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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Appellant,

v.

LEONARD TURNER et al.,

Defendants and Respondents.

B230100

(Los Angeles County
Super. Ct. No. A070788)

APPEAL from orders of the Los Angeles County Superior Court.

Eldon Fox, Judge. Affirmed.

Steve Cooley, District Attorney, Phyllis Asayama and Roberta Schwartz, Deputy District Attorneys, for Plaintiff and Appellant.

Janice Y. Fukai, Alternate Public Defender, and Felicia Kahn Grant, Deputy Alternate Public Defender, for Defendant and Respondent Leonard Turner.

Randy S. Kravis for Defendant and Respondent John Threlkeld.

In 2008 and 2009, the People filed separate informations charging John Threlkeld and Leonard Turner with multiple offenses committed during a home invasion rampage that occurred in 1974, including first degree murder with a robbery special circumstance allegation. Threlkeld and Turner filed motions to dismiss all charges, arguing their rights to a speedy trial and due process were violated by the 30-plus years delay in prosecuting the action. The trial court granted the defendants' motions. As we are constrained by the standard of review on appeal, we affirm the trial court's orders.

FACTS¹

On April 15, 1974, Mercure Washington, Patricia Galea, Dinel Smith, Eugene Synegal and Commelia Bussey returned to Galea's apartment after going to the airport. On entering the apartment, the group was confronted by two males (and perhaps a third male or female) who entered the premises earlier in the day and were searching for items to steal. Kristine Murphy (now Greenwell), who had been staying at the apartment while the others went to the airport, was already tied up in a bathroom. The assailants wore stockings as masks; one had a shotgun; the other a knife. Soon, all of the victims were bound. Then, in a series of rapidly unfolding events, the assailant with the shotgun said, "Kill them," and the assailant with the knife began cutting the victims' throats. When Patricia Galea began begging for her life, the assailant with the shotgun put the weapon to her face and fired it, killing her. Victim Murphy's car was gone after the home invasion.

Victims Bussey and Washington knew Threlkeld and Turner from prior contacts. Bussey apparently pointed police in their direction.² On April 17, 1974, a felony

¹ Because the case was dismissed before trial, our summary of the facts is compiled from evidence presented at two preliminary hearings, and from materials submitted at the time of the motions to dismiss.

² In 2006, detectives from the Los Angeles County Sheriff's Department (LASD) interviewed Washington during a renewed investigation of the 1974 home invasion. According to police reports of Washington's interview in 2006, Washington told detectives (in 2006) that, in 1974, at the moment the home invasion was unfolding, he had not attached an identity to the home invaders. Later, at the hospital where the victims were being treated, Bussey had said to Washington that she (Bussey) "knew who it was

complaint for arrest warrant was filed, and arrest warrants for Threlkeld and Turner were issued.³ In early May 1974, Murphy's stolen car was discovered in Gallup, New Mexico, where it had been abandoned at a gas station for about three weeks. In mid-May 1975, authorities in Michigan notified LASD that Threlkeld and Turner were in custody in Michigan on robbery charges.

The evidence in the record before us on the current appeal, showing events that transpired after mid-1974, is vague and filled with gaps at best. Those events, to the extent they are amendable to reconstruction, are discussed below in more detail in addressing the People's arguments that the trial court wrongly dismissed the current robbery/murder case filed against Turner and Threlkeld in 2008 and 2009. What is undisputed is this: Threlkeld and Turner were not at any time during the latter half of 1974 returned to Los Angeles County to answer the original 1974 felony complaint, nor were they returned to Los Angeles County to answer the original felony complaint at any time during the next 30-plus years. No person associated with LASD or the District Attorney's Office in 1974 contributed any enlightening material in 2010 regarding any events connected with the 1974 investigation and initiation of the original 1974 felony complaint.

Sometime around April 2006, the owner of the property where the 1974 home invasion crimes had occurred called LASD Detective Larry Brandenburg to inquire about the outcome of the case, and whether anyone had ever been arrested or prosecuted. According to Detective Brandenburg, the call "started a set of things in motion," beginning with an LASD program in which retired detectives reviewed "old cases to see if there's any information or if they're solvable." Detective Brandenburg testified that

because she talked to them." Washington identified Threlkeld and Turner at their preliminary hearings in 2008 and 2009.

³ Isolated copies of documents facially appearing to have been prepared by police authorities in connection with the 1974 investigation of the 1974 home invasion indicate that a number of other suspects were arrested in connection with the investigation; some of the documents seem to suggest that at least some of these other suspects were arrested after being found in possession of items taken during the home invasion.

one of these retired detectives “ordered the case out of the library, reviewed it and noticed that there had been suspects identified and warrants issued for them, but [there was] no outcome as to what happened.” At that point, Detective Brandenburg and others began reviewing information showing that Threlkeld and Turner had been imprisoned in Michigan, and attempting to find their then-current location. The investigating officers also re-interviewed witnesses, attempted to review files, and look for evidence that might be in storage. In early 2007, the investigating officers presented a case involving the crimes committed during the 1974 home invasion to the District Attorney’s Office.

