

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2007-KA-0580**
VERSUS * **COURT OF APPEAL**
DATIN ODOM * **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 449-815, SECTION "E"
Honorable Calvin Johnson, Judge

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Judge Patricia Rivet Murray

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(Court composed of Chief Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray, Judge Terri F. Love)

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AFFIRMED

This is a criminal case. The sole issue presented is whether the trial court erred in granting the motion to quash filed by the defendant, Datin Odom. Finding no error, we affirm.

STATEMENT OF THE CASE

On June 30, 2004, Mr. Odom was charged by bill of information with possession of marijuana after having previously been convicted of possession of marijuana on two prior occasions, a violation of La. R.S. 40:966(E)(3). On August 2, 2004, Mr. Odom was arraigned, pleaded not guilty, and a hearing on defense motions was set for August 17, 2004. Mr. Odom failed to appear for that hearing because he was in federal custody. For the same reason, he failed to appear for the next fourteen pre-Hurricane Katrina scheduled court hearings, the last being August 9, 2005.

On August 29, 2005, Hurricane Katrina struck the New Orleans area. On February 8, 2006, a motion hearing was set for March 3, 2006. Mr. Odom failed to appear for either the March 3, 2006 hearing or the following April 13, 2006 hearing because he was not served. He failed to appear at a hearing scheduled for May 8, 2006 because he was in federal custody. He failed to appear at a hearing

scheduled for June 12, 2006 because he was not served. He failed to appear at the next fourteen scheduled court hearings, the last being January 26, 2007, because he was in federal custody.

On February 5, 2007, Mr. Odom appeared for a motion hearing and filed a written motion to quash on the ground that the two-year time limitation for commencement of trial had expired. On February 15, 2007, a hearing was held on the motion to quash, and the trial court granted the motion. This appeal by the State followed.

STATEMENT OF THE FACTS

The facts of this case are not relevant to the procedural issue raised by the State. As noted, the bill of information charged that Mr. Odom possessed marijuana on June 7, 2004, after having been previously convicted of possession of marijuana in two cases.

DISCUSSION

The State's sole assignment of error is that the trial court erred when it granted Mr. Odom's motion to quash. A trial court's ruling granting a defendant's motion to quash is a discretionary ruling that should not be disturbed on appeal absent an abuse of discretion. *See State v. Love*, 00-3347, pp. 9-10 (La. 5/23/07), 847 So.2d 1198, 1206.

Under La. C.Cr.P. art. 578(A)(2), the State initially had two years from June 30, 2004, the date of the institution of prosecution, within which to bring Mr. Odom to trial in this case involving a non-capital felony. It is well settled that when, as here, the defendant moves to quash because the two year period has lapsed, the State bears a heavy burden to establish prescription was either interrupted or suspended. *State v. Rome*, 93-1221, p. 3 (La. 1/14/94), 630 So.2d

1284, 1286. The State may discharge this burden by establishing either a ground for interruption under La. C.Cr.P. art. 579 or a ground for suspension under La. C.Cr.P. art. 580. The State argues that it met its burden by establishing both grounds for suspension and interruption. We separately address each argument.

Pursuant to La. C.Cr.P. art. 580,¹ the State argues that the two-year period was suspended by Mr Odom's filing a pretrial motion, which the trial court never ruled upon.² However, "[t]he motions have to actually be formally *filed* to suspend the time limitations." Berrigan, *La. Crim. Trial Prac.* (3rd Ed.), §14-23. The only motion filed by Mr. Odom that is contained in the record is his motion to quash. We thus find that the State failed to establish a ground for suspension existed.

Pursuant to La. C.Cr.P. art. 579,³ the State argues that the two-year period was interrupted by the effects of Hurricane Katrina. In support, the State cites *State v. Brazile*, 2006-1611 (La. App. 4 Cir. 5/30/07), 960 So.2d 333.⁴ In *Brazile*, this court held that the impact of Hurricane Katrina on the Orleans Parish Criminal Court was a "cause beyond the control of the state" under Article 579 and thus interrupted prescription. We find, as Mr. Odom contends, that this case is factually distinguishable from *Brazile*. Unlike in this case, the defendant in *Brazile* was present in court both before and after Hurricane Katrina for the hearings at which

¹ La. C.Cr.P. art. 580 provides that "[w]hen a defendant files a motion to quash or other preliminary plea, the running of the periods of limitation established by Article 578 shall be suspended until the ruling of the court thereon; but in no case shall the state have less than one year after the ruling to commence the trial."

² According to the State's response to Mr. Odom's motion to quash, Mr. Odom filed a motion for preliminary hearing.

³ Article 579 provides that the period of limitation set forth in article 578 shall be interrupted if "the defendant cannot be tried because of . . . any . . . cause beyond the control of the state." La. C.Cr.P. art. 579(A)(2). Article 579 further provides that "periods of limitation established by Article 578 shall commence to run anew from the date the cause of interruption no longer exists." La.C.Cr.P. art. 579(B).

⁴ The defendant in *Brazile* has filed a writ application with the Louisiana Supreme Court (2007-K-1339), which is still pending.

the trial date was continued. In this case, Mr. Odom was not present in court at the multiple hearings held in this case either before or after Katrina, and this case has never been set for trial. The State's reliance on *Brazile* is thus misplaced.

Throughout the entire time this case has been pending Mr. Odom has been in federal custody. The trial court cited the State's failure to have Mr. Odom brought from federal custody into court for the multiple court hearings as the principal reason for granting the motion to quash. Mr. Odom points out that at least twenty-seven hearings in this case were delayed due to the State's failure to take the appropriate steps to have him brought to court. Mr. Odom further points out that on approximately a dozen occasions the trial court admonished the State to take appropriate steps to have him brought to court. Given the State's apparent failure to do so, we cannot say the trial court abused its discretion in granting Mr. Odom's motion to quash.⁵

DECREE

For the foregoing reasons, the judgment of the trial court granting the motion to quash filed by Mr. Odom is affirmed.

AFFIRMED

⁵ In so finding, we emphasize that the cause of the delay in bringing Mr. Odom to trial was unrelated to the effects of Hurricane Katrina.