Third District Court of Appeal

State of Florida

Opinion filed October 2, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-0916
Lower Tribunal No. 14-28334

Walter Robinson,
Appellant,

vs.

The State of Florida,
Appellee.

An appeal from the Circuit Court for Miami-Dade County, Jose L. Fernandez, Judge.

Carlos J. Martinez, Public Defender, and Susan S. Lerner, Assistant Public Defender, for appellant.

Ashley Moody, Attorney General, and Christina L. Dominguez, Assistant Attorney General, for appellee.

Before FERNANDEZ, MILLER, and GORDO, JJ.

MILLER, J.

Appellant, Walter Robinson, challenges his conviction for possession of a firearm by a violent career criminal, in violation of section 790.235, Florida Statutes (2019). On appeal, he assigns error to the denial by the lower tribunal of his motion for discharge following his demand for speedy trial. For the reasons set forth below, we discern no error and affirm.

FACTS AND LOWER COURT PROCEEDINGS

On June 6, 2017, following legions of trial delays, at least four of which were solely attributable to the defense, Robinson filed a demand for speedy trial under Florida Rule of Criminal Procedure 3.191(b). The lower court scheduled trial to commence in mid-July, 2017.

On June 16, 2017, the State obtained court-ordered buccal swabs from Robinson. During the week immediately preceding the trial, the State disclosed that a DNA comparison between Robinson's swabs and a serological specimen recovered from gloves discovered in the proximity of the crime scene yielded a match. The State further filed a motion to extend the speedy trial period, citing the unavailability of a critical witness due to an unexpected and serious medical condition.

On the scheduled trial date, both the prosecution and defense appeared before the court and sought a continuance. The defense articulated its desire for a delay was premised upon its need to depose the DNA analyst. The State again advanced

the unavailability of its necessary witness. In response, the defense proposed a stipulation as to the substance of the proffered testimony of the witness. The State declined to accept the offer.

The lower tribunal continued the case, finding that a defense continuance was warranted, and regardless, an extension of the speedy trial period was justified. On August 4, 2017, Robinson filed a notice of expiration of speedy trial. The court struck the notice and, on August 23, 2017, Robinson filed a motion for final discharge. The motion was denied, and on September 5, 2017, a jury was impaneled, but later discharged due to a forecasted hurricane.[1]

The case eventually proceeded to trial, and following a jury determination of guilt, Robinson was sentenced to a term of twenty years of incarceration. The instant appeal ensued.

LEGAL ANALYSIS

"As expressly guaranteed by both the state and federal constitutions and the Florida Rules of Criminal Procedure, a criminal defendant possesses the right to a speedy and public trial." State v. Nelson, 26 So. 3d 570, 574 (Fla. 2010) (citing Amend. VI, U.S. Const.; Art. I, § 16(a), Fla. Const.; Fla. R. Crim. P. 3.191). The United States Supreme Court has "long identified the 'major evils' against which the

[1] On September 20, 2017, Robinson filed another demand for speedy trial; however, no notice of expiration followed.

Speedy Trial Clause is directed as 'undue and oppressive incarceration' and the 'anxiety and concern accompanying public accusation.'" Doggett v. United States, 505 U.S. 647, 659, 112 S. Ct. 2686, 2695, 120 L. Ed. 2d 520 (1992) (Thomas, J., dissenting) (quoting United States v. Marion, 404 U.S. 307, 320, 92 S. Ct. 455, 463, 30 L. Ed. 2d 468 (1971)).

"The Speedy Trial Clause does not purport to protect a defendant from all effects flowing from a delay before trial." United States v. Loud Hawk, 474 U.S. 302, 311, 106 S. Ct. 648, 654, 88 L. Ed. 2d 640 (1986). "The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice." Beavers v. Haubert, 198 U.S. 77, 87, 25 S. Ct. 573, 576, 49 L. Ed. 950 (1905). This relativity of rights was aptly described by the United States Supreme Court in Barker v. Wingo, 407 U.S. 514, 519-20, 92 S. Ct. 2182, 2186-87, 33 L. Ed. 2d 101 (1972), in the following manner:

> The right to a speedy trial is generically different from any of the other rights enshrined in the Constitution for the protection of the accused. In addition to the general concern that all accused persons be treated according to decent and fair procedures, there is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused. The inability of courts to provide a prompt trial has contributed to a large backlog of cases in urban courts which, among other things, enables defendants to negotiate more effectively for pleas of guilty to lesser offenses and otherwise manipulate the system. In addition, persons

> released on bond for lengthy periods awaiting trial have an opportunity to commit other crimes . . . Finally, delay between arrest and punishment may have a detrimental effect on rehabilitation.

