

2012 IL App (2d) 101272-U  
No. 2-10-1272  
Order filed February 16, 2012

**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(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Lake County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 06-CF-1567
	)	
ROBERT C. RIGSBY,	)	Honorable
	)	James K. Booras,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.  
Justices Zenoff and Hudson concurred in the judgment.

**ORDER**

*Held:* Defendant was not denied his constitutional right to a speedy trial: although defendant's trial occurred approximately four years after he was charged with certain offenses, he was tried not on those charges but instead on distinct charges that were filed only five months before trial.

¶ 1 After a stipulated bench trial, defendant, Robert C. Rigsby, was convicted of two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2000)) and sentenced to concurrent six-year prison terms. On appeal, he argues that the trial court erred in denying his

motion to dismiss, based on his constitutional right to a speedy trial (U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8 ). We affirm.

¶ 2 On April 18, 2006, defendant was charged by information with two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a) (1) (West 2000)). The first count alleged that, sometime between January 1, 2000, and January 1, 2001, defendant, who was over the age of 17 at the time, inserted his penis into the vagina of K.D., who was under 13 at the time. The second count alleged that, at some time between January 1, 2000, and January 1, 2001, defendant, who was over 17 at the time, inserted his finger into the vagina of K.D.

¶ 3 On April 6, 2010, the trial court granted an order of habeas corpus *ad prosequendum*, directing the warden of the Menard Correctional Center to deliver defendant to the Lake County courthouse on April 27, 2010, for a preliminary hearing. On April 27, 2010, defendant appeared and filed a statutory demand for a speedy trial (see 725 ILCS 5/103-5(a) (West 2010)).

¶ 4 On May 26, 2010, the State filed a 12-count indictment against defendant. The first six counts charged separate acts of predatory criminal sexual assault of a child, all allegedly committed between September 1, 2000, and January 1, 2001. Three of the first six counts alleged that defendant inserted his penis into the vagina of K.D.; the other three alleged that he inserted his finger into her vagina. The last six counts charged separate acts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2000)). Three alleged that defendant rubbed his penis upon K.D.'s body; the other three alleged that he placed his finger upon her vagina.

¶ 5 On July 27, 2010, defendant moved to dismiss all of the charges, invoking both his constitutional and statutory rights to a speedy trial (see U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8; 725 ILCS 5/114-1(a)(1) (West 2010)). The motion alleged the following facts. On December

8, 2005, defendant was arrested in Lemont for aggravated criminal sexual abuse. On March 1, 2006, defendant was arrested and charged in Cook County with sexual offenses allegedly committed in Chicago. On April 18, 2006, he was charged by information in Lake County with two counts of predatory criminal sexual assault of a child. On October 31, 2006, in the Cook County case, defendant pleaded guilty to predatory criminal sexual assault and was sentenced to 30 years in prison. On November 3, 2006, he was brought to prison. At the time, he was unaware of any pending charges in Lake County. Later, he was indicted. Since December 8, 2005, he had been in continuous custody under the name Robert Rigsby.

¶ 6 As pertinent here, defendant's motion contended that the State violated his constitutional right to a speedy trial, as four years had passed between when he was charged and when he was actually brought to Lake County to face the charges. Defendant's motion did not distinguish between the 2006 charges and the 2010 charges but argued that all the charges must be dismissed.

¶ 7 The State did not file a response to defendant's motion. At the hearing on the motion, the State conceded the factual allegations of defendant's motion and admitted that it could not explain the long delay between the original information and the order of habeas corpus *ad prosequendum*. Neither party made any distinction, for speedy-trial purposes, between the 2 charges in the original information and the 10 charges that were added by the indictment in 2010. The State did not contend that, even if trial on the first two charges were barred, trial on the remaining charges was permissible.

