

1-08-2251

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

Third Division
March 9, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	97 CR 21374
)	
ARTEE WATKINS,)	Honorable
)	Thomas J. O’Hara,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Justices Murphy and Steele concurred in the judgment.

ORDER

Held: A delay of 40 months between remand and the new trial did not violate the defendant’s right to a speedy trial, where he caused part of the delay, he did not suffer great prejudice, and he agreed to almost all of the continuances. Testimony that the defendant had a “[r]egular gun *** that shoot[s]” sufficed to prove he had a dangerous weapon and a firearm, so that the evidence supported convictions for armed robbery and unlawful use of a weapon by a felon.

This case comes before us for a second time. In the earlier appeal, we reversed the

convictions of defendant, Artee Watkins, for armed robbery and unlawful use of a weapon by a felon (UUWF), and we remanded the case for a new trial. The new trial took place in June 2008, about 40 months after we issued our order. The jury again found Watkins guilty of the charges. In this appeal, Watkins argues that the trial court should have dismissed the case due to the violation of his right to a speedy trial, and the trial court should have acquitted him because the prosecution did not present sufficient evidence to prove that he had a dangerous weapon or a firearm, as required to support the convictions for armed robbery and UUWF.

Because Watkins bore responsibility for a significant part of the delay, because he did not suffer great prejudice, and because he agreed to almost all of the many continuances, we find that the trial court correctly denied his motion to dismiss on speedy trial grounds. We also find the testimony that Watkins had a “[r]egular gun, [a] gun that shoot[s],” sufficed to prove that he had a dangerous weapon and a firearm. Accordingly, we affirm the judgment of the trial court.

BACKGROUND

Around 8 p.m., on May 14, 1997, two men entered a donut shop in Olympia Fields, where Kristie Campbell worked. One of the men pulled out a gun and told Campbell to give him all of the money in the cash register. He took the money and the two men left.

Police later caught Kareem Robbins trying to rob a different donut shop nearby. Following a discussion with Robbins, police arrested Dion Hunter and Watkins for the Olympia Fields robbery. On July 2, 1997, Watkins signed a statement pertaining to the robbery. According to the statement, Watkins took a ride with Robbins in Hunter’s car on May 14, 1997. They decided to rob somebody. Watkins called a girl he knew who had a gun. She brought him the gun. Watkins handed the gun

1-08-2251

to Robbins and Robbins put on a mask in preparation for the robbery. Hunter drove to the donut shop in Olympia Fields and waited in the car while Robbins and Watkins went into the store. After they robbed the store they quickly spent the money.

A jury found Watkins guilty of armed robbery and UUWF, and the trial court sentenced Watkins to concurrent terms of nine years for the robbery and three years for UUWF. On direct appeal this court reversed the convictions and remanded the case for a new trial. We filed our order on February 4, 2005, some time after Watkins had finished serving his sentence for the offenses. The circuit court filed our mandate on March 31, 2005. The State took some time trying to find Watkins's address, and when the State found him it notified him of the renewed proceedings. Watkins first appeared in court on June 28, 2005. Watkins brought an attorney to court on September 8, 2005. The parties met with the court many times over the following years, and they finally prepared the case for a new trial early in 2008.

Watkins moved to dismiss the charges based on the failure to hold a speedy trial. The trial court denied the motion on January 8, 2008. The court found that after the filing of the mandate in the circuit court, Watkins and his attorneys agreed to continuances of the case for more than two years without demanding trial. The court said:

“It was continued by agreement with two motion defendants during that period of time. *** The delay from the record and *** the evidence is attributed to both sides here. *** The defense has continued by agreement dates. Along with the State not providing discovery.

* * *

1-08-2251

*** There is no showing that additional delay *** caused substantial or specific prejudice.

Based on all those matters I believe this does not *** show there is [a] constitutional violation of speedy trial.”

At the new trial, Campbell testified that the man who wore the mask pulled out a gun when he demanded the money. She got down on the floor when he pointed the gun at her and told her to get down. She did not further describe the gun.

