

2011 IL App (1st) 090340-U

Nos. 1-09-0340 and 1-09-0402, Consolidated

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FIFTH DIVISION
September 30, 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.)	No. 07 CR 22600
)	
SHANTRELL TUCKER and ALONZO CAMPBELL,)	Honorable
)	Timothy Joyce,
Defendants-Appellants.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Joseph Gordon and McBride concurred in the judgment.

O R D E R

¶ 1 *HELD*: Because the State adequately established it acted with due diligence in locating a witness and there was a reasonable probability such efforts would locate the witness, the trial court did not err in granting a 60-day extension to defendants'

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120-day speedy trial term. The State also proved defendants guilty of first degree murder beyond a reasonable doubt.

¶ 2 Following a joint jury trial, defendants Shantrell Tucker and Alonzo Campbell were convicted of first degree murder. Tucker was sentenced to natural life in prison. Campbell received a 28-year prison term. On appeal, defendants contend they were denied their statutory right to a speedy trial. Defendants also contend the State failed to prove them guilty of first degree murder beyond a reasonable doubt. For the reasons that follow, we affirm defendants' convictions and sentences.

¶ 3 BACKGROUND

¶ 4 The testimony presented at trial established that around 11 p.m. on May 25, 2007, Vernon Walls was sitting outside his house in his friend Alvin Lee's red Monte Carlo car. Vernon was sitting behind Alvin, the driver of the car. Another friend of Vernon's, Terrance Smith, was sitting in the front passenger seat. Vernon's sister, Jennifer Walls, stood outside the passenger side of the car near the curb while talking to Terrance. Vernon, Alvin and Terrance were smoking marijuana and drinking in the car at the time, but Vernon and Alvin denied being stoned or drunk because they had only been parked out front for around 15 minutes after returning from the liquor store.

¶ 5 Steve Wooten testified that while the others were sitting in

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the Monte Carlo, he drove up in his car with his wife and two stepdaughters. Wooten parked his car, walked over to Alvin's car and started talking to Alvin, Terrance and Vernon. Wooten said he had drunk Cognac and smoked marijuana before he arrived at Alvin's house. An SUV drove past the Monte Carlo shortly after Wooten arrived, then reversed and stopped so the SUV and Monte Carlo were side by side. Vernon saw Tucker in the driver's seat of the SUV and Antonio Cox, a co-defendant at trial, in the front passenger seat. Alvin, Vernon and Wooten testified that although they did not recognize the SUV, they recognized Tucker as the driver because they had grown up with him. Alvin and Wooten also testified they recognized Campbell, whom they had also grown up with, as the passenger in the rear passenger seat of the SUV. Jennifer testified she did not know anyone in the SUV, but she identified Tucker at trial as the driver of the SUV. Jennifer also identified Campbell as the passenger in the rear of the SUV. Jennifer was not able to see the person sitting in the front passenger seat.

¶ 6 According to Vernon, Alvin and Wooten, they had a friendly conversation with Tucker and Cox because they were all familiar with each other. Campbell stuck his head out of the SUV's window while the others talked. Tucker then asked Alvin whether he knew who had previously shot at Tucker's van. After Alvin said he did

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not know anything, Tucker asked him who else he had in the car. After Alvin said "what difference do it make who I have in my car," shots were fired from the front and back seats of the SUV. Vernon said that although he did not know who shot from the back seat, he saw Tucker pull out a gun and start shooting. Vernon also testified he saw shots coming from the back seat of the SUV. Wooten testified he did not see the shooting because his back was to the SUV.

¶ 7 After the shooting stopped, the SUV drove away. Jennifer then saw that Terrance had been shot multiple times. Alvin testified he had also been shot and saw a puddle of blood in his lap. Vernon suffered a graze wound to his arm and was shot in his finger. Terrance subsequently died at the hospital.

¶ 8 On cross examination, Jennifer admitted her statement to the police indicated she saw there were five people in the SUV. She admitted that she did not know anyone in the SUV, and that she made her identifications based on Tucker's and Campbell's eyes since she could not tell their facial features or whether they were black or white. She also admitted that her identification of Tucker was based on a glance because she was on her phone at the time, and that she never saw Tucker with a gun.

