

**DISTRICT COURT OF THE COUNTY OF SUFFOLK, FIRST DISTRICT**

Present:

HON DENNIS M. COHEN  
JUDGE

Date: MAY 22, 2008

THE PEOPLE OF THE STATE OF NEW YORK

- AGAINST -

ROBERT J. TROTTA,  
Defendant

Upon the following papers numbered 1 to 7  
read on this motion of the defendant to dismiss  
Notice of Motion and supporting papers 1;  
Notice of Cross Motion and supporting papers \_\_\_\_\_;  
Answering Affidavits and supporting papers 2;  
Replying Affidavits and supporting papers 3;  
Filed papers 4 (District Attorney's Office Request to Reschedule for  
Reduction; 11/29/07; Other 5 (CPL §180.50 Order of Reduction; 12/3/07);  
6 (Courtroom Calendar of 12/3/07 for Part D-35); 7 (Markings on Court's  
File Jacket for the Matter) \_\_\_\_\_ it is,

**ORDERED**, that the branch of the defendant's motion seeking dismissal pursuant to CPL §30.30 is granted to the extent that the matter shall be set down for hearing on the date set forth below, with the balance of the motion held in abeyance for the sake of judicial economy. In this regard, and without reaching the issue raised by defendant under People v. Rashtak, 165 Misc.2d 236 (as to which the Court notes that the related exhibit, consisting of a Department of Motor Vehicles abstract, is not in proper evidentiary form) the Court notes that the defendant has met his initial burden, of alleging that ready-trial time has been exceeded, even if the longer six-month period is applied, thereby shifting the burden to the People. People v. Berkowitz, 50 NY2d 333. In response, the People acknowledge the expenditure of 175 of the 183 days permissible under the longer period, consisting of the time from the filing of the original accusatory instruments, on June 11, 2007, through the date of the CPL §180.50 reduction proceeding, which occurred on December 3, 2007. However, review of the contents of the Court's file and records reveals the following: 1.) That the last scheduled Court date for the matter, previous to the reduction proceeding, was November 26, 2007, at which time a return date of January 22, 2008 was assigned; 2.) That

the People's request to reschedule the matter to December 3, 2007, for the purpose of reducing the charges, is dated November 29, 2007, but is unaccompanied by any marking to indicate that the People served a copy of that request upon the defendant; 3.) That upon the Order of Reduction granted December 3, 2007, no indication is made that defendant and/or his counsel were present at the time of that proceeding; 4.) That upon the entries for December 3, 2007, the Court's file jacket and calendar indicate that the defendant was to be arraigned upon the reduced charges on January 7, 2008. A question of fact therefore exists as to whether the People are additionally liable for the 35 days which elapsed from the date of the reduction to the date of arraignment on the new charges, thereby giving rise to an aggregate of 210 expended days, rendering the prosecution untimely under CPL §30.30. The matter is therefore set down for hearing on the date set forth below, before or at which time the parties are to produce any transcripts they wish the Court to consider in rendering its findings of fact.

New Court Date: 1/7/08 - District  
Dated: 7/21/08

DM  
\_\_\_\_\_  
J.D.C.  
Hon. Dennis M. Cohen

Decision to be published on-line:    \_\_Yes    \_\_No