

STATE OF LOUISIANA

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NO. 2001-KA-1657

VERSUS

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COURT OF APPEAL

JERRY TONEY

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 385-983, SECTION "D"
Honorable Frank A. Marullo, Judge

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Charles R. Jones

Judge

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(Court composed of Judge Charles R. Jones, Judge Terri F. Love, and
Judge Max N. Tobias, Jr.)

TOBIAS, J., DISSENTS

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AFFIRMED

Appellant, the State of Louisiana, appeals the order of the district court granting Jerry Toney's Motion to Quash the multiple bill filed against Jerry Toney. The multiple bill alleged Toney is a fourth felony offender. We affirm.

Toney was charged with possession of cocaine with intent to distribute in violation of La. R.S. 40:967(A)(1). After trial, a twelve-member jury found him guilty as charged. He was sentenced to ten years at hard labor without benefit of parole, probation, or suspension of sentence, and the State filed a multiple bill charging Toney as a fourth felony offender. At the multiple bill hearing, Toney filed a Motion to Quash the bill which the district court granted.

The facts of this case are not at issue here.

At a hearing in August 2001, the district court found that the multiple bill was quashed because it was not timely filed and because the hearing had been reset thirteen times. The State argues that the district court erred in granting the Motion to Quash because there is no evidence that (1) the State

was responsible for any of the continuances of the multiple bill hearing, (2) the delays were not unreasonable, and (3) Toney was not prejudiced.

The record reflects a minute entry from March 14, 2000, indicating that the State filed the multiple bill immediately after Toney was sentenced to his ten-year term. The multiple bill hearing originally set for April 14, 2000, was reset approximately twelve times prior to the hearing on August 7, 2001, when the district court granted Toney's Motion to Quash. The sequence of minute entries indicates that at the multiple bill hearing set for April 14, 2000, the district court granted Toney a continuance and reset the matter for May 17th, 2000. A joint continuance was granted on July 28th, 2000 and the matter was reset for August 18th, 2000. On September 14th, a joint continuance was again granted. There are no reasons given as to why this matter was reset for the dates of November 3rd and 8th 2000; March 6th and 13th, 2001; April 20th, 2001; May 18th, 2001; and June 29th. The record reflects that Toney was responsible for the last two continuances since there is a notation in the record to send notice to defense counsel who was presumably not in court. Thus, the record indicates that Toney was responsible for at least two continuances, and the State and defense jointly asked for two continuances, and on the date the Motion to Quash was granted, the State requested a continuance.

The district court granted the Motion to Quash on the basis that the State had been dilatory in proceeding with the multiple bill.

Toney filed two Motions to Quash which appear in the record. A typed one was filed on June 29, 2001; that document states that the multiple bill was just filed and that although the prosecution claimed that Toney had five prior offenses, the defense did not know which of those convictions the state planned to use. The second hand-written Motion to Quash was filed on August 7, 2001, under the district court's guidance. It is based on the fact that the State did not proceed with the multiple bill in a timely fashion. The second Motion to Quash also claims that the defense was responsible for only one continuance.

Recently this Court considered a similar case, State v. Grimes, 2001-0576 (La. App. 4 Cir. 5/2/01), 786 So. 2d 876, where the defendant appealed the trial court's denial of his Motion to Quash the multiple bill after a series of eighteen continuances over a sixteen month period. This Court affirmed and summarized the law on this issue as follows:

The multiple offender statute, La. R.S. 15:529.1, does not provide a time period in which a multiple bill should be filed and the matter adjudicated except to note that a defendant may be charged as a multiple offender if "at any time, either after conviction or sentence, it shall appear that a person convicted of a felony has previously been convicted" of another felony. State v. Walker, 98-1410 (La. App. 4 Cir. 5/12/99), 735

So.2d 837. In State v. Broussard, 416 So.2d 109, 110 (La. 1982), the Louisiana Supreme Court noted that although La. R.S. 15:529.1 does not provide a time limitation, a multiple bill must be filed within a reasonable time after the State learns that a defendant has a prior felony conviction. The Court stated:

The same considerations which underlie the constitutional right to a speedy trial compel a conclusion that upon conviction a defendant is entitled to know the full consequences of the verdict within a reasonable time. Since the enhancement of penalty provision is incidental to the latest conviction, the proceeding to sentence under the provision should not be unduly delayed. State v. Walker, at p. 6-7, 735 So.2d at 841, quoting State v. Broussard, 416 So.2d at 110-111.

The application of the Broussard doctrine is a fact-specific inquiry depending upon the particular facts and circumstances of each case. State v. McNeal, 99-1265 (La. App. 4 Cir. 6/14/00), 765 So.2d 1113.

State v Grimes, 786 So. 2d at 879-890.

In Grimes eighteen continuances occurred between the filing of the multiple bill and the hearing, and the party responsible for the delays was rarely named. Similarly in the case at bar, the record does not provide explanations for most of the postponements of the hearings. We find that

the district court judge, who presided over all of these matters relating to this prosecution, was clearly in a better posture than we, reading the cold record, in determining who was responsible for the delays in proceeding with the multiple bill.

Further, the later two continuances charged to Toney were actually not his fault, as the court had failed to send notices to his counsel of record. As previously stated, the record is devoid as to whether the State or Toney was responsible for the sixteen and three-fourth month delay even though the district court determined that the State was the main cause of the delay. This Court is not in a position to disturb the district court's findings, nor are we in a position to make assumptions as to the reasons for the continuances at the trial level when the record is devoid. We can only recognize that there were numerous continuances granted by the district court and that the district court did not abuse its discretion in granting such continuances nor in granting Toney's Motion to Quash.

DECREE

For the reasons stated herein, we defer to the vast discretion of the district court and affirm the granting of Jerry Toney's Motion to Quash the multiple bill.

AFFIRMED