

**NOTICE**

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2014 IL App (4th) 130731-U

NO. 4-13-0731

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**  
April 23, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellant,	)	Circuit Court of
v.	)	Vermilion County
DUSHAWN BRADLEY,	)	No. 12CF537
Defendant-Appellee.	)	
	)	Honorable
	)	Craig H. DeArmond,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Presiding Justice Appleton and Justice Harris concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The appellate court affirmed the trial court's dismissal of defendant's criminal charges, holding defendant's fulfilled cooperation-immunity agreement precluded the State from refiling charges against defendant.
- ¶ 2 In January 2012, the State nol-prossed pending charges against defendant, Dushawn Bradley, in exchange for his cooperation against his codefendant, Bryan Falletti. Later that month, the trial court dismissed Falletti's case based on a speedy trial violation. In November 2012, the State refiled charges against defendant, asserting defendant failed to fulfill the cooperation-immunity agreement because he did not testify against Falletti. In May 2013, defendant filed a motion to dismiss, arguing he fulfilled the cooperation-immunity agreement and was therefore immune from prosecution. Following an August 2013 hearing, the court granted defendant's motion to dismiss.

¶ 3 The State appeals, asserting the trial court erred in dismissing defendant's charges because defendant failed to fulfill the terms of the cooperation-immunity agreement by failing to testify against Falletti. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In July 2011, the State charged defendant by information with unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)) and reckless discharge of a firearm (720 ILCS 5/24-1.5 (West 2010)) under Vermilion County No. 11-CF-456. In addition to defendant, the State charged Falletti and Anthony Gilmore as codefendants.

¶ 6 In January 2012, the State conveyed to the trial court that it had reached a cooperation-immunity agreement with defendant, stating, "as to [defendant], the people are moving to *nolle pros* [*sic*]. [Defendant] would be expected to testify against Mr. Falletti and cooperate with the State in terms of keeping a current address and communication with us." The State also agreed not to file additional charges related to the case. The State then said defendant "would be expected to testify pursuant to the information that he gave to the police and, again, in addition, to cooperate with the State in being a witness; and if he fails to do that, then we would be able to refile the charges."

¶ 7 Later that month, the trial court dismissed codefendant Falletti's case based on a speedy trial violation, which this court affirmed in *People v. Falletti*, 2012 IL App (4th) 120107, 977 N.E.2d 334. In April 2012, Gilmore entered into a plea agreement with the State.

¶ 8 In November 2012, the State refiled defendant's 2011 charges herein in Vermilion County No. 12-CF-537. In May 2013, defendant filed a motion to dismiss pursuant to section 114-1(a)(3) of the Code of Criminal Procedure of 1963 (725 ILCS 5/114-1(a)(3) (West 2012)), asserting his agreement with the State immunized him from prosecution.

¶ 9 In August 2013, the trial court held a hearing on defendant's motion to dismiss. Defendant asserted he was now immune from prosecution on the pending charges because he cooperated with the State and remained ready, willing, and able to testify as needed. Conversely, the State argued it could pursue the prosecution of defendant because, though defendant cooperated, he did not testify. Thus, the State contended, defendant "did not give anything up."

¶ 10 The trial judge dismissed the charges against defendant, noting the parties stated the agreement for the record, which he interpreted as requiring defendant to remain "ready, willing, and able" to cooperate as a State's witness in exchange for the dismissal of his charges. The court then stated,

"The best description of the situation we have in front of us is so egregious. The State dismissed it against one defendant, lost against the other, well, then they want to go against [defendant]. Well, that wasn't the deal. The deal was you remain ready, willing, and able to testify against the codefendants. Your case is *nolle prossed* and it won't ever come back. Contrary to the State's accession that he didn't do anything. Yes, he did. He has remained available as a State's witness since the date the case was *nolle prossed*. A defendant in a multi-defendant criminal case involving unlawful possession of a weapon by a felon and reckless discharge of a firearm who is willing to testify against his codefendants is definitely giving up something. He's subjected himself to whatever possible repercussions may occur from testifying as a State's witness. The State understands that, the

defense understands that, and it would be ludicrous for us to believe otherwise."

The court went on to say defendant "fulfilled his part of the agreement" and "[a]t no time did he duck or avoid" the State.

¶ 11 Later that month, the State filed a certificate of substantial impairment. This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, the State asserts the trial court erred in dismissing defendant's case because defendant was not immune from prosecution. We must first address the terms of the cooperation-immunity agreement and the trial court's interpretation of those terms.

