

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LINDSEY EUBANKS,

Defendant-Appellant.

UNPUBLISHED

December 30, 1997

No. 196299

Kent Circuit Court

LC No. 93-061468-FH

Before: Corrigan, C.J., and Doctoroff and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals by right his convictions of delivery of less than fifty grams cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and conspiracy to deliver the same, MCL 750.157a; MSA 28.354(1). The trial court sentenced defendant to consecutive terms of five to twenty years' imprisonment. We affirm.

Defendant first argues that the trial court erred in denying his motion to dismiss the charges on the ground that he was denied due process and a speedy trial by the twenty eight month delay between the offenses and his arrest. The threshold question in deciding whether a delay constitutes a denial of due process is whether the defendant suffered prejudice. *People v Reddish*, 181 Mich App 625, 627; 450 NW2d 16 (1989). Once the defendant shows prejudice, the prosecution must demonstrate sufficient reasons to justify the delay. *Id.* This Court gives considerable deference to the trial court's determination whether the police exercised diligence in arresting the defendant. See *Doggett v United States*, 505 US 647, 652; 112 S Ct 2686; 120 L Ed 2d 520 (1992).

In this case, the trial court correctly noted that the twenty-eight month delay was presumptively prejudicial. See *People v Simpson*, 207 Mich App 560, 563; 526 NW2d 33 (1994); *Doggett, supra* at 652 n 1. The court also correctly concluded that defendant met the threshold requirement of demonstrating prejudice because a material witness died shortly before defendant's arrest. *Reddish, supra* at 627. The court then thoroughly reviewed the evidence and determined that the police made diligent efforts to locate defendant. The court stated:

I'm satisfied in this case that the government did in fact make diligent inquiry as Doggett defines it. Mr. Eubanks' residence was visited three times in the period of a month, soon after the warrant was issued. He wasn't there.

The house where he lived was watched by various police officers over the next year, plus. He was not found to be there.

Search warrants were actually used in an effort to locate him elsewhere. They were unsuccessful.

Thereafter, more inquiries were made and more surveillance was conducted. The truth of the matter is that for the entire time that this warrant was outstanding, efforts of varying degrees were being made by the police to locate Mr. Eubanks.

The court further found that defendant was responsible for the delay because he hid from the police after learning that the police were looking for him. Therefore, the court concluded that the delay was attributable to defendant's actions in avoiding capture.

We agree with the trial court that the police diligently sought to arrest defendant, but were hindered by defendant's efforts to avoid capture, including changing his appearance by losing 80 to 100 lbs. Narcotics officers justifiably delayed in arresting defendant after the offense because they could not compromise their ongoing investigation. That other officers arrested defendant on an unrelated misdemeanor charge five days after the court issued a warrant for the instant offenses is of no consequence. Those officers were not aware of the instant warrant because the narcotics officers appropriately delayed entering it in the LEIN until after they closed their investigation a month later. Defendant's girlfriend thwarted the officers' subsequent attempts to locate defendant at his residence by informing defendant that the police were looking for him. Thereafter, the narcotics officers referred the matter to the "fugitive team," who did not begin searching for defendant in earnest until more than eighteen months later. During the interim, however, the narcotics officers themselves continued to search for defendant.

The trial court properly assessed the corporate efforts of the police department, not just the internal divisions, in determining whether the police exercised diligence in arresting defendant. Members of the department continuously searched for defendant from the close of the investigation until defendant's arrest over two years later. In the end, patrol officers arrested defendant during a routine traffic stop. Defendant supplied a false name, and the officers had to confirm defendant's identity through thumbprint analysis because he had lost so much weight that they could not identify him solely on the basis of a prior mug shot. Accordingly, the trial court did not err in denying defendant's motion because the police diligently searched for defendant but defendant hindered their efforts by altering his appearance in an effort to avoid capture.

Defendant next contends that his consecutive sentences for conspiracy and the substantive drug offense violate double jeopardy. Our Supreme Court recently answered this question in the negative.

People v Denio, 454 Mich 691, 705-706; 564 NW2d 13 (1997). Accordingly, we affirm the sentences.

Finally, defendant argues that the trial court erred in scoring Offense Variables 8 and 9. Defendant does not state a cognizable claim on appeal because he merely attacks the sufficiency of the evidence to support the trial court's scoring decision. *People v Mitchell*, 454 Mich 145, 177-178; 560 NW2d 600 (1997).

Affirmed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ E. Thomas Fitzgerald