Robbins, who plead guilty to the charge of armed robbery and fully served his sentence, testified that Watkins handed him the gun for the robbery, and Watkins accompanied Robbins as he went into the donut shop. Robbins described the gun as a “[s]mall gun,” and as a “[r]egular gun, [a] gun that shoot[s].”

Hunter, who had also finished serving his sentence for the armed robbery, admitted that he drove Robbins and Watkins to the donut shop they robbed. He did not see any gun, although he thought either Robbins or Watkins had one.

An assistant State’s Attorney read into the record Watkins’s confession. In the confession Watkins described the gun he gave Robbins as “black and chrome.” He knew Robbins intended to use the gun to “flash at a victim” so the victim “would know [Robbins] meant business, that it was no joke.” The parties stipulated that Watkins had a prior conviction for a felony.

The jury found Watkins guilty of armed robbery and UUWF. The trial court imposed on Watkins the same sentence he had fully served, nine years for armed robbery with a concurrent term of three years for UUWF. Watkins now appeals.

ANALYSIS

Speedy Trial

Watkins argues first that the trial court should have dismissed the charges due to the violation of his right to a speedy trial. The State bears the burden of justifying any delay in bringing a defendant to trial. *People v. Crane*, 195 Ill. 2d 42, 53 (2001). When a defendant moves to dismiss a charge on grounds of an alleged violation of his right to a speedy trial, as protected by the sixth amendment to the United States Constitution, the court should consider “[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.” *Barker v. Wingo*, 407 U.S. 514, 530 (1972). In balancing these factors, courts also look to the seriousness of the offense and the complexity of the case, as those factors affect the justification for the delay and the society’s interest in protecting itself from criminals. *Barker*, 407 U.S. at 531; see also *Crane*, 195 Ill. 2d at 61. We defer to the trial court’s findings of fact concerning the right to speedy trial, but we review *de novo* the decision to grant or deny the motion. *Crane*, 195 Ill. 2d at 51-52.

Here, the delay between the decision and the retrial encompassed 40 months, from February 2005 to June 2008. We must presume prejudice due to any delay of even one year. *People v. Kaczmarek*, 207 Ill. 2d 288, 295 (2003). The delay here exceeded three years, and such a long delay counts as a factor favoring dismissal. See *Doggett v. United States*, 505 U.S. 647, 656 (1992).

The State offers little excuse for its failure to locate Watkins in the three months between March 31, 2005, and June 28, 2005. The State bears responsibility for this part of the delay. See *Doggett*, 505 U.S. at 652-53. Watkins accepts responsibility for the delays while he sought counsel, and for delays due to his failure to appear for some proceedings. Those delays explain the lack of

1-08-2251

progress from June 28, 2005, until September 8, 2005, from November 17, 2005, to March 23, 2006, and from October 26, 2006, to December 4, 2006, for a total of about 8 months. Although the parties agreed to the delays between September 8, 2005, and November 17, 2005, the State indicated it needed the continuances to begin discovery.

From March 23, 2006, until October 26, 2006, the court held 10 separate status hearings, and the parties always agreed to continue the case. The transcripts of the proceedings on those dates shows that the illness of the assistant State's Attorney, negotiations toward a plea bargain, and defense counsel's need for complete discovery all contributed to the delay. Although the parties agreed to the continuances, we find that this seven month delay counts against the State slightly more than it counts against Watkins. See *People v. Roberson*, 289 Ill. App. 3d 344, 347 (1997) (delay due to illness of assistant State's Attorney counts against State); *State v. Maddox*, 195 P.3d 1254, 1263 (N.M. 2008) (negotiations do not excuse State's failure to prepare case for trial).