¶ 14 A. The Terms of the Agreement

¶ 15 The trial court's factual findings regarding the terms of an agreement will not be disturbed unless those findings are against the manifest weight of the evidence. *People v. Boyt*, 129 Ill. App. 3d 1, 14, 471 N.E.2d 897, 906 (1984). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332, 882 N.E.2d 999, 1005 (2008).

¶ 16 The parties agree part of defendant's cooperation-immunity agreement required defendant to remain in contact with the State and to furnish a current address. The parties further agree defendant fulfilled that portion of the agreement. The dispute arises regarding the trial court's interpretation of the language of the agreement stating that defendant "would be expected to testify." The trial court adopted defendant's interpretation of the agreement and found this language to mean defendant had to be "ready, willing, and able to testify." The State, however,

contends this language *required* defendant's testimony against Falletti to actually take place in order to fulfill the agreement.

¶ 17 The term "expect" means "to consider bound in duty or obligated" or "to consider probable or certain." Merriam-Webster's Collegiate Dictionary 407 (10th ed. 2000). That definition could lead to the conclusion that defendant if called upon to do so, would testify or, in other words, that defendant would be required to testify if needed. Under that definition of "expect," the court could have reasonably interpreted the agreement as requiring defendant to remain ready, willing, and able to testify as needed. The State asserts the interpretation that defendant remain "ready, willing, and able" is too broad an interpretation because that approach would leave the State with "virtually no consideration" for the immunity agreement. We disagree.

¶ 18 Those intimately familiar with the inner workings of criminal proceedings are well aware of the mutual benefits of agreements such as the one reached here. The State's case against an individual the State has determined should be subjected to the full reach of the law is bolstered and an individual who is willing to take the risk associated with testifying against a codefendant is able to free himself of the stigma and penalties associated with a conviction for his conduct. Defendant's cooperation alone is sufficient consideration for the promise of immunity. *Smith*, 233 Ill. App. 3d at 349, 599 N.E.2d at 497. In this case, defendant never refused to testify or changed his anticipated testimony. At all times, defendant was "ready, willing, and able" to testify. The State, through its failure to bring the codefendant to trial in accordance with speedy trial requirements, deprived defendant of the opportunity to testify. Thus, we conclude the trial court's factual finding that defendant satisfied all the conditions of the immunity agreement was not manifestly erroneous.

¶ 19

## B. Specific Performance

¶ 20 Having determined the trial court did not err in finding defendant satisfied the conditions of the cooperation-immunity agreement, we now turn to whether defendant is entitled to specific performance of the contract. The court's decision to grant specific performance of an agreement will not be overturned absent an abuse of discretion. *People v. Whitfield*, 217 Ill. 2d 177, 204, 840 N.E.2d 658, 674 (2005).

¶ 21 Specific performance is an appropriate remedy for the enforcement of a plea agreement when "the State's repudiation of the asserted plea agreement constituted a denial of due process, which can be remedied only by allowing the defendant specific enforcement of the agreement." *People v. Navaroli*, 121 Ill. 2d 561, 523-24, 521 N.E.2d 891, 894 (1988). Due to the contractual nature of both plea agreements and cooperation-immunity agreements, it logically follows defendant should also receive specific performance of an immunity agreement once his due process rights are implicated.

¶ 22 The State asserts defendant has no right to specific performance because defendant has not been prejudiced by detrimentally relying upon the agreement. However, the question is whether defendant's due process rights were implicated by his reliance on the agreement. In support of its argument that defendant's due process rights were not implicated, the State initially likens a cooperation-immunity agreement to a plea agreement, asserting, that similarly to the defendants in *Navaroli* and *Boyt*, defendant gave up no rights in cooperating with the State because he still had the right to proceed to jury trial on the charges. Contrary to the State's argument that we should treat plea agreements and immunity agreements similarly, we are persuaded by *Smith*, which carefully distinguishes the differing interests in a plea

agreement from those in an immunity agreement. Moreover, the State, in its reply brief, concedes plea agreements and cooperation-immunity agreements are different.

¶ 23 The *Smith* court noted a defendant's due process rights in a plea agreement are not triggered until the defendant enters a plea of guilty because, until he enters a plea, the defendant is free to pursue his right to a trial. *Smith*, 223 Ill. App. 3d at 350, 599 N.E.2d at 496-97. Hence, the consideration for defendant's plea agreement is defendant's waiver of his right to a trial. *Smith*, 223 Ill. App. 3d at 349, 599 N.E.2d at 497. Conversely, in a cooperation-immunity agreement, the "parties agree that the defendant's cooperation is sufficient consideration for the government's promise of immunity." *Smith*, 223 Ill. App. 3d at 349, 599 N.E.2d at 497. Therefore, a defendant who completes the terms of a cooperation-immunity agreement has earned the right not to be haled into court at all. *Smith*, 223 Ill. App. 3d at 350, 599 N.E.2d at 497. Though *Smith* does not address performance of an immunity agreement, we find the analysis differentiating a plea agreement and an immunity agreement compelling and applicable to the present case.

