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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2010-2011

CR-09-1651

State of Alabama

v.

Gedarin Kenardo Robinson

Appeal from Montgomery Circuit Court
(CC-10-653)

PER CURIAM.

The State appeals from the trial court's order dismissing the indictment charging Gedarin Kenardo Robinson with second-degree forgery for allegedly obtaining a non-driver's identification card in his brother's name.

The State argues that the trial court erroneously granted Robinson's motion to dismiss the indictment against him on speedy-trial grounds. In Barker v. Wingo, 407 U.S. 514 (1972), the United States Supreme Court set forth the following factors that must be weighed when reviewing a speedy-trial claim: (1) the length of the delay; (2) the reason for the delay; (3) the accused's assertion of his right to a speedy trial; and (4) the degree of prejudice the accused suffered due to the delay. See also Ex parte Walker, 928 So. 2d 259 (Ala. 2005) (providing a lengthy analysis as to the proper application of those factors in Alabama).

The following timeline is helpful for our examination of the issue in this case:

January 15, 2004 -- Robinson allegedly obtained an Alabama non-driver identification card in the name of Eric Delano Robinson by forging the name "Eric Robinson" on documents required to obtain the identification card.

April 18, 2008 -- An arrest warrant was issued in Montgomery County seeking Robinson's arrest for the January 14, 2004, offense.

June 5, 2008 -- Robinson filed an appearance bond in Elmore Circuit Court regarding burglary charges in Elmore County.

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August 21, 2008 -- Robinson was indicted in Montgomery County for second-degree forgery for the January 14, 2004, offense.

May 12, 2010 -- Robinson was arrested in Montgomery County for the January 14, 2004, offense.

June 8, 2010 -- Robinson filed a "Motion to Dismiss for Failure to Provide a Speedy Trial." A hearing was set for June 29, 2010.

June 24, 2010 -- The State filed a motion to continue the speedy-trial hearing scheduled for June 29, 2010, because its key witness would be out of town until July 2, 2010. The hearing was rescheduled for July 7, 2010.

July 14, 2010 -- The trial court conducted a hearing on Robinson's motion to dismiss.

July 21, 2010 -- The trial court dismissed the indictment against Robinson.

During the hearing on the motion to dismiss, Diana Hough testified that she is employed by the Montgomery County Sheriff's Department as a fingerprint classifier and as the assistant to the identification officer, Ron McCoy. She further testified that she had reviewed the records regarding Robinson's forgery charge and that she was the custodian of those records. According to Hough, the original arrest warrant was issued April 18, 2008; that warrant was replaced by a grand-jury indictment on August 21, 2008. She stated that the only address the department had for Robinson was a

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North Carolina address, so his information was entered into The National Crime Information Center ("The NCIC") on December 17, 2008; Hough testified that the NCIC system periodically required the department to confirm that the warrant was still valid and that her records reflected that the department verified the continued validity of the warrant on January 21, 2009, on April 16, 2009, and on March 25, 2010.

Hough stated that in preparation for the present proceedings, the sheriff's department ran a criminal history to review Robinson's contact with law enforcement. According to Hough, that history revealed that Robinson had been arrested in Elmore County on June 5, 2008; she stated that the records indicated that Robinson was booked in Elmore County under the name Kenardo Robinson, and that records in Montgomery County listed him as Gedarin Robinson. Hough further indicated that the records indicated that Robinson was arrested in North Carolina on April 4, 2010, and then by Montgomery County authorities on May 11, 2010, for the forgery charge.

On cross-examination, Hough indicated that she did not have any knowledge of the procedures used in Elmore County,

that she did not have an explanation for the variations of Robinson's name between the entries in the Elmore County records, and the Montgomery County records, and that she did not know the disposition of the Elmore County charges or whether Robinson came to Montgomery County before going to Elmore County to face the Elmore County charges.

Robinson also testified at the hearing on his motion to dismiss. Defense counsel asked Robinson about the Elmore County charges, and the following exchange occurred:

"[Robinson]: Well, initially, I was arrested in North Carolina on a fugitive warrant. All they said was Alabama wanted me. So I came -- I didn't know what county wanted me. I came to Montgomery first and then they told me Elmore County wanted me, so --

"[Defense counsel]: Where did you go in Montgomery?