¶ 9 Vernon admitted on cross examination that his statement to police indicated Tucker was the only person he saw fire from the

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front of the car. Vernon admitted describing Tucker as five feet tall and weighing 160 pounds in his statement to police, though he described Tucker as being 5'9" or 5'11" tall in court. Vernon admitted he had prior convictions for possession of a controlled substance, delivery of a controlled substance and unlawful use of a weapon by a felon. Wooten admitted on cross examination that he had a prior conviction for possession with intent to deliver.

¶ 10 Chicago Police Detective Dan Gallagher testified Jennifer, Vernon and Wooten all identified Tucker and Campbell as involved in the shooting during a photo array. Vernon and Wooten also identified Cox from a photo array.

¶ 11 Chicago Police Detective Tom Crain testified he and his partner met Assistant State's Attorney Emily Stevens at Mt. Sinai Hospital on May 27, 2007, in order to interview Alvin Lane. Detective Crain said that although Alvin was recovering from surgery, he was able to converse and respond appropriately to the detectives' questions. After recounting the details of the shooting, Alvin agreed to document his statement. Once ASA Stevens wrote out his statement, Alvin was allowed to review it and make corrections. Alvin then initialed each page and signed the written statement. Detective Crain said that in the statement, Alvin said Tucker asked "who's that over there" while gesturing to Terrence. Alvin also said in his statement that he

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saw Campbell holding a gun in the SUV's backseat.

¶ 12 ASA Stevens testified she did not doubt Alvin's ability to understand her when she interviewed him in the hospital. She said Alvin made corrections to the statement and was treated well. ASA Stevens testified Alvin did tell her that he saw Campbell holding a gun, and that he saw shots being fired from the front seats of the SUV.

¶ 13 At trial, Alvin denied seeing a gun from the SUV and did not remember saying to police that Campbell was holding a gun or that he saw gunfire from the front of the SUV. Alvin also denied telling the ASA that Tucker asked who was in the car. Although Alvin testified he made the statement voluntarily, he noted he was on pain killers and disoriented at the time. Alvin admitted testifying to the grand jury that he saw Campbell in the backseat holding a gun, and that his handwritten statement was true.

¶ 14 Michael Bellamey, an assistant manager at an Enterprise Rent a Car branch located in Forest Park, testified that at around 9:28 a.m. on May 26, 2007, Lukeina Strong tried to exchange a rented Toyota Forerunner SUV for a different vehicle. After Bellamey refused to allow her to exchange vehicles, Strong became upset and Bellamey ended the rental agreement. The vehicle was re-rented a number of times over the next few weeks. An Enterprise employee, Lamar Barnes, testified he delivered the

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vehicle to the Chicago Police Department. Barnes said there had been a man with Strong when she rented the SUV, but it was not Tucker. The police recovered one latent fingerprint from the SUV that matched Strong. Two samples taken by police from the backseat of the SUV also tested positive for evidence of a discharged weapon.

¶ 15 Emma Williams, Lukeina Strong's mother, testified she had not seen Strong since October 2007. She testified she had never met Tucker before.

¶ 16 The jury found defendants Tucker and Campbell guilty of first degree murder. Defendant Cox was found not guilty. The trial court sentenced Tucker to natural life in prison. Campbell was sentenced to a 28-year prison term. Both Tucker and Campbell appealed.

¶ 17 ANALYSIS

¶ 18 The main issue in this case is the propriety of the trial court's orders granting the State two 30-day extensions to locate a witness. Although defendants concede the State acted with due diligence in trying to locate Lukeina Strong prior to trial, defendants contend the State failed to show a reasonable likelihood that the witness could be located. Accordingly, defendants contend the trial court improperly continued the matter beyond the statutory speedy-trial period.

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¶ 19 A defendant has a right to a speedy trial under both the Federal and Illinois Constitutions (U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, §8), as well as under Illinois statute (725 ILCS 5/103-5 (West 2008)); however, these rights are not precisely equivalent (*People v. Staten*, 159 Ill. 2d 419, 426 (1994)). In order to prove a statutory violation, defendant need only show that despite his demand for trial he has not been tried within the period set by statute and that he has not caused or contributed to the delays. *Staten*, 159 Ill. 2d at 426. Proof of the constitutional violation, by contrast, requires consideration of the length of the delay in trial, the reasons for the delay, the defendant's assertion of the speedy-trial right, and prejudice to the defendant caused by such delay. *Staten*, 159 Ill. 2d at 426. When a statutory speedy-trial violation is alleged, "the statute operates to prevent the constitutional issue from arising except in cases involving prolonged delay, or novel issues." *Staten*, 159 Ill. 2d at 426, quoting *People v. Stuckey*, 34 Ill. 2d 521, 523 (1966). In this case, defendant's speedy trial claim is statutory, not constitutional.

