larceny (PL § 155.25). The final count in the eight count indictment.

Judge McKeighan sentenced Mr. Khalil, as a first felony offender, to a determinate 4 years' incarceration, 3 years' post-release supervision ("PRS") on Count I (stalking first), an indeterminate 1-3 years' incarceration on Count VII (grand larceny fourth), and time served on all remaining misdemeanor counts (see PL § 70.00). Judge McKeighan did not award restitution but did order an order of protection in favor of the Complainant, Ms. Farideh, expiring on February 3, 2035 (CPL 530.25 [1530.13 [43]]).

There were no co-defendants or stay of judgment. Mr. Khalil is currently prisoner at "Albion Correction Facility" prison (see <http://ny.sdoccslookup.dccs.ny.gov/>; DIN 20-A-0945 [last visited July 20, 2021]).

2. STATEMENT OF FACTS

on or about December 2017 Mr. Khalil was told to work with Dr. Pansa Mirbod at Clarkson University. Dr. Mirbod told him to take a class with Dr. Goudart

Ahmadi, Dr. Mirbod Started working on COVID-19 Gain of Function Technology, developing United States of America's bio weapon, on or about 2018 or earlier; Dr. Mirbod, Dr. Ahmadi and Chinese Citizen graduate student (at the time) started studying the flow on pores medium years before 2018, a phenomena which was observed on the red blood cells; we did study the turbulent flow on pores in medium experiment, then for the human platelets, for that Dr. Mirbod said, she got the data we used to develop computational models from Europe, MRI; Dr. Ahmadi is co-author of book about human respiratory system fluid mechanics; Dr. Brian Helcobrook was a co-advisor with Dr. Mirbod to post-doctor researcher to study the laminar flow on the pores medium, then on or about July 2018 Mr. Khalil was forced to work with Dr. Byron Erath and Dr. Helen Brock, and Mr. Khalil was told to take two classes with Dr. Ahmadi; Dr. Erath and Dr. Helen Brock started their work on COVID-19 Gain of Function Technology, developing United States of America's bio weapon on or about 2018 or earlier, Dr. Erath provided magnetic resonance imaging ["MRI"] from Japan, we built artificial humming, human vocal cords, three dimensional printed human throats, mouths and computational models; on or about July 2019 FBI Albany New York State office, asked me about Dr. Ahmadi; General Electric Corporation, and Clarkson University; on or about May 14, 2019 and May 15, 2019 FBI Syracuse New York State office contacted me "I want to talk to you about something or for asking you couple of questions you are not in trouble or anything..."; on or about October 2019 FBI Albany contacted me; General Electric Corporation told me to join Clarkson University and paid for tuition and other expenses as back as on or about September 2015, General Electric Corporation had an office at Clarkson University Potsdam New York State; on or about May 27, 2020 at or about 3:30 at St. Lawrence

COUNTY Jail I was given food with my name hand written on the bag then I started experience a 10 to 10 abdominal pain after consuming the food, at or about 1:30 I was taken to Canton Potsdam hospital Emergency Room, I was there for about six hours, after IV, CAT Scan, STill and blood works a POSSIBLE trace was found in my blood, on or about August 18, 2020 at 12:30 PM at WATER TOWN Correctional Facility, three FBI agents visited me, on or about September 22, 2020 FBI contacted me "Brother Ahmed. I hope by the time this letter finds you, you are well and in good health it was good talking to you last month" on or about September 16, 2021 at 11:45 am office of Special investigation agent came to visit me at Cape Vincent Correctional Facility; Communications included letters, phone calls and in person, I was told that, (we want to make sure you are safe, Research was COVID-19 Gain of Function Technology jointly with G62 and US government intelligence; Research was developing bio weapons, Farideh was set up to criminalize you; Farideh was set up to frame you; they went too far to hurt you physically); General Electric Corporation, Clarkson University and United States of America government intelligence jointly worked on COVID-19 Gain of Function, developing bio weapons as back as 2018 or earlier, COVID-19 was knowingly and timely organized by United States of America intelligence; USA government General Electric Corporation and Clarkson University jointly made petitioner who with significant technical abilities as St. Lawrence County Chief assistant District Attorney described petitioner, unknowingly work for them on developing bio weapons, Gain of Function researches, which is crime against the people of USA, humanity and genocide.

petitioner and Complainant were studying at Clarkson University in Potsdam, NY, Complainant came from Iran around 2017; on or about May 9, 2018. Mr. Khalil proposed marriage and she accepted, while the lower court did not permit Mr. Khalil to testify to what Complainant told him in May 2018 that made him both fearful for him and his family, the contents of the conversation caused him to report her to the Depart-

ment of Homeland Security ("DHS"), Complainant bought a ring from Zales for Mr. Khalil in May 2018; she introduced Mr. Khalil to her father using her phone and the assistance of a translator for Mr. Khalil to understand her father's dialect.