¶ 8 In denying defendant's motion, the trial judge noted that the State had shown no reason for the four-year delay between when defendant was first charged and when he was informed of the charges. However, the judge reasoned, during that period, defendant had been in the custody of the

DOC, which was tantamount to “hiding within the State.” Thus, he had to “show actual particularized prejudice,” which he had not.

¶ 9 Defendant moved to reconsider the denial of his motion. The trial court denied the motion. Defendant preserved his speedy-trial claim. On October 28, 2010, the court held a stipulated bench trial on only counts VII (aggravated criminal sexual abuse based on rubbing penis against body of K.D.) and X (aggravated criminal sexual abuse based on placing finger upon vagina of K.D.). Defendant was convicted and sentenced to concurrent six-year prison terms. He timely appealed.

¶ 10 On appeal, defendant argues that the trial court erred in refusing to dismiss the charges on constitutional speedy-trial grounds. (Defendant does not renew his statutory speedy-trial argument.) As in the trial court, defendant treats all of the charges as subject to the same analysis. The State, in a terse response brief, also treats all of the charges identically.

¶ 11 We affirm the judgment and hold that defendant’s convictions were not obtained in violation of his constitutional right to a speedy trial. However, we depart from the assumption that the parties and the trial court made—that all of the charges, both those filed in 2006 and those filed in 2010, are governed by the same analysis. The parties and the trial court appear to have taken for granted that, if defendant was denied a speedy trial on the 2006 charges, he was necessarily denied a speedy trial on the 2010 charges. However, that is simply contrary to law. As we shall explain, defendant was not denied his constitutional right to a speedy trial on the charges for which he was actually tried.<sup>1</sup>

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<sup>1</sup>Had defendant actually been tried on, and convicted of, the 2006 charges, he would have a far stronger claim that his speedy-trial right was violated by the unexplained delay of approximately four years between the filing of the charges and the trial. See generally *Barker v. Wingo*, 407 U.S. 514 (1972). The trial court’s reasoning—that defendant’s imprisonment under his own name in the

¶ 12 Because no material facts are in dispute, our review is *de novo*. See *People v. Crane*, 195 Ill. 2d 42, 51 (2001). Both the federal and state constitutions guarantee the “accused” the right to a speedy trial. U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8. Therefore, the right to a speedy trial does not accrue until the defendant is accused, which requires “either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge.” *United States v. Marion*, 404 U.S. 307, 320 (1971); see *Mitchell*, 356 Ill. App. 3d at 161. Delay that occurs before a defendant has been accused does not violate the constitutional right to a speedy trial, although it might violate due process or the statute of limitations. *Marion*, 404 U.S. at 321-22; *Mitchell*, 356 Ill. App. 3d at 162.

¶ 13 Here, in 2006, defendant was “accused” of two counts of predatory criminal sexual assault of a child. However, only in May 2010 was he was “accused” of the two charges of aggravated criminal sexual abuse for which he was actually tried. Defendant has not and could not reasonably assert a speedy-trial violation if the right accrued in May 2010. Thus, his claim fails.

¶ 14 Although no Illinois opinion appears to be directly on point, federal court opinions applying *Marion* persuasively hold that, in general, the right to a speedy trial is specific to a particular charged offense. In *United States v. DeTienne*, 468 F.2d 151 (7th Cir. 1972), in December 1969, the defendants were indicted for attempted robbery and assault with a dangerous weapon. They were later convicted. The defendants had been arrested in October 1968 on separate charges. In rejecting their claim that they had been denied their right to a speedy trial, the court of appeals refused to

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DOC was tantamount to “hiding within the State”—is both inherently dubious and contrary to this court’s precedent. See *People v. Belcher*, 186 Ill. App. 3d 202, 208 (1989), *disapproved on other grounds*, *People v. Mitchell*, 356 Ill. App. 3d 158, 163-64 (2005).