After three more continuances by agreement, postponing proceedings until January 29, 2007, defense counsel explained that she could not demand a trial because she still had not received discovery materials. The court said:

“Discovery has not been issued. *** [I]f there ever was a case where the state would be pushed forward to a due diligence hearing – if you don't know what that's about, pick up the statute book to start reading it. *** [T]his might be the type of case for it. *** [T]his is getting to the point of being ridiculous here. *** Somebody come up with a file so we can move forward.”

The parties agreed to a continuance for 60 days, and then for another 40 days while discovery

1-08-2251

remained incomplete. For 4 more agreed continuances, the primary prosecutor failed to appear, and defense counsel indicated that discovery remained incomplete. We find the delay from January 29, 2007, to August 16, 2007, counts against the State.

On August 16, 2007, Watkins came to court with new counsel, seeking a continuance so his new counsel could learn his case. New counsel accounted for a delay of a little more than one month, to September 18, 2007. On that date Watkins moved to dismiss the indictment as a sanction for the State's failure to comply with discovery. The court denied the motion. The parties agreed to a continuance for a hearing on Watkins's motion to dismiss on speedy trial grounds. The attorney said, "We have no choice but go by agreement. We have not had full discovery tendered to us." The State indicated that part of the delay occurred because the State lost the case file. At the next status hearing, defense counsel reiterated that the delays put her "in a position of having to demand trial without having discovery in this matter." The State's negligence makes this period count mostly against the State. See *Barker*, 407 U.S. at 531. We find the State primarily responsible for delays from September 18, 2007, until January 8, 2008, when the court heard the motion to dismiss the case on speedy trial grounds.

The State accepts responsibility for two subsequent delays, to February 28, 2008, as the State alone sought those continuances. The parties agreed to set a trial date of April 22, 2008, but on that date Watkins moved to have counsel appointed for Robbins and Hunter. The court continued the case to May 8, 2008, for a hearing on the motion, and the parties agreed to set June 10, 2008, as the date to start the trial.

In sum, while we agree with the trial court that both parties share responsibility for the delay,

1-08-2251

we find the State bears more responsibility for the delays from March 31 to June 28, 2005, March 23 to October 26, 2006, January 29 to August 16, 2007, and September 18, 2007 to February 28, 2008, for a total of almost than 2 years. Watkins bears responsibility for delays from June 28 to September 8, 2005, from November 17, 2005, to March 23, 2006, from August 16 to September 18, 2007, and from April 22 to May 8, 2008, for a total of about nine months. We see no grounds for allocating responsibility for delays from September 8 to November 17, 2005, from October 26, 2006, to January 29, 2007, from February 28 to April 22, 2008, and from May 8 to June 10, 2008. Accordingly, as to the second *Barker* factor, we find the State significantly more responsible than Watkins for the delays, but both parties caused substantial delays.

The trial court emphasized Watkins's failure to assert the right to a speedy trial before September 2007, more than 30 months after this court remanded the case to the trial court. We find the third *Barker* factor should not weigh heavily against Watkins because his counsel explained that without discovery she could not demand trial.

As to the fourth factor, we agree with the trial court that the record does not show that Watkins suffered very significant prejudice due to the delay. He did not spend time in prison on the charges at issue, and he did not lose significant exculpatory evidence due to the delay. The State apparently suffered some prejudice, because at the first trial Campbell identified Watkins as the man who accompanied the masked gunman, but she did not identify Watkins at the retrial. We acknowledge that Watkins endured significant interruptions from his work for his frequent court appearances.

We also consider the seriousness of the offense, society's need for protection against

criminals, and the complexity of the case. While armed robbery is a serious crime, Watkins already served his entire sentence for the crime, so the State had no further interest in punishing a criminal or in protecting the public from Watkins. The State admitted, before trial, that it would not seek any further incarceration for Watkins if the jury found him guilty as charged. The case presented a simple fact situation with no need for scientific tests or extensive investigation or complex legal analysis.