Complainant admitted that she possessed a passport for Halima, whom she often referred to as a "sister", and passport-sized or wallet photos for others in her family; on May 13, 2018 and August 18, 2018, Mr. Khalil submitted an anonymous tip to DHS included Complainant's possession of Halima's passport, which he discovered in her car. Complainant also sent affectionate messages to Mr. Khalil, but explained them away as "servicing him" or making the relationship more "pleasant for him" and that the text messages over these period of months did not represent her true feelings.

As to the events that unfolded on August 23-24, 2018, Complainant and Mr. Khalil offered conflicting narratives.

On the evening of August 22, 2018, Complainant testified that she left Mr. Khalil following an argument and intended to study for an important placement exam for her PhD program the following morning by heading out, but Mr. Khalil located her and stayed with her studying on campus and sleeping by her side. When Mr. Khalil wasn't asleep, the two argued about the relationship and Complainant testified that she said "I don't think [the relationship] is working". At some point on the morning of the August 23, 2018, according to Complainant, they returned home to the camper to shower, continued to argue, and she reached for her phone to contact the police, but Mr. Khalil grabbed her wrists and wrestled away the phone, leaving painful marks on her wrists.

By contrast, Mr. Khalil testified that they studied together at Clarkson on the evening of August 22, 2018, that they went to McDonald's at Zionsville,

eventually went back to the carper. According to Complainant, later that afternoon, around 12:00 pm or 1:00 pm, they went to her previously scheduled doctor's appointment, but Complainant didn't tell the doctor or anyone inside the doctor's office about what happened that morning as they both waited in the lobby for the appointment for over an hour. Mr. Khalil testified to waiting in the doctor's office for long period during which he exited the lobby to charge his phone in his car, before eventually leaving with her from the doctor's appointment.

Complainant testified that Mr. Khalil next took her to Clarkson University. Two of Complainant's friends from Clarkson, Nicole Helt and Bahman Farzi, testified at the trial; Helt testified she has never seen Mr. Khalil abuse Complainant. Farzi testified he was previously in a "secret" relationship with Complainant prior to her dating Mr. Khalil.

Complainant got back into Mr. Khalil's car, they next went to Taco Bell, where they ordered one meal. Thereafter, they drove where Complainant alleged from the car before Mr. Khalil caught up to her on foot and per Complainant allegedly partially depicted in video footage from nearby surveillance camera. Mr. Khalil alleged that Complainant, who had allegedly missed her exam, was "swaddled"

From there, Mr. Khalil drove them to Tim Horton's where he purchased two coffees for them; then Complainant testified she "jumped out" of the moving vehicle and went into the church to ask for a ride to nearby Clarkson Campus. Mr. Khalil testified that she made a statement to him that made him fearful she would "get me killed and get my family killed" before exiting the vehicle.

Inside the church, at around 5:15-5:30 p, Complainant met with Judith "Judy" Sanford, a retired nurse, and her husband, who gave her a ride to campus. Ms. Sanford did not see Complainant's wrists during the car ride.

Upon returning to campus, Complainant went to the Campus Security office

where a guard and retired Potsdam Officer, Kevin Bates, met with her. Complainant told Bates about her "problems" with Mr. Khalil, and Bates took photographs.

The following morning, August 24, 2018, Complainant returned to the Campar with St. Lawrence Sheriff's Department Deputy John Jones and Khalil documented the property retrieval by video recording Complainant and Deputy Jones inside the Campar. According to Complainant and Deputy Jones Complainant's phone was found on the bunk bed, while her blue folder containing her important documents was located underneath a mattress, her purse was in the same "vicinity," according to Deputy Jones or on the "back side of the bed" where she had never previously left it, according to Complainant. Deputy Jones did not search Complainant prior to her entering the Campar.