“measure ‘delay’ for Sixth Amendment purposes from the time of their arrests in October 1968.” *Id.* at 155. Relying on *Marion*, the court explained that the defendants’ right to a speedy trial on the charges that were filed in December 1969 was not triggered by the previous filing of distinct charges against them. *Id.* The court continued:

“It would be absurd in the extreme if an arrest on one charge triggered the Sixth Amendment’s speedy trial protection as to prosecutions for any other chargeable offenses. Of course, if the crimes for which a defendant is ultimately prosecuted really only gild the charge underlying his initial arrest and the different accusatorial dates between them are not reasonably explicable, the initial arrest may well mark the speedy trial provision’s applicability as to prosecution for all the interrelated offenses. No such situation is presented in this case, and the appellants did not become ‘accused’ for Sixth Amendment purposes on the occurrence of their unrelated October 1968 arrests.” *Id.*

¶ 15 In *United States v. Nixon*, 634 F.2d 306 (5th Cir. 1981), the defendant was arrested in 1975 for counterfeiting. Five months later, he moved to dismiss the charge, alleging a violation of his right to a speedy trial; in response, the government voluntarily dismissed the charge. In 1977, the defendant testified before a grand jury, denying that he had been involved in the alleged counterfeiting. In 1978, evidence was discovered that the defendant had been engaged in counterfeiting, and, in April 1979, he was indicted for perjury, based on his grand jury testimony. The defendant moved to dismiss the charge, alleging that the delay between his arrest for counterfeiting and his indictment for perjury violated his right to a speedy trial. *Id.* at 307-08.

¶ 16 The court of appeals rejected this argument. Citing *DeTienne*, the court explained that the perjury charge did not “merely ‘gild the charge’ underlying the original arrest. Even though proof

of perjury must rely in part on the same facts as would support a counterfeiting charge, perjury is a distinct and separate offense.” *Id.* at 309 (quoting *DeTienne*, 468 F.2d at 155). Thus, “[a] speedy trial claim as to each separate offense must stand or fall on its own merits, based upon when the defendant was accused, by arrest or indictment, of that specific offense.” *Id.*

¶ 17 We agree with the reasoning of *DeTienne* and *Nixon* and have found no authority holding otherwise. Thus, defendant’s convictions were not obtained in violation of his right to a speedy trial unless the 2010 charges on which they were based merely “gilded” or were a part of either of the 2006 charges. That is plainly not so. Although the 2010 charges involved the same victim and were based on acts occurring within part of the time frame of the 2006 charges, each 2010 charge was distinct and separate from the 2006 charges. The 2006 charges were of predatory criminal sexual assault of a child, a Class X felony (see 720 ILCS 5/12-14.1(b)(1) (West 2000)), based on (1) defendant’s alleged insertion of his penis into the victim’s vagina; and (2) defendant’s alleged insertion of his finger into the victim’s vagina. The 2010 charges of which defendant was convicted were of aggravated criminal sexual abuse, a Class 2 felony (see 720 ILCS 5/12-16(g) (West 2000)), based on (1) defendant’s alleged rubbing of his penis on the victim’s body; and (2) defendant’s alleged placing of his finger on the victim’s vagina. The two sets of charges involve different offenses with different classifications and different acts (penetration in the first set, contact in the second). Thus, the speedy-trial period for the charges of conviction did not begin until the indictment was filed, a mere two months before defendant filed his speedy-trial motion and only five months before he was tried. Defendant has never contended that such slight delays raised any speedy-trial issues, and there is no basis to do so.

¶ 18 We recognize that we are affirming the judgment on a ground that the trial court did not use and one that the State (curiously) did not raise. However, we review the trial court's judgment, not its reasoning, and we may affirm on any ground that the record requires. See *People v. Smith*, 406 Ill. App. 3d 747, 752 (2010). Moreover, as we are deciding a pure question of law on undisputed facts, we may go beyond the parties' arguments in the interest of reaching a just result and maintaining a sound and uniform body of precedent. See *Hux v. Raben*, 38 Ill. 2d 223, 225 (1967).

¶ 19 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 20 Affirmed.