¶ 24 We find further support for our analysis in *People v. Weilmuenster*, 283 Ill. App. 3d 613, 625, 670 N.E.2d 802, 810 (1996), where the court concluded "[a] defendant's right to due process is clearly implicated when the government makes promises of immunity from prosecution." Though the *Weilmuenster* case involved ambiguity as to the type of immunity the defendant would receive following his testimony, thus implicating the defendant's due process right against self-incrimination, the present case also presents a situation in which defendant's due process rights have been implicated. See *Weilmuenster*, 283 Ill. App. 3d at 615, 670 N.E.2d at 803-04. Based on the totality of the circumstances presented in this matter, we conclude defendant has established sufficient detrimental reliance on the agreement.

¶ 25 First, defendant's decision to cooperate with the State placed him in a vulnerable position within the community. As the trial court noted,

"[A] defendant in a multi-defendant criminal case involving unlawful possession of a weapon by a felon and reckless discharge of a firearm who is willing to testify against his codefendants is definitely giving something up. He's subjected himself to whatever possible repercussions may occur from testifying as a State's witness."

By entering into this agreement defendant publicly acknowledged, in open court, his willingness to cooperate with the State against a fellow member of his community. Such action would irrevocably alter his reputation and potentially subject him to retribution from both the community and his codefendant. In addition, by entering into and complying with a cooperation-immunity agreement, defendant would reasonably believe he was free of the onus of defending the charges against him. Defendant's cooperation and fulfillment of his part of the immunity agreement triggered his right not to be haled into court at all; thus, the State's later decision to refile charges against defendant constituted a denial of defendant's due process rights. See *Smith*, 223 Ill. App. 3d at 350, 599 N.E.2d at 497.

¶ 26 The State asserts *Smith* is distinguishable because, in *Smith*, the defendant's case had been dismissed with prejudice whereas, in the present case, defendant's case had only been nol-prossed. While we note significant differences exist between a dismissal with prejudice and the State's motion to enter a *nolle prosequi*, that distinction is not dispositive for this particular case. While defendant's case was initially nol-prossed in the instant case, the parties clearly intended for the effect to be a dismissal with prejudice after defendant completed the conditions

of the immunity agreement. The agreement stated "if defendant fails" to complete the conditions of the immunity agreement, the State "would be able to refile the charges." Logically, the opposite must also be true—if defendant completes the conditions, the State cannot refile charges. As we previously noted, defendant completed the conditions necessary to fulfill the immunity agreement when he remained ready, willing, and able to testify; it is now the State's turn to honor its portion of the agreement. See *People v. Fearing*, 110 Ill. App. 3d 643, 645, 442 N.E.2d 939, 940 (1982) ("[C]harges that have been settled or dismissed may not be reinstated if the defendant has performed his obligations under the terms of the settlement.").

¶ 27 Nonetheless, the State asserts its discretion to nol-pros charges also gives it the discretion to withdraw its offer to nol-pros at any time. Despite the State's argument to the contrary, the State's discretion to nol-pros a case does not necessarily give the State the right to withdraw its offer to nol-pros and subsequently refile charges. In this situation, the State did not choose to revoke the cooperation-immunity agreement during the pendency of the codefendant's case. Rather, the State waited until defendant completed the conditions of the agreement by remaining ready, willing, and able to testify, to attempt to withdraw from the agreement. In fact, the State waited until this court resolved Falletti's appeal before refiling charges, which indicates the State had no intention of revoking the immunity agreement until it became clear the State could no longer prosecute Falletti. Adopting the State's argument would allow the State to nol-pros charges against cooperating defendants and refile charges once the codefendant's case had been resolved, thus giving the defendant nothing in exchange for his cooperation while the State received the full benefit of the agreement. Not only is that approach illogical, but it would also undermine plea-bargaining and negotiation processes. Thus, the trial court did not abuse its discretion when it found defendant is entitled to specific performance of the contract, as

defendant's reliance upon the agreement and the completion of the conditions thereof invoked his right not to be haled into court on this charge.

¶ 28

### III. CONCLUSION

¶ 29

For the foregoing reasons, we affirm the trial court's judgment.

¶ 30

Affirmed.