AFFIRM; and Opinion Filed January 20, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-01370-CR

VICTOR N. ROJAS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 5
Dallas County, Texas
Trial Court Cause No. F-0521244-L

MEMORANDUM OPINION

Before Justices Bridges, Lang-Miers, and Whitehill
Opinion by Justice Lang-Miers

Appellant Victor N. Rojas appeals his conviction for possession with intent to deliver a controlled substance in an amount of one gram or more but less than four grams. Appellant argues that the trial court erred in denying his motion to dismiss for violation of his right to a speedy trial. We affirm.

BACKGROUND

Appellant was arrested for possession of a controlled substance—methamphetamine—in an amount of 400 grams or more on August 31, 2005. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112(f) (West 2010). In January 2006, appellant was indicted for the offense. The indictment was filed with the district clerk on March 9, 2006 and a warrant issued for appellant's

arrest on the same day. The sheriff executed the arrest warrant on February 19, 2015. Appellant was arraigned the following day, February 20. 2015.

On April 2, 2015, defendant filed a request for speedy trial and a motion to dismiss based on violation of his right to a speedy trial.[1] Appellant argued in his motion that the ten-year delay between the charge and his arraignment is presumptively prejudicial and the State had not justified the delay. The trial court held a hearing on his motion to dismiss on April 13, 2015.

The testimony and evidence admitted at the hearing reflect that appellant employed various identities between the time of the commission of the offense in 2005 and his arrest in 2015, including Victor Noyola Rojas, Manuel Guadalupe Flores, Juan Acevdo, and Juan Acevedo. The 2005 investigative report for the offense involved here states, "Throughout this investigation, FLORES identified himself as ROJAS to officers present at the arrest. On Wednesday, August [sic] 7, 2005 through investigative means, it was determined that ROJAS['S] true identity is FLORES."[2] The subsequent indictment lists appellant's name as Victor N Rojas AKA: Manuel Guadalupe Flores. In addition, Officer Thomas Cooke with the City of Richardson police testified that, when he arrested appellant in 2015, appellant first identified himself as Juan Acevdo whose birthdate was October 29, 1970. When questioned further, he provided Cooke with a citation from the City of Dallas that reflected his name as Juan Acevedo with a birthdate of October 1, 1970. The officer determined there were two warrants outstanding for appellant under the name Juan Acevedo in Garland, Texas. After Cooke took appellant to the City of Richardson jail, the jail informed Cooke that appellant "had two separate aliases" "on file": one "was for Victor Rojas and one was for Manuel Flores." Additionally,

[1] Appellant originally filed the motion to dismiss attached to the motion for speedy trial on April 2, 2015. On April 24, 2015—after the court denied the motion to dismiss—the motion to dismiss was filed again as a separate (but unsigned) document.

[2] Appellant's sister testified in his defense that, in Mexico, their stepfather had changed appellant's name from "Victor Rojas" with a birthdate of October 29, 1970 to "Manuel Guadalupé Flores" with a birthdate of October 1, 1970.

during the hearing, appellant and the State stipulated concerning appellant's statements during a telephone call from jail:

> [THE STATE:] With agreement of Defense counsel, I believe we've agreed—correct me, if I'm wrong. We'll stipulate specifically, in call number nine—it's been listed as number nine. In that call the—during that call, the Defendant said he's being held on that 2005 charge under—quote—"the other name" which we won't mention. And this was the most important part of that call I believe, Your Honor, that I think we can stipulate to.
>
> THE COURT: Defense.
>
> [APPELLANT'S COUNSEL:] Your Honor, we are just stipulating that he knows he was arrested in 2005 and he's aware of that arrest.
>
> THE COURT: And that's what these calls verify?
>
> [THE STATE:] I'm sorry. I forgot the other line that I had told the Court and Defense counsel about. It further says "just take as Victor Rojas."
>
> THE COURT: Defense.
>
> [APPELLANT'S COUNSEL:] No objection, Your Honor.
>
> THE COURT: All right. That will be admitted.

Various testimony and evidence admitted at the hearing involved appellant's addresses during the ten years between his initial arrest and his arraignment. At the hearing, Officer Daniel Sherman of the Dallas County Sheriff's Department testified that, on June 2, 2006, he attempted to execute the felony warrant issued for the arrest of "Victor Rojas"[3] at the address 2010 Crawford 29, Dallas Texas. Officer Sherman determined that there was no address with that number on Crawford Street in Dallas and concluded that it was a fictitious address.[4] The indictment also lists appellant's address as "2010 Crawford 29" in Dallas. But appellant's sister, Nora Boconegra, testified that, from 2005 to 2007, appellant lived at 2010 Cranford Street in Garland. And an investigative report involving the alleged offense from September 2005 lists

[3] The warrant was issued in the name Victor N. Rojas.

[4] Officer Sherman testified that there is also a Crawford Street in Mesquite, Texas but that 2010 Crawford does not exist in Mesquite.

appellant's last known address as 2010 Cranford, Apt. 29, Dallas, TX 75213. On cross-examination, Officer Sherman testified that it was possible that "there could have been a typographical error" but that "for the most part" that does not happen.

