In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00364-CR

CHRISTOPHER DANIEL LANE A/K/A CHRISTOPHER D. LANE A/K/A CHRIS DANIEL LANE, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 355th District Court
Hood County, Texas
Trial Court No. CR13058, Honorable Ralph H. Walton, Jr., Presiding

June 8, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

Christopher Daniel Lane a/k/a Christopher D. Lane a/k/a Chris Daniel Lane, appellant, appeals his conviction for possessing a controlled substance of less than one gram. Through a single issue, he contends he was denied his right to a speedy trial. We affirm.[1]

[1] Because this appeal was transferred from the Second Court of Appeals, we are obligated to apply its precedent when available in the event of a conflict between the precedents of that court and this court. *See* TEX. R. APP. P. 41.3.

Preservation

First, we address the State's contention that appellant did not preserve the issue. It argues that "[t]o preserve error on an alleged violation of the right to speedy trial, the defendant must at least move to dismiss based on the violation." The record illustrates the utter frivolousness of that contention, but because it was raised it seems we must address it. *Quigley v. State*, No. 02-15-00441-CR, 2017 Tex. App. LEXIS 2032, at *35 (Tex. App.—Fort Worth Mar. 9, 2017, no pet.) (mem. op., not designated for publication) (holding that a speedy trial complaint is subject to the rules of error preservation).

Not only does a motion to dismiss due to the alleged denial of appellant's right to a speedy trial appear within the clerk's record, but also the State acknowledges its existence in its appellate brief. Furthermore, when the cause came for trial and the court asked if the "defendant [was] ready," counsel for appellant answered "Judge, we're present and ready to go forward. We do have a motion on file we need to address before we begin anything. That's a ***motion to dismiss that I filed last week***." (Emphasis added). Immediately thereafter, the trial court conducted a hearing on the motion and denied it. Yet, the State construes appellant's statement about being ready to go forward as some type of waiver. That is, it argues that because appellant "requested a hearing on his motion to dismiss only after he announced that he was present and ready to go forward," he apparently waived the complaint. How announcing that one is prepared to "go forward" evinces an intent or desire to forgo consideration of a pending motion to dismiss is unexplained though. Indeed, coupling the announcement with an immediate reference to the motion and informing the court that "we need to address" that motion seems to belie any notion that appellant waived

the matter. The trial court conducting a hearing on that motion also illustrates that no one deemed it waived.

In short, the preservation rule requires an objection that informs the trial court of the basis of the complaint coupled with a ruling on the objection. TEX. R. APP. P. 33.1. That occurred here.

Speedy Trial

Next, we address the substance of appellant's issue. A speedy trial complaint is analyzed through a balancing test. *Quigley v. State*, 2017 Tex. App. LEXIS 2032, at *34. That test "requires us to weigh the strength of each of the following factors and to balance their relative weight in light of the conduct of the prosecution and the defendant: 1) the length of the delay, 2) the reason for the delay, 3) the circumstances surrounding the appellant's assertion of his speedy-trial right, and 4) the prejudice suffered by the appellant." *Id.*; *accord Washington v. State*, No. 02-14-00454-CR, 2016 Tex. App. LEXIS 9812, at *21 (Tex. App.—Fort Worth Aug. 31, 2016, pet. ref'd) (mem. op., not designated for publication) (stating the same). No particular factor is either necessary or a sufficient condition to the finding of a deprivation of the right; instead, all must be considered together along with other relevant circumstances. *Washington v. State,* 2016 Tex. App. LEXIS 9812, at *21.

Here, the delay between appellant's arrest and trial approximated twenty-two months. The State concedes that such a period triggers a speedy trial analysis.

Regarding the reasons for the delay, the record indicates multiple trial settings which were passed without explanation. So too does it evince multiple attorneys (4) being appointed to appellant. One withdrew because she had already been appointed

to represent appellant's co-defendant. Another had previously represented appellant, and the latter apparently objected to that person. The facts underlying the objection were not presented. Appellant merely indicated that he had a conflict with the person. Another attorney moved to withdraw after appellant informed the attorney that he (appellant) would be filing a grievance against him for not doing what he wanted.[2]

Appellant attempted to attribute any of the delay inherent in obtaining four different attorneys to the "State." Yet, the "State" did not appoint the individuals; the trial court did. Furthermore, nothing of record suggests that the "State" caused the conflicts between appellant and his attorneys.

