2019 IL App (2d) 180109-U
No. 2-18-0109
Order filed April 2, 2019

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellant,	)	
v.	)	Nos. 06-DT-669 06-TR-31578 06-TR-31579 06-TR-31581
LAURENCE E. SHAFFER,	)	Honorable Mark R. Gerhardt,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE McLAREN delivered the judgment of the court.
Justices Jorgensen and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant was not denied his constitutional right to a speedy trial: although the delay of 11 years was extremely long, the delay was not attributable to the State's negligence, defendant failed to assert his right, and defendant thus was required to show a specific prejudice but did not.

¶ 2 The State appeals the trial court's order dismissing its case against defendant, Laurence E. Shaffer, based on the denial of defendant's constitutional right to a speedy trial (U.S. Const.,

amends. VI, XIV; Ill. Const. 1970, art. I, § 8). We determine that defendant's constitutional right to a speedy trial was not violated. Accordingly, we reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 On May 26, 2006, defendant was charged with two counts of driving under the influence of alcohol (625 ILCS 5/11-501(a)(1), (a)(2) (West 2006)) and various traffic offenses. On June 5, 2006, he was released on bond and scheduled to appear at a July 17, 2006, court date. At that time, he provided an address on Kernwood Street in Palatine as his address. Defendant failed to appear, and an arrest warrant was issued. Defendant was arrested on September 20, 2006. On October 2, 2006, he was again released on bond and listed what he believed was a Chicago homeless shelter as his address. Defendant failed to appear for an October 31, 2006, court date. A new warrant was issued, and defendant was arrested on that warrant over 11 years later on November 11, 2017. At that time, defendant again resided at the Kernwood Street address in Palatine.

¶ 5 On November 15, 2017, defendant moved to dismiss on the basis of a violation of his constitutional right to a speedy trial. That same day, a bond hearing was held, and defendant testified that he had been living at the Palatine address for the past two years. He indicated that he was homeless for a period of time and that the address he listed in Chicago was probably a homeless shelter, but that he was not really living there. He then went to California to take care of his parents. After his parents passed away, he returned to the Palatine address. Defendant stated that he thought that the charges had been taken care of because he had paid a lawyer twice to "try and figure this out." The State told the court that, to its knowledge, there had been no attempts to find defendant and, when directly asked by the court what efforts had been made in the last two years, the State said that it was unsure.

¶ 6 After a lengthy discussion of the case law and applicable factors, the trial court found that defendant was denied his constitutional right to a speedy trial. The court noted that the burden was on the State and that the State failed to show that it did anything at all to locate defendant. The court found the State's lack of action to be negligent and further noted that the potential prejudice to defendant increased over time. The State's motion to reconsider was denied, and the State appeals.

¶ 7 II. ANALYSIS

¶ 8 The State argues that the trial court erred when it dismissed the charges on constitutional speedy-trial grounds. At the outset, we note that defendant has not filed a brief. Under *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976), we may consider the merits of an appeal despite the absence of an appellee's brief if the record is simple and the claimed errors are such that we can easily decide them without the aid of an appellee's brief. Here, the record is straightforward, and the issue involves weighing well-settled factors to determine whether defendant's constitutional speedy-trial right was violated. Accordingly, we review the merits.

¶ 9 " '[T]he ultimate determination of whether a defendant's constitutional speedy-trial right has been violated is subject to *de novo* review.' " *People v. Silver*, 376 Ill. App. 3d 780, 783 (2007) (quoting *People v. Crane*, 195 Ill. 2d 42, 52 (2001)). "However, we will uphold the trial court's factual determinations unless they are against the manifest weight of the evidence." *Id.*

¶ 10 Four factors are considered when determining whether a defendant's constitutional right to a speedy trial has been violated: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of his or her right; and (4) the prejudice to the defendant as a result of the delay. *Id.* The threshold question is whether the length of the delay is presumptively

prejudicial. *Id.* at 784 (citing *People v. Belcher*, 186 Ill. App. 3d 202, 205-06 (1989)). If the length of the delay is presumptively prejudicial, the court should balance the remaining three factors. *Id.* "Thus, the first factor has a triggering function, and unless a presumptively prejudicial period of delay occurs, a court need not conduct the remainder of the analysis." *Id.* A delay of nearly one year crosses the threshold dividing an ordinary delay from a presumptively prejudicial delay. *Id.* Here, the delay was over 11 years, so the remaining factors must be applied.

