

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2012-KA-0470**
VERSUS *
MICHAEL GUICE * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 467-956, SECTION "A"
Honorable Laurie A. White, Judge

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Judge Dennis R. Bagneris, Sr.

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(Court composed of Judge Dennis R. Bagneris, Sr., Judge Max N. Tobias, Jr.,
Judge Joy Cossich Lobrano)

TOBIAS, J., CONCURS

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MAY 1, 2013

AFFIRMED

The State asserts the trial court abused its discretion in granting defendant's, Michael Guice's ("Guice"), motion to quash the bill of information based upon prescription. The State asserts, for the first time on appeal, that interruption occurred, under La. C.Cr.P. art. 579(A)(3), when Guice failed to appear at a January 12, 2007 arraignment, which he was informed of by way of subpoena being left at his door. Because we do not find that the State has carried its heavy burden to demonstrate either an interruption or a suspension of the time limit, we hereby affirm the judgment of the trial court.

FACTS

On July 18, 2006, Guice was arrested for possession of cocaine. On August 17, 2006, Guice signed a \$6,000 bond and was ordered released. December 20, 2006, the State filed a bill of information charging Guice with possessing cocaine, a violation of La. R.S. 40:967(C)(2), on July 18, 2006. The docket master reflects that he filed an ROR bond for \$5,000 on the same date. Guice failed to appear for arraignment on January 12, 2007, and an alias capias was issued for his arrest and

forfeiture of bond was ordered. He was not arrested until June 2, 2011, and appeared for arraignment on June 9, 2011.

Guice filed motions that were originally set for hearing on July 5, 2011. On that date, Guice's counsel appeared without him. Guice was in custody, but had not been brought to court. The trial judge was also ill, and the hearing was reset for July 13, 2011. The clerk of court also received Guice's motion for speedy trial on July 5, 2011. Guice also moved for a bail reduction, which was set to be heard on July 13, 2011.

At the July 13, 2011 hearing, the trial court replaced Guice's commercial bond with an "ROR" bond and released him again. Guice waived the other motions. A pretrial conference was set for July 27, 2011, and trial was set for August 15, 2011. The following day, Guice filed a recognizance bond for \$5,000.

On July 20, 2011, Guice's counsel appeared without him and was granted orders to have two federal inmates appear for Guice's trial. Guice failed to appear at the July 27, 2011 pretrial hearing. An alias capias was issued for his arrest, and the trial court issued a judgment of bond forfeiture upon the State's request. Guice was arrested on August 1, 2011. The trial court issued a release and reinstated a personal surety bond on August 4, 2011.

Guice appeared for trial on August 15, 2011, and moved to quash the bill of information, which the trial court granted. The State now appeals this final judgment.

DISCUSSION

In its sole assignment of error, the State asserts the trial court abused its discretion in granting Guice's motion to quash the bill of information based upon prescription. Guice's motion to quash was based upon the assertions that he was

not properly served with notice of his original arraignment hearing and that he was in state custody “for several years prior to the state bringing him to court” until his June 2, 2011 arrest. At the August 15, 2011 hearing, Guice asserted that he was incarcerated in East Baton Rouge parish, presumably prior to June 2, 2011.

The State argues on appeal that interruption occurred under La. C.Cr.P. art. 579(A)(3), when Guice failed to appear at the January 12, 2007 arraignment, which he was informed of by way of subpoena being left at his door. However, the State did not present this argument to the trial court; rather, when the trial court asked if the State wanted to be heard, the assigned assistant district attorney stated, “No, I’ll submit.”

Once a motion to quash for untimely prosecution has been filed, the State is under a heavy burden to show a legal cause for the delay. *State v. Williams*, 631 So.2d 1370, 1373 (La. App. 5 Cir. 2/9/94) citing, *State v. Taylor*, 439 So.2d 410 (La.1983). The responsibility of proving timely prosecution rests with the State. *State v. Dennis*, 46,471 (La. App. 2 Cir. 9/21/11), 72 So.3d 968, 975, writ denied, 2011–2365 (La.5/18/12), 89 So.3d 1189. In this case, it is clear that more than two years elapsed from the institution of prosecution and the date Guice filed his motion to quash. Thus, the issue presented in this appeal is whether the record establishes that the two year prescriptive period had been interrupted.

Upon reviewing the record, we find that the State failed to demonstrate that the two-year prescriptive period for commencing trial was interrupted. Accordingly, we hereby affirm the judgment of the trial court, which granted the motion to quash.

AFFIRMED