¶ 20 In Illinois, every incarcerated defendant must be tried within 120 days from the date he was taken into custody except in circumstances not present here. 725 ILCS 5/103-5(a) (West 2008). If he is not, the court must release him from custody and dismiss

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the charges against him. 725 ILCS 5/103-5(d) (West 2008).

¶ 21 The period in which defendant must be tried, however, may be extended by up to an additional 60 days where the State has been unable to obtain evidence despite its due diligence and has provided reasonable grounds for the court to believe that it will do so at a later date. 725 ILCS 5/103-5(c) (West 2008). The decision to extend the speedy trial period beyond 120 days lies within the discretion of the trial court, and we will not disturb its determination absent a clear abuse of discretion. *People v. Richards*, 81 Ill. 2d 454, 458 (1980).

¶ 22 The State contends defendants forfeited their rights to assert a speedy trial claim by not filing a motion for discharge prior to their joint jury trial. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (both a trial objection and a written post-trial motion raising the issue are required "for alleged errors that could have been raised during trial."); *People v. Foster*, 297 Ill. App. 3d 600, 605 (1998). Instead, defendants raised the speedy trial violation issue for the first time in their respective post-trial motions for a new trial. Because defendants did not file a motion for discharge prior to trial, we find the issue is forfeited. *Foster*, 297 Ill. App. 3d at 605.

¶ 23 Forfeiture aside, we find the trial court's decision to grant the State an extension of the 120-day trial period in order

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to locate a witness was not an abuse of discretion.

¶ 24 Initially, we reject defendants' contention that the 120-day period for both Tucker and Campbell had already expired before the State filed its motion for an extension. Defendants contend the record reflects that neither Campbell nor Tucker "specifically agreed" to the continuances entered between January 22 to April 1, 2008. As the State properly notes, however, both Tucker--through his attorney--and Campbell specifically agreed to an April 1 trial date when they appeared in court on January 22, 2008. Although Campbell's attorney was not present in court on that date due to an illness, the prosecutor indicated counsel had specifically agreed to an April 1 trial date during a recent telephone conversation. When the trial court asked Campbell whether he had any problem with what the prosecutor said, Campbell said "No, sir." The court then continued the case "[b]y agreement to April 1st with [sic] for jury trial." While several other status hearings were conducted between the January 22 appearance date and the proposed April 1 trial date, the record reflects defendants never demanded trial during any of those appearances. In fact, the record reflects the parties agreed the trial date was still set by agreement for April 1, 2008.

Accordingly, we find defendants' contention that the 120-day speedy trial period should not be considered tolled from January

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22 to April 1, 2008, is without merit. See *People v. Kliner*, 185 Ill. 2d 81, 114 (1998) ("In general, an agreed continuance constitutes an affirmative act of delay attributable to the defendant which tolls the speedy-trial term.")

¶ 25 Whether to grant an extension of the 120-day statutory period rests with the trial court's discretion, and such an extension will not be disturbed absent an abuse of that discretion. *Foster*, 297 Ill. App. 3d at 605, citing *People v. Hughes*, 274 Ill. App. 3d 107, 111 (1995). When an extension is challenged, we examine the entire record as it existed at the time of the motion. *Foster*, 297 Ill. App. 3d at 605.

¶ 26 Here, the State's written motion for an extension outlined the "due diligence" it had exercised in attempting to locate Lukenia Strong, a material and essential witness in the prosecutions' case. The State also specifically argued that "[d]ue to the intense efforts by both the State's Attorney and the Chicago police department to find Miss Strong, there is reasonable ground to believe that the presence of Miss Strong may be procured at a later date." During the hearing on the motion, the State noted:

"we have alleged throughout that petition
dozens of facts to show genuine due diligence
in this case and we do have a good faith

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belief that this intense pressure this investigation has brought through various means will produce the fear on Miss Givens [sic] is we are given additional time to produce her."

¶ 27 Both defendants stipulated below that the State had adequately established due diligence in trying to locate Strong. However, Campbell's defense counsel argued to the court that the State had failed to show reasonable grounds to establish the State's diligence would actually lead to finding the witness.