At Trial, the people also called upon an expert in matrimonial matters and domestic violence suffered by Muslim women, Nadeia Sharan, a lawyer, mediator, and Muslim Cultural Scholar and author. Sharan testified concerning domestic violence or intimate partner violence, but did not know Mr. Khalil or Complainant or the facts of the case. She testified that Muslim women are the "face of the family" and that her is located "between her legs".

The jury deliberated for one full day spread out over an afternoon and much of the following day, and sent ten (10) notes requesting read-backs, re-reading of charges, and to review additional evidence. The jury acquitted Mr. Khalil of the petit larceny related to the blue folder containing Complainant's important documents, which allegedly was found when Complainant and Deputy Jones lifted the mattress. The jury convicted on the remaining charges.

3. ARGUMENT

3.1 QUESTION 1

A. Introduction

This case commenced (CPL 1,20 [17], 30, 20 [13]) with the arrest and filing of accusatory instruments in Pierrepont Town Court on August 24, 2018 charging misdemeanor offenses related to the incident between Mr. Khalil and Complainant, but did not include any felony or misdemeanor petit larceny. In other words, their initial charges encompassed only Counts II-IV of the later filed indictment.

The People did not indict (July 2, 2019), file the indictment (July 11, 2019) or arraign (August 26, 2019) Mr. Khalil on the Petitions, petit larcenies, or criminal mischief fourth class (Counts I and V-VIII) arising from the same incident until at least 311 days elapsed from the commencement of this action in Pierrepont Town Court. The People used the threat of grand jury indictment to encourage settlement of the matter to a plea to the misdemeanors.

On November 3 and 8, 2019, Counsel for both parties submitted briefs on the Speedy Trial issue, which was fully argued on November 13, 2019.

On November 13, 2019, the People also tendered a new expert witness for the first time, MS. Nawal Ammar, who would testify about domestic violence ("DV") or intimate partner violence. The defense objected that it lacked adequate time to prepare for cross-examination of the witness prior to trial. In the weeks that followed, the People ultimately selected a different expert to testify about DV. MS. Nadia Sharon, for the trial commenced on January 27, 2020.

On December 31, 2019, the lower court denied the Speedy Trial motion. The lower court held that only 5 days were chargeable to the People on the misdemeanors in the original accusatory instruments (i.e. Counts II-IV of the indictment) due to Mr. Khalil remaining unrepresented by counsel and that their repeated statement of readiness since that time remained effective. As for Counts I

and VIII, the lower court found that adjournments were chargeable to the defense and that the July 11, 2019 statement of readiness was effective. As for misdemeanor petit larcenies and felony grand larceny fourth, i.e. Counts V-VII, the court found that they were distinct crimes occurring 2 days after the initial incident and that therefore the speedy trial clock did not begin to run on these larcenies until the indictment was filed and Mr. Khalil was arraigned, at which time they effectively announced ready for trial.

B. Statutory Speedy Trial

In a felony matter, the people must be ready for trial within 6 months or, in 2019, within 182 days (CPL 30.30 [13a]; People v. England, 84 NY2d 1, 4 [1994]). The commencement of the criminal action by the filing of the accusatory instrument in local criminal court starts the clock (People v. Lomax, 50 NY2d 351, 356 [1980], citing CPL 1.20 [17]). The period of time chargeable to the people, or excluded as chargeable to the defense, varies by case and circumstance (CPL 30.30 [4]; see also People v. Anderson, 66 NY2d 524, 535 [1985]). While the computing of excludable time for subsequent indictments relates back to the prior accusatory instrument, the prosecutor "remains entitled to but one six month readiness period" (People v. Sinistay, 67 NY2d 236, 240 [1986]).

6th Amendment right to a speedy trial, see Barker v. Wingo, 407 U.S. 514, 530, 92 S.Ct. 2182, 2192, 33 L.Ed.2d 101, 117 (1972); Klopfer v. North Carolina, 386 U.S. 213, 221-22, 87 S.Ct. 988, 992-93, 18 L.Ed.2d 1, 7 (1967).

C. The people should not receive the benefit of adjournments in Town Court where they asserted that they remained in sole control of whether to indict Mr. Khalil, leveraged that threat of indictment to pers-

he plea bargaining with him, and these neither to indict nor obtain a speedy trial waiver.