"[Robinson]: Here to the jail.

"[Defense counsel]: Came to the jail?

"[Robinson]: Yes, sir.

"[Defense counsel]: Did you identify yourself?

"[Robinson]: Yes.

"[Defense counsel]: All right. And how did you identify yourself?

"[Robinson]: With my name, Gedarin Kenardo Robinson.

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"[Defense counsel]: All right. What is your full name?

"[Robinson]: Gedarin Kenardo Robinson.

"[Defense counsel]: All right. So Kenardo is your middle name?

"[Robinson]: Correct.

"[Defense counsel]: All right. And was there any attempt to serve you with any papers or to arrest you on a Montgomery warrant at that time?

"[Robinson]: No."

(R. 12-13.) According to Robinson, he pleaded guilty in Elmore County to misdemeanor possession of a forged instrument to resolve those charges. Robinson indicated that he had been unaware of the charge against him in Montgomery County and that he was not aware of any attempts to serve him with any papers or to arrest him on the Montgomery charge.

On cross-examination, the prosecutor questioned Robinson as to why he came to Montgomery County to check on cases when he claimed that he was unaware of any cases against him in Montgomery. Robinson responded:

"I was arrested in North Carolina on a fugitive warrant out of the state of Alabama. I knew I lived in Montgomery before. So they had a hold on me, and -- but they gave me bail in North Carolina on the condition that I came down here to straighten out what was going on. So once I got out of North

Carolina, I came here to Montgomery County jail to turn myself in, but they told me the warrants were Elmore County. So once I went to Elmore County, I turned myself in there, and then used a property bond for property we have in here Montgomery to bail me out in Elmore County."

(R. 14-15.) Robinson further indicated that he came to Montgomery County on the same day he was arrested in Elmore County.

The trial court inquired of the prosecutor as to why Robinson had not been indicted until approximately four years after the commission of the offense, and the prosecutor engaged in a dialogue with the trial court regarding the continuing nature of the offense. The trial court also asked Robinson if he lived in North Carolina, to which Robinson responded affirmatively.

The prosecutor noted that Robinson had not asserted his right to a speedy trial until recently, and that he had not shown any prejudice caused by the delay. The trial court asked defense counsel how Robinson had been prejudiced, to which defense counsel stated that the allegation was that Robinson had obtained the identification card in his brother's name, and that the defense viewed the brother as a possible witness but the brother was no longer subject to the subpoena

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power of the court because he did not live in Alabama and, according to defense counsel's understanding, was presently non compos mentis.

The trial court took the matter under advisement, and the hearing was concluded. Later that same day, defense counsel submitted to the trial court a copy of the United States Supreme Court opinion in Doggett v. United States, 505 U.S. 647 (1992).¹ The case-action summary contains the following entry dated July 21, 2010: "Order Grant Mo To Dismiss." (C. 3.) The record also contains a copy of Robinson's motion to dismiss for failure to provide a speedy trial, with what appears to be a stamp indicating that the motion was granted and bearing a line for the date and the trial judge's name; the corresponding lines in the stamped area contain handwritten notations of "7-21-10," "case dismissed," and the trial judge's signature. (C. 30.)

The record does not affirmatively indicate that the trial court weighed each of the factors as required by Barker,

¹The trial court had requested a copy of the opinion during the hearing on Robinson's motion to dismiss the indictment, and defense counsel indicated that he did not have a copy in court but would submit a copy after the hearing.

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supra. See also Ex parte Walker, supra. Therefore, we remand this case for the trial court to make specific, written findings of fact as to each Barker factor with reference to the principles set forth by the Alabama Supreme Court in Ex parte Walker, supra. See generally Parris v. State, 885 So. 2d 813 (Ala. Crim. App. 2001). If the trial court determines that it needs to conduct an additional hearing to take additional evidence or to hear additional arguments, it may do so. On remand, the trial court shall take all necessary action to see that the circuit clerk makes due return to this Court at the earliest possible time and within 35 days after the release of this opinion. The return to remand shall include the trial court's specific, written findings of fact; a transcript of any additional hearing; and copies of any additional documents or evidence that may be submitted to the trial court.

REMANDED WITH INSTRUCTIONS.

Welch, P.J., and Windom and Kellum, JJ., concur.