We find the factors as a whole balance very closely. On the one hand, the State's negligence in losing the case file and its extended inability to respond to discovery weigh against the State, and in this simple case with no need to protect the public or impose further punishment on Watkins, we see even less justification for the delay. On the other hand, Watkins, through his attorneys, agreed to almost all of the continuances, and caused nine months of continuances himself, mostly by looking for private counsel and by negligently failing to appear for some proceedings. In *Crane*, our supreme court held that an unexplained delay of 11 months in proceedings did not warrant a dismissal on speedy trial grounds, because the defendant failed to invoke his right to speedy trial during that delay. *Crane*, 195 Ill. 2d at 61-62. Under the specific circumstances of this case, we will not hold that the State forfeited its right to try Watkins for the alleged crimes. The trial court properly denied Watkins's motion to dismiss the charges due to violation of his right to a speedy trial.

Sufficiency of the Evidence

To prove that Watkins committed armed robbery, the State needed to show that the gun he gave to Robbins qualified as a "dangerous weapon" within the meaning of section 18-2(a) of the

Criminal Code. 720 ILCS 5/18-2(a) (West 1996). Similarly, to prove that Watkins committed UUWF, the State needed to show that the gun he gave to Robbins qualified as a “firearm” under section 24-1.1(a) of the Criminal Code. 720 ILCS 5/24-1.1(a) (West 1996). Watkins argues that the State did not present sufficient evidence to prove that the object he gave Robbins qualified as either a firearm or as a dangerous weapon. We will not reverse a conviction for insufficient evidence if any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008).

In *Ross*, a witness testified that the defendant had a gun. The prosecution argued that the testimony sufficed to prove that the defendant had a dangerous weapon. Our supreme court rejected that argument and held:

“Illinois cases do not create a mandatory presumption that any gun is a dangerous weapon. Instead, our cases conclude that the trier of fact may make an inference of dangerousness based upon the evidence. The State may prove that a gun is a dangerous weapon by presenting evidence that the gun was loaded and operable, or by presenting evidence that it was used or capable of being used as a club or bludgeon. Here, the State did neither.” *Ross*, 229 Ill. 2d at 275-76.

Thus, testimony that Robbins held a gun does not suffice to prove that he held a dangerous weapon within the meaning of the definition of armed robbery.

Here, Watkins confessed that his friend brought him a black and chrome gun to “flash” at the victim so the victim would know Robbins “meant business.” Campbell testified that she saw a gun in Robbins’s hand. Robbins described the object as a “[r]egular gun, [a] gun that shoot[s].”

We hold that the term “gun” usually refers to a dangerous weapon, a firearm that expels bullets with great force. As the United States Supreme Court said in *McLaughlin v. United States*, 476 U.S. 1, 17 (1986), a “gun is an article that is typically and characteristically dangerous.” Thus, when Robbins testified that Watkins handed him a “[r]egular gun, [a] gun that shoot[s],” the trier of fact could infer that the gun was loaded and operable and could shoot bullets. See *Ross*, 229 Ill 2d at 276). Therefore, it qualified as a dangerous weapon and as a firearm. See 430 ILCS 65/1.1 (West 1996). The testimony from Watkins and Campbell bolstered that inference, as their testimony shows that Watkins meant for the object to frighten Campbell, and the object achieved that purpose. Accordingly, we find the evidence sufficient to support the convictions for armed robbery and UUWF.

CONCLUSION

Under the circumstances of this case, where Watkins caused about nine months of the delays in bringing the case to a new trial, and he agreed to virtually all of the other continuances, without raising the speedy trial issue for more than two and a half years, the trial court correctly denied the belated motion to dismiss for failure to give Watkins a speedy trial. Testimony that Watkins handed Robbins a regular gun that shoots sufficed to support an inference that Watkins had a “dangerous weapon,” within the purview of the definition of armed robbery (720 ILCS 5/18-2(a) (West 1996)), and a “firearm” within the purview of the definition of UUWF (720 ILCS 5/24-1.1(a) (West 1996)). Accordingly, we affirm the judgment of the trial court.

Affirmed.