Mr. Khalil contends that the misdemeanor matters charged in the original accusatory instruments (Counts II-IV) were untimely because pre-indictment statements of readiness became ineffective upon divesting Pierrefort Town Court over those matters (see *People v. Carraro*, 57 Misc 3d 1207 [A], 2017 NY Slip Op 51219 [U], *2 [Crim Ct. Kings County 2017]). The remaining Counts of the indictment remain wholly within the exclusive power of the DA to indict, and their use of them as a hammer during plea negotiations, without regard for their duty to timely bring forth the indictments, must result in reversal (*People v. Babcock*, 86 AD2d 979, 979 [4th Dept 1982]).

The People could not declare ready for trial on the later charged crimes they brought before the grand jury on July 11, 2019 because no such charges were pending in Pierrefort Town Court prior thereto (see *People v. Delgado*, 209 AD2d 218, 219 [1st Dept 1994], citing *People v. Gayland*, 84 Misc2d 111 [1994] [pre-indictment statement of readiness illusory because the court does not acquire jurisdiction over the defendant until the indictment and arraignment]). People solely control when to empanel a grand jury for indictment (*Babcock*, 86 AD2d at 979, citing *People v. McCaffery*, 78 AD2d 1003, 1003 [4th Dept 1980]).

As Counsel stated at motion or judgment, his client rejected plea offers immediately in court on November 16, 2018 and April 3, 2019. Moreover, many of the adjournments occurred, according to defense Counsel, because "there was no ADA present" and these "were just control dates" the local court set up knowing "there's not going to be any prosecution there" so "technically" he should not talk to the judge because that would constitute "ex parte communication". Therefore, in this case as in previous matters, "as a general rule,

The time 'incident to the conclusion of plea negotiations' is chargeable to the people" (People v. Suppe, 224 AD2d 970, 976 [4th Dept 1996] [emphasis added]).

Furthermore, defense Counsel requested a trial date on April 13, 2019 for the misdemeanors and acknowledged that many of the discussions with the DA about scheduling issues occurred off the record in telephone conversations. The DA did not offer a response to these contentions below other than to say that they possess a plenary "prosecutor's prerogative" as to when or whether to indict a case except for the possibility of a defendant taking advantage of an early plea to a misdemeanor, which thereby deprives them of the ability to indict any related felonies, presumably due to Constitutional double jeopardy concerns (see CPL 40.20(2), 40.30(1)(a)).

The local Criminal Court, Pierrepont Town Court, setting statuses during which the people are not even present (a fact they did not contest in their motion response or during oral argument below) does not constitute any delay by the defense when they codify those requests for adjournment because, under these circumstances, they do not "clearly express" defense Counsel's consent and "[d]efense Counsel's failure to object to the adjournment or failure to appear does not constitute consent" (People v. Matieson, 166 AD3d 1300, 1302 [3rd Dept 2018], citing People v. Smith, 82 NY2d 676, 678 [1993]). Moreover, the lower court's analysis completely overlooks the periods in which the defense requested a trial on the then pending misdemeanor matter since April 3, 2019.

Furthermore, even if attributable to the defense, these delays to the local Criminal Court proceedings, are not a delay to the grand jury proceedings (see People v. Murray, 224 AD2d 968, 969-70 [4th Dept 1996], citing England, 84 NY2d 451) "People neither were nor could be ready for

trial in Town Court on the charge of sexual abuse in the first degree, a felony, for which defendant was not indicted until March 14, 1991." ["The declaration of readiness by the people in their memorandum to Town Court was nothing more than an 'empty declaration'"] See also Babcock, 86 AD2d at 979; People v. Johnson, 174 AD3d 1570, 1571 [4th Dept 2019].

See (People v. Waring, 206 AD2d 329, 330 [1st Dept 1994]) ["absent some reasonable ground the time used to obtain an indictment is ordinarily chargeable to the people"]. Furthermore, with regard to pre-indictment plea offers, "time incident to the conclusion of plea negotiations" is chargeable to the people (Suppe, 224 AD2d at 971) "because the record does not support their assertion that defendant explicitly requested or consented to an adjournment for the purpose of plea negotiations, the entire period of pre-indictment delay is chargeable to the people, thus rendering their declaration of readiness untimely" (People v. Coxon, 242 AD2d 962, 963 [4th Dept 1997]).