¶ 11 Having decided that a speedy-trial inquiry has been triggered, we must next consider the reason for the delay. The State bears the burden of justifying the delay. *Crane*, 195 Ill. 2d at 53. The State has a constitutional duty to make a diligent and good-faith effort to apprehend a defendant and bring him to trial. *Belcher*, 186 Ill. App. 3d at 206. "A defendant need only show that the delay was not attributable to his conduct." *Id.* Negligence, while not weighed against the State as heavily as an intentional delay, is neither reasonable nor an acceptable cause for the delay. *Crane*, 195 Ill. 2d at 56.

¶ 12 Here, the State did not provide any evidence of its efforts to locate defendant. But given the incomplete or inaccurate information it had as to his whereabouts while he was homeless and in California, it appears that any search for him during that time would have been futile. Thus, we cannot say that the delay was not attributable to defendant's conduct, as he was responsible for the incomplete or inaccurate information. Accordingly, we weigh this factor against defendant.

¶ 13 In regard to defendant's assertion of his right, the State contends that this factor should weigh against defendant because he failed to demand a speedy trial, did not update his addresses, and left the state. While a court may not presume a defendant's waiver of a fundamental right

from his inaction, a defendant will not be completely absolved from all responsibility to assert his right to a speedy trial. *Crane*, 195 Ill. 2d at 58. A failure to assert the right will make it difficult to find that a defendant was denied a speedy trial. *Id.* However, in the absence of knowledge of the charges at the time of a move, and in the absence of a lifestyle indicative of a fugitive, we will not place an inculpatory motive upon a defendant for leaving the area. See *Silver*, 376 Ill. App. 3d at 784. While cases involving defendants who have moved generally have involved moves before indictments were issued (see, *e.g.*, *id.*), the reasoning of those cases is instructive in that a defendant who is unaware of the charges cannot be expected to assert his speedy-trial right. "[W]here the defendant is justifiably under the impression that charges are no longer pending against him, his failure to demand trial will not constitute waiver of his right to a speedy trial." *People v. Prince*, 242 Ill. App. 3d 1003, 1009 (1993).

¶ 14 Here, defendant stated that he thought that his lawyer had taken care of the charges. However, the record does not show that his belief was justified. Defendant stated that his belief was based on payment to a lawyer, but nothing indicates that he was told that the matter had been resolved. Instead, it was not resolved, and defendant's bond required that he appear in court on a specified date and time. Yet he failed to do so and left the state without requesting a speedy trial. As a result, we weigh this factor against defendant.

¶ 15 In regard to prejudice caused by the delay, the State contends that the trial court erred by finding that the presumptive prejudice from the length of the delay showed that defendant was also actually prejudiced by it. " 'Unreasonable delay between formal accusation and trial can cause several types of prejudice to the defendant, including oppressive pretrial incarceration, anxiety and concern of the accused, dimming memories, and loss of exculpatory evidence.' " *Silver*, 376 Ill. App. 3d at 785 (quoting *People v. Lock*, 266 Ill. App. 3d 185, 191 (1994)).

"[P]resumptive prejudice from the length of the delay cannot alone prove a sixth amendment speedy-trial claim." *Id.* Negligence in bringing a defendant to trial, when unaccompanied by a particularized trial prejudice, must have lasted longer than the amount of time necessary to trigger the remaining analysis. *Id.* Thus, when the delay is less than a year, close to the minimum necessary to trigger judicial review, relief is not available absent a particularized showing of prejudice. *Id.* at 786. "However, excessive delay can presumptively compromise a trial in ways that neither party can identify or prove." *Id.* Thus, when an unjustified delay is well beyond the minimum, such that the first three factors weigh so heavily in a defendant's favor, a defendant need not show a specified prejudice to his or her defense. *Id.*

¶ 16 Here, the first three factors do not weigh heavily in defendant's favor. Indeed, we have weighed two of them against defendant. Thus, we will not presume prejudice. Defendant was not incarcerated, and nothing shows that he had anxiety or concern about the charges. The record is also silent on how his defense would be impaired by the delay. See *People v. Echols*, 2018 IL App (1st) 153156, ¶ 39. Accordingly, we also weigh this factor against defendant. Having balanced the factors and found that the majority weigh against defendant, we determine that his right to a speedy trial was not violated.

¶ 17 III. CONCLUSION

¶ 18 We determine that defendant's constitutional right to a speedy trial was not violated. Accordingly, the judgment of the circuit court of McHenry County is reversed and the cause is remanded.

¶ 19 Reversed and remanded.