(Footnotes omitted).

Adhering to these enshrined principles, under the Florida Rules of Criminal Procedure, upon filing a demand for speedy trial, the accused must be brought to trial within sixty days. However, "the court may order an extension of the time period[ ] provided under [the] rule when exceptional circumstances are shown to exist." Fla. R. Crim. P. 3.191(*l*). "That the unforeseeable unavailability of a witness is grounds for an extension of the speedy trial rule is clear." Routly v. State, 440 So. 2d 1257, 1261 (Fla. 1983) (citing Fla. R. Crim. P. 3.191(f); Dedmon v. State, 400 So. 2d 1042, 1045 (Fla. 1st DCA 1981); Foster v. State, 380 So. 2d 1081, 1082-83 (Fla. 3d DCA), review denied, 388 So. 2d 1113 (Fla. 1980); State v. Rheinsmith, 362 So. 2d 698, 699 (Fla. 2d DCA 1978); State v. Wolfe, 271 So. 2d 203, 204 (Fla. 4th DCA 1972)). "Further, the trial court's determination of exceptional circumstances is a matter of discretion based on the facts presented below." Id. (citing Talton v. State, 362 So. 2d 686, 687 (Fla. 4th DCA 1978), cert. denied, 370 So. 2d 462 (Fla. 1979)).

Here, the proffer and documentation submitted by the State in furtherance of its motion to extend the speedy trial time were adequate to establish that the unavailability of the witness was the result of "unexpected illness" or "unexpected

incapacity." Fla. R. Crim. P. 3.191(*l*)(1). Moreover, as the State was within its rights to refuse the defense's proposed stipulation as to the content of the witness's testimony, the record supports a finding that the testimony was "uniquely necessary for a full and adequate trial." Id.; see Old Chief v. United States, 519 U.S. 172, 189, 117 S. Ct. 644, 654, 136 L. Ed. 2d 574 (1997) ("[T]he prosecution is entitled to prove its case free from any defendant's option to stipulate the evidence away.").[2]

Finally, here the defense sought and was granted a continuance in order to conduct further discovery. As the record reflects that the State furnished the DNA report immediately upon receipt, we cannot impute an "inexcusable delay in providing discovery," thus the "defense request for continuance . . . waive[d] . . . 'speedy trial' time and [Robinson's] right to discharge." State v. Naveira, 873 So. 2d 300, 307 (Fla. 2004); see State v. Guzman, 697 So. 2d 1263, 1264 (Fla. 3d DCA

[2] "[T]he prosecution is entitled to prove its case by evidence of its own choice, . . . a criminal defendant may not stipulate or admit his way out of the full evidentiary force of the case as the Government chooses to present it." Old Chief, 519 U.S. at 186-87, 117 S. Ct. at 653. The rationale behind this rule "is to permit a party 'to present the jury a picture of the events relied upon. To substitute for such a picture a naked admission might have the effect to rob the evidence of much of its fair and legitimate weight.'" Id. (quoting Parr v. United States, 255 F. 2d 86, 88 (5th Cir. 1958)); see Stephen A. Saltzburg, A Special Aspect of Relevance: Countering Negative Inferences Associated with the Absence of Evidence, 66 Calif. L. Rev. 1011, 1019 (1978) ("[O]nce certain theories of a case are presented and some evidence is offered to support them, triers of fact, especially juries untrained in evidence law and the rules governing litigation, may expect to hear specific kinds of proof in further support of or in response to the offered evidence. If their expectations are not satisfied, triers of fact may penalize the party who disappoints them by drawing a negative inference against that party.") (footnotes omitted).

1997) ("For at least the sixteenth time, we hold that the rule that a successful defense motion for continuance waives the right to discharge under the speedy trial rule applies notwithstanding that the motion follows alleged discovery violations by the state.") (internal citations omitted); State v. Vukojevich, 392 So. 2d 297, 298 (Fla. 2d DCA 1980) ("When the continuance was granted, the time limits set forth in . . . rule [3.191] became inapplicable, and speedy trial requirements bec[a]me determined in the light of individual circumstances as a matter of judicial discretion.") (citations omitted).

Accordingly, Robinson has failed to demonstrate that the exercise of discretion by the lower tribunal, in finding exceptional circumstances and charging a defense continuance, was "arbitrary, fanciful, or unreasonable . . . [or that] no reasonable man [or woman] would take the view adopted by the trial court," and we decline to embrace any contention of error. Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980) (citation omitted).

Affirmed.