As to the misdemeanors that remained pending in local Criminal Court before indictment (Counts II-IV), while statements of readiness are otherwise effective, the decision to indict the GC nearly a year later resulted in untimely prosecution of those misdemeanors (See People v. Carrenard, 57 Misc 3d 1203 [A], 2017 NY Slip Op 51219 [U], *2 [Crim CT, Kings County 2017]). The people choosing to indict such charges is done "at their own peril" because they cannot declare ready on the misdemeanors and then terminate/divert (CPL 170.20) the local Criminal Court, here Pierce Post Town Court, to present to a grand jury (Carrenard, 57 Misc 3d 1203 [A], 2017 NY Slip Op 51219 [U], *2).

As to the felony and misdemeanor larcenies (Counts V-VII), the

lower Court found that were separate and distinct crimes rather than directly derived from the original accusatory instruments but the Supreme Court Appellate Division 3rd Dept NY agreed with Mr. Khalil Appellate Attorney that all of the charges set forth in the indictment arise out of the same criminal transaction as those alleged in the local criminal court informations. (see People v. Ahmed Khalil 706 AD3d 1300).

The Appellate Division did not reverse the additional findings as to whether the charging of the people's experts (mer for sharam) as the charging of expert mens people statement of readiness on July 11, 2019 Discovery, and the trial started on January 27, 2020 which means 6 months and 16 days; 16 days more than 6 months (see CPL 30.30 [1] [a])

"because the record does not support their assertion that defendant explicitly requested or consented to an adjournment for the purpose of plea negotiations, the entire period of pre-indictment delay is chargeable to the people, thus rendering their declaration of readiness uniformly" People v. Colon, 242 AD2d 962, 963 [4th Dept 1997] and all the trial adjournments requested reflected that as "engaged in the matter of a proceeding", "simultaneous engagement", "simultaneous engagement", actually Mr. Khalil and his trial lawyer were at the court house on October 21, 2018, November 29, 2018, April 3, 2019, May 3, 2019, July 8, 2019 and November 13, 2019 and more off record.

the people engaged in tactical delay by waiting to present the case to a grand jury as violation notion of fundamental fairness is supported by the record, as a people proposed plea on October 21, 2018 just minutes before charging Mr. Khalil with felony "criminal possession of a weapon 3rd deg § 160.50" which was dismissed on April 04, 2019 on the interest of justice

and 23 days after People charged Mr. Khalil with "Criminal Conspiracy 2nd Degree Count § PL 215.5") a charge which Mr. Khalil was acquitted on after a jury trial on May 23, 2019; furthermore the Assistant DA email on received "Further Conversations resulted in the disclosure relative to PL Article 30 to include two counts of PC, one count of CSA1, and one count of Aggravated SA1", and again at the People closing statement "But you're not here on five counts of rape in the first degree..."

3.2 QUESTION 2

A. Introduction

The jury acquitted Mr. Khalil of the petit larceny related to the blue folder of important documents (Count VI). After the felony grand larceny fourth (Count VIII), Mr. Khalil recorded a video of what transpired during the property retrieval. Complainant testified that she left the purse in Mr. Khalil's car before fleeing to the church to get a ride to campus from Sanford, who saw no purse.

The theory of the trial lawyer included that Complainant leveraged her situation with Mr. Khalil and others to gain permanent status under United States immigration laws and to turn the tables against him following his reporting of her potential immigration fraud involving her cousin's/sister's passport to Homeland Security in May and August of 2018. The defense further posited that prior to her engagement to Mr. Khalil, Complainant dated a lawyer's NPC, Mr. John Kiffin, and engaged in a "secret" relationship with Mr. Farzi, which she denied by the admitted. While she later pursued an application based on national interest waiver, she initially contacted a lawyer about gaining permanent status in the US

Under the asylum or domestic violence exemption due to her relationship with Mr. Khalil.

As Bates acknowledged, and as defense counsel argued, the case largely hinged upon the credibility of Complainant because every other witness received their understanding of what occurred from her.

B. Sufficiency and Weight Standards of Review

Legal sufficiency requires the court determine whether any rational trier of fact could have found the "essential elements" of the crime beyond a reasonable doubt" (People v. Carter, 60 NY2d 620, 624 [1983], quoting Jackson v. Virginia, 443 US 307, 319 [1979]; CPL 470.15 [2], [4] [b], 470.2 [2] [4]).

where the Court finds the evidence legally sufficient, that finding does not end the analysis because a legally sufficient verdict may still be against the weight of the evidence (*People v Danielson*, 9 NY3d 342, 349 [2007], citing *People v Cahill*, 2 NY3d 14, 62 [2003]). Unlike appellate review for legal sufficiency, weight of the evidence review requires the Court to examine the evidence further, even if some credible evidence supports all the necessary elements and findings (*People v Bleakley*, 69 NY 2d 490, 491- [1987]).