Nonetheless, even if the antics of appellant caused some delay, they would not explain why there was a twenty-two month lapse between arrest and trial. On the other hand, the record does not indicate that any of the twenty-two-month delay actually was attributable to the "State," *i.e.,* prosecution. So, in effect, this element of the test disfavors appellant somewhat but not much.

Regarding appellant's assertion of his right to a speedy trial, the record contains evidence indicating that he requested a speedy trial or a dismissal within months of being arrested. Appellant's fourth attorney also demanded a speedy trial about eight months before trial and moved for dismissal about four days before trial actually began. This element would tend to suggest that appellant wanted a speedy trial and not merely a dismissal of the proceeding. *See Washington v. State*, 2016 Tex. App. LEXIS 9812, at *25 (stating that "[w]hether and how a defendant asserts this right is closely related to the other three factors because the strength of the defendant's efforts will be shaped by

[2] The court is aware of a practice by some defendants of filing a grievance against an attorney they do not like to simply secure another appointee that they do like. Apparently, the trial court cautioned appellant against doing this.

them [and] [f]iling for a dismissal instead of a speedy trial generally weakens a speedy-trial claim because it may show a desire to have no trial instead of a speedy one").

As for prejudice, appellant asserts:

> there is ample evidence that the delays caused by the State prejudiced Appellant. The State appointed four attorneys to represent Appellant, the State erred in appointing two attorneys with existing conflicts, Appellant was unable to communicate with his attorneys, Appellant's first three attorneys failed to advocate a speedy trial on Appellant's behalf, and Appellant finally had to resort to filing his own *pro se* motions. The inability of Appellant to prepare his case "skewed the fairness of the entire system."

In concluding as he does, the impact of having multiple attorneys upon his ability to defend himself at trial goes unexplained. Moreover, his mere conclusory suggestion that he was somehow impaired carries little probative value. *See Buntion v. State*, 482 S.W.3d 58, 74 (Tex. Crim. App. 2016) (noting how conclusory allegations have little persuasive value).

So too did he claim "an inability to work, that his memory was impaired, that he suffered anxiety, and that his mother had become ill and could not testify on his behalf." His mother, though, would have testified as a character witness during the punishment phase of the trial. What she would have said is unknown. And no one could simply assume she would have spoken favorably about appellant or indicated he was normally a law abiding person given his twelve prior felony convictions. Indeed, appellant himself acknowledged the unlikelihood of his mother's punishment testimony having any favorable impact upon his sentence.

As for his inability to work, the record indicates that he had been released on bond until he violated a condition of his release by testing positive for controlled

substances. In other words, he was free to work until he opted to undertake a course of conduct that returned him to jail. Such an outcome is not attributable to the State. As for the matter of anxiety, the comment was conclusory as well. Its extent and nature went unexplained. Furthermore, his rather extensive criminal history and numerous felony criminal convictions could lead a factfinder to wonder whether appellant was truly anxious about one more pending criminal prosecution.

His allegation of impaired memory went unexplained as well. That is, he simply indicated that over the last two years "gray areas" developed. No attempt was made to discuss the extent of that gray, though. Again, the comment was little more than a conclusion and did little to illustrate how any delay hampered his ability to defend himself.

Though the twenty-two-month delay was enough to trigger the speedy trial analysis, it was not enough to illustrate presumptive prejudice. *See Compass v. State*, No. 02-06-00075-CR, 2007 Tex. App. LEXIS 5730, at *8 n.28 (Tex. App.—Fort Worth July 19, 2007, no pet.) (per curiam) (mem. op., not designated for publication.) (declining to hold a twenty-nine-month delay presumptively prejudicial). That coupled with the dearth of evidence illustrating prejudice bode ill for appellant.

Weighing each factor of the test, we conclude that the trial court did not err in denying appellant's motion to dismiss. There was delay, no doubt. But it and its circumstances are not of the ilk that evinces a denial of a right to a speedy trial.

Accordingly, we affirm the judgment of the trial court.

Per Curiam

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