¶ 28 In granting the initial 30 day extension on June 6, 2008, the trial court noted showing reasonable grounds to believe the diligence would lead to finding the witness is "problematic in any case where [the State] is asking for an extension." The court found that having established the State exercised due diligence, it could not say "there is not a likelihood they would find the person or not find the person" because "the whole purpose of the request [is that] if they continue their efforts that they will be successful." Accordingly, the court granted the State an initial 30-day extension, instead of a 60-day extension, because it wanted "to see what reasonableness there is in finding Miss Strong."

¶ 29 During a hearing on July 14, 2008, the State outlined the

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efforts it had made to locate Strong during the 30-day extension and requested an additional 30-day extension of the speedy trial period. Although defendants again agreed the State had established due diligence, both defendants argued the State had failed to show the efforts stood a reasonable chance of locating Strong. The court granted the remaining 30-day time on the extension.

¶ 30 Based on the record before us, we find the trial court did not abuse its discretion in granting the two 30-day extensions to defendants' speedy trial period. Although defendants contend the State failed to show its efforts stood a reasonable chance of success to locate Strong, we note the petition outlined a significant exercise of due diligence on the State's part to locate Strong. The State also expressed confidence in its belief that such efforts would lead to them finding Strong within the 60-day extension period. While those efforts ultimately proved unsuccessful, we find the trial court had more than enough information to make an informed judgment at the time it granted the extensions. See *Foster*, 297 Ill. App. 3d at 606, citing *People v. Hughes*, 274 Ill. App. 3d 107, 111 (1995). Because nothing in the record indicates the State was "careless, indifferent, or mendacious in its attempts to gain additional time," we see no reason to "second-guess" the court's

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determination. See *Hughes*, 274 Ill. App. 3d at 111.

Accordingly, we find the trial court did not abuse its discretion in granting the extensions to defendants' speedy trial period.

¶ 31 II. Reasonable Doubt

¶ 32 Defendants contend the State failed to prove them guilty of first degree murder beyond a reasonable doubt.

¶ 33 The relevant question is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004); *People v. Ornelas*, 295 Ill. App. 3d 1037, 1049 (1998). It is the responsibility of the trier of fact to determine the credibility of witnesses and the weight to be given their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). A criminal conviction will not be reversed unless the evidence is so improbable or unsatisfactory that a reasonable doubt of defendant's guilt is justified. *People v. Moore*, 171 Ill. 2d 74, 94 (1996).

¶ 34 Here, four witnesses--Vernon, Lane, Jennifer and Wooten--identified Tucker and Campbell at trial as being present in the SUV on the night of the shooting. Vernon, Lane and Wooten also testified they had known the defendants since childhood. Vernon

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specifically testified he saw Tucker pull out a gun and start shooting at Lane's Monte Carlo. Vernon also testified he saw gunshots being fired from the rear of the SUV, where Campbell had been sitting. The forensic evidence also established somewhere between two to four guns were used in the shooting.

¶ 35 We recognize Vernon, Lane and Wooten admitted that they had all been drinking and smoking marijuana prior to the shooting, and that all three admitted at trial to prior felony criminal convictions. We also recognize Lane contradicted at trial some of the details he allegedly recounted to police regarding the shooting while in the hospital, including whether he ever saw Campbell holding a gun prior to shots being fired from the rear of the SUV and whether Tucker had asked who was in Lane's car. We note, however, that as the trier of fact, the jury is in the superior position to assess the witnesses' credibility and resolve any conflicts in the evidence. See *People v. Rodriguez*, 408 Ill. App. 3d 782, 793-94 (2011). Although the jury was clearly made aware of the facts regarding the witnesses' credibility defendants now highlight on appeal, the jury still found the evidence presented by the State justified a finding of guilt.

¶ 36 A lack of physical evidence tying defendants to the shooting and minor inconsistencies in the eyewitnesses' accounts does not

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render the evidence presented here so "unreasonable, improbable or unsatisfactory" as to justify reversing the jury's determination. See *Rodriguez*, 408 Ill. App. 3d at 794.

Based on the evidence before us, we find a rational trier of fact could conclude defendants shot and killed Terrance Smith. See *Cunningham*, 212 Ill. 2d at 278.

¶ 37 CONCLUSION

¶ 38 We affirm defendants' convictions and sentences.

¶ 39 Affirmed.