C. The verdicts were both legally insufficient and against the weight of the evidence.

The ground for ~~loss of~~ Fourth (COUNT VII; PL § 113:3 [4]) required the people to prove that Mr. Khalil both a) took or withheld the purse containing her credit card and b) harbored the intent to deprive her of it (PL § 113:3 [1]), viewing the evidence in a light most favorable to the people, complainant either abandoned or lost her property by leaving it in Mr. Khalil's car, and he undertook "reasonable measures" to return it to their shared residence.

(Pl. § 155.05 [2] [b]), see generally *People v McFarland*, 181 AD2d 1007 [4th Dept 1992] citing *People v Colon*, 28 NY2d 1, 11 [1971].

Moreover, the weight of the evidence does not support Mr. Khalil either taking or permanently depriving Complainant of her phone (see *Delamater*, 118 NY3d at 116-17; *Overlander*, 94 AD3d at 1460). The weight of the evidence further does not establish that Mr. Khalil hindered or attempted to withhold the phone given that he cooperated in Deputy Jones' property retrieval and video recorded the same with his phone, which this Court may consider as factors inferring innocence when freshly reviewing the evidence (see *Carter*, 158 AD3d at 1113).

As for the remaining counts of the indictment, the People's Case rested entirely upon the credibility of Complainant, the Court might cast a more discerning eye towards Complainant's testimony (*People v Steeter*, 118 AD3d 1287, 1288 [4th Dept 2014]; see also *People v Fuller*, 50 NY2d 628, 634-35 [1980] "Sworn testimony will be undermined to such a degree, either by an apparent motive to fabricate or by its own inherent improbability or inconsistency, that it cannot, standing by itself, amount to proof beyond a reasonable doubt").

Complainant averred that she did not have her phone from the time Mr. Khalil took it until the following day, and that the events in the car occurred until roughly 4:00 PM or 5:00 PM, yet she sent an email from the account she had on her phone at 3:17 PM on August 23, 2018, (all the Defense Exhibits the Court reported them missing which show the conspiracy by the Trial Court), thereby further undermining her credibility.

Neighbors in the trailer park Mr. John Patrick and Ms. Brenda Lipinsky, neither saw or suspected anything untoward in the relationship between Mr. Khalil and Complainant, and both saw Complainant leave by herself at times, contrary to Complainant's testimony that Mr. Khalil was controlling and

always wanted to know her whereabouts.

Defense Counsel also impeached Complainant during cross-examination in that she had ample opportunity to report abuse or escape yet decided to forego such opportunities in public places such as doctor's office, Taco Bell, Tim Horton's, or at the lab in Clarkson University. Contrary to her account of abuse, she became engaged to Mr. Khalil and purchased a ring for him, which was inconsistent with affectionate text messages over WhatsApp, also her denial of a prior secret relationship with Farzi, another prosecution witness, despite Farzi admitting to the relationship.

Defense Counsel cross-examined Deputy Jones and impeached him as a witness regarding several prior instances of untruthfulness, including, but not limited to, Deputy Jones resigning as a deputy because he lied about a core accident he was involved in.

As the record reflects "As jointly understood, upon mutual agreement of the parties, the counsel for the defendant has agreed that any material the court may authorize for disclosure are not to be permitted for use as a collateral attack pertaining to the pending federal litigation of oral Nicholas Hillary v. St. Lawrence County et al ..." as a conflict of interest of the counsel for the defendant, furthermore two witnesses are listed as a party to said action 2019 WL 977876, Mr. Hillary was the head men's soccer coach at Clarkson University and see oral Hillary v. Village of Potsdam 2015 WL 902930 "Hillary asserts that was evidence pointing to St. Lawrence County Deputy Sheriff John Jones as a prime suspect in the murder of twelve-year-old Garret Phillips"

REASONS FOR GRANTING THE PETITION

As a matter of fundamental fairness, the district Attorney should not be permitted to engage in these sort of malicious acts, conspiracy acts, and brinksmanship, to violate the Constitutional rights. United States of America Constitution could not have intended such an outcome.

United States of America government intelligence, General Electric Corporation, Clarkson University should not be permitted to engage in these sort of making people to unknowingly work on developing bioweapon and gain of function researches.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: February 7, 2023