In addition, appellant also lived at several other places between 2005 and 2015. His sister Boconegra testified that, during those ten years, appellant lived "off and on" with her, their mom, his wife, and his girlfriend. She testified that, after living on Cranford Street from 2005 to 2007, appellant lived with his ex-wife and children in Garland and then lived with his mother for four-and-a-half or five years. She testified that her mother's address was on Cranford and "then she moved to Umphress" in Pleasant Grove. She also testified that "it wouldn't be unusual for him to give" her address, 44515 Live Oak, Apartment 205, in Dallas if "he wanted to" because "stay[ed] there" anytime she "needed him[.]"

The trial court denied the motion to dismiss on April 20, 2015. On November 3, 2015, the State moved the reduce the offense for which appellant was charged to possession with intent to deliver a controlled substance in the amount of one gram or more but less than four grams. *See id.* § 481.112(c). Appellant pleaded guilty to the reduced charge. The court sentenced appellant in accordance with the terms of a plea bargain to two years' imprisonment. Appellant then filed this appeal.[5]

APPLICABLE LAW

Both the Sixth Amendment to the United States Constitution and article 1, section 10 of the Texas Constitution guarantee a speedy trial.[6] *See* U.S. CONST. amend. VI; TEX. CONST. art. 1, § 10; *Zamorano v. State*, 84 S.W.3d 643, 647 (Tex. Crim. App. 2002). A speedy trial

[5] Appellant filed an appellate brief asserting ineffective assistance of counsel. He subsequently filed a supplemental brief in which he argues that his issue of ineffective assistance of counsel in his original brief is moot and requests that it be withdrawn. Because appellant withdraws his ineffective assistance of counsel issue, we need not address it. *See* TEX. R. APP. P. 47.1.

[6] Section 1.05 of the code of criminal procedure also provides that the accused shall have a speedy trial. *See* TEX. CODE CRIM. PROC. ANN. art. 1.05 (West 2005).

mitigates the concern and anxiety accompanying public accusation and protects a defendant from impairment to his defense and oppressive pretrial incarceration. *Cantu v. State*, 253 S.W.3d 273, 280 (Tex. Crim. App. 2008). "The right attaches once a person becomes an 'accused'—that is, once he is arrested or charged." *Id.*

While the Texas Constitution provides an independent speedy trial guarantee, the Texas Court of Criminal Appeals has traditionally analyzed speedy-trial claims under the same framework established by the United States Supreme Court in *Barker v. Wingo*, 407 U.S. 514, 530–33 (1972). *See Zamorano*, 84 S.W.3d at 647–48. That framework requires us to consider four factors: (1) the length of the delay, (2) the reasons for the delay, (3) the assertion of the right, and (4) the prejudice to the defendant. *Barker*, 407 U.S. at 530. No single factor is sufficient or necessary to establish a violation of the right to a speedy trial, although the length of the delay is a "triggering mechanism" for analysis of the other factors. *Id.* at 530, 533. The court of criminal appeals has held that a seventeen-month delay is "presumptively prejudicial" and a four-month delay is not. *Cantu*, 253 S.W.3d at 281. If the delay is "presumptively prejudicial," the State bears the burden of justifying the delay and the defendant has the burden to prove that he asserted the right and that he suffered prejudice because of the delay. *Id.* at 280. The defendant's burden of proof "varies inversely" with the State's degree of culpability for the delay: the less culpability the State has for the trial delay, the more a defendant must show actual prejudice or prove diligence in asserting his speedy-trial right. *Id.* at 280–81 (quoting *Robinson v. Whitley*, 2 F.3d 562, 570 (5th Cir. 1993)). In evaluating a speedy-trial claim, we balance the defendant's conduct against the State's conduct and consider the four factors together, along with any other relevant circumstances. *Barker*, 407 U.S. at 530, 533.

We review a trial court's ruling in light of the arguments, information, and evidence available to the trial court at the time it ruled. *Dragoo v. State*, 96 S.W.3d 308, 313 (Tex. Crim.

App. 2003). We apply a bifurcated standard of review to the trial court's ruling: "an abuse of discretion standard for the factual components, and a *de novo* standard for the legal components." *Zamorano*, 84 S.W.3d at 648. The balancing test applied to a speedy-trial analysis as a whole is a legal question. *Cantu*, 253 S.W.3d at 282.

ANALYSIS

Appellant argues that the trial court erred in denying his motion to dismiss for violation of his right to a speedy trial. But appellant has not presented any arguments to establish that the trial court erred in applying and balancing the four *Barker* factors. In his appellate briefs, appellant presents the procedural background, describes the substance of the motion to dismiss and the testimony, evidence, and arguments of counsel at the trial court's hearing on the motion to dismiss, and states various facts. He then includes—without any application or analysis—an extended quote from *Cantu*, 253 S.W.3d at 281, and without citation, an extended quote that we have identified as being from *Webb v. State*, 36 S.W.3d 164, 172 (Tex. App.—Houston 2000, pet. ref'd). We conclude that appellant has not presented anything for our review. *See* TEX. R. APP. P. 38.1(i). Nevertheless, we have reviewed the record and conclude that the trial court did not err in denying his motion to dismiss for violation of his right to a speedy trial. We overrule appellant's issue.

CONCLUSION

We resolve appellant's issue against him and affirm the trial court's judgment.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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Tex. R. App. P. 47.2(b)

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

VICTOR N. ROJAS, Appellant

No. 05-15-01370-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 5, Dallas County, Texas
Trial Court Cause No. F-0521244-L.
Opinion delivered by Justice Lang-Miers, Justices Bridges and Whitehill participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 20th day of January, 2017.