In May 2007, the People filed an amended felony complaint against Threlkeld and Turner involving the 1974 home invasion crimes. Threlkeld and Turner were arrested pursuant to warrants issued on the amended felony complaint. In June 2008, after a preliminary hearing as to Threlkeld, the People filed an information charging him with 17 counts including first degree murder with a robbery special circumstance allegation (count 1), robbery and attempted robbery (counts 2-4), assault with a deadly weapon (counts 8-12), and assault with intent to murder (counts 13-17). In June 2009, after a preliminary hearing as to Turner, the People filed an information charging him with 17 counts ranging from first degree murder with a robbery special circumstance allegation (count 1), to attempted murder (counts 4-5), to robbery (counts 2-3, 6), to assault with a deadly weapon (counts 8-12), to assault with intent to murder (counts 13-17).

In June 2009, Threlkeld filed a motion to dismiss the charges against him based on the claim that his right to a speedy trial had been denied and had resulted in a violation of due process. The thrust of Threlkeld’s motion rested on an argument that his ability to prepare a defense had been compromised because percipient witnesses to the 1974 crimes had died, possible alibi witnesses had died or could not be located, physical evidence collected in 1974, including the shotgun and knife left at the scene, and a knife found at another suspect’s apartment, blood evidence, fingerprints, and victim Murphy’s stolen car and its contents, were gone. The original investigators were unavailable; their original interview notes and recordings were gone. The District Attorney’s original case file was

gone. The victims' medical records were gone. Threlkeld further argued that the People had made no showing of any reason at all why it had taken California authorities more than 30 years to get the case against Threlkeld back on track for trial. In July 2010, Turner filed a motion to dismiss based on a similar showing.⁴

In October 2010, the trial court conducted an evidentiary hearing on the motions to dismiss. At the time, the court reviewed copies of the limited, still available documents from the 1974 investigation, and from surrounding events, including those in Michigan. The court also reviewed the testimony presented at the defendants' preliminary hearings in 2008 and 2009. LASD Detective Brandenburg testified about his role in the renewed investigation in 2006 to 2007, and, to the best of his ability, to his understanding of the events which had transpired in 1974 in connection with the investigation at that time. The lawyers argued the merits.

On November 8, 2010, the trial court granted the motions to dismiss filed by both Threlkeld and Turner, finding their rights to a speedy trial/due process had been violated by the delay in bringing the charges against them to trial.

The People filed a timely appeal.

DISCUSSION

I. The Trial Court's Ruling

The People contend the trial court abused its discretion in granting the defendants' motions to dismiss, *prior to trial*. We disagree.

A criminal defendant has a right to a speedy trial under both the federal and state constitutions. (U.S. Const., 6th Amend.; Cal. Const. art. I, § 15.) A criminal defendant's Sixth Amendment right to a speedy trial is also protected in a state criminal action by the due process clause of the Fourteenth Amendment. (See *Klopfer v. North Carolina* (1967) 386 U.S. 213, 222-226.)

As a general rule, four factors must be weighed in determining whether an accused has been deprived of his right to a speedy trial. Those factors are the length of the delay,

⁴ There were also separate motions to dismiss certain counts based on the statutes of limitations. Those motions are not at issue on this appeal.

the reason for the delay, whether the defendant has asserted his right, and prejudice to the defendant from the delay. (See, e.g., *United States v. MacDonald* (1978) 435 U.S. 850, 858, citing *Barker v. Wingo* (1972) 407 U.S. 514, 530.) Prejudice to the defendant is to be considered in the light of the interests that the speedy trial right is designed to protect: “(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.” (*Ibid.*, quoting *Barker v. Wingo, supra*, at p. 532.) The resolution of a speedy trial claim requires a weighing of the “particular facts of the case,” and, for this reason, “most speedy trial claims . . . are best considered only after the relevant facts have been developed at trial” because, before trial, a determination of the degree to which a delay has impaired an adequate defense “tends to be speculative.” (*Id.* at p. 858.) A denial of a pretrial motion to dismiss does not preclude a like motion made after trial. (*Id.* at p. 859.)

Regardless of whatever favor may exist in the law in having a trial court defer a ruling on a speedy trial motion until after trial, a court’s decision to grant such a motion either before, during or after trial is reviewed under the deferential abuse of discretion standard. (*People v. Mirenda* (2009) 174 Cal.App.4th 1313, 1330.) Under this standard, we may not substitute our judgment for that of the trial judge, and a determination that the trial judge would have been justified in making a different decision is not sufficient to support reversal. (*People v. Superior Court (Lerma)* (1975) 48 Cal.App.3d 1003, 1007.) Where a trial court’s ruling on a speedy trial motion is supported by substantial evidence and does not fall outside the bounds of reason, we must affirm the court’s ruling. (*People v. Mirenda, supra*, at p. 1330.)

We cannot declare the trial court’s speedy trial decision in this murder case to be outside the bounds of reason in light of the totality of the circumstances. And even if we thought it might be more prudent to wait until after trial to rule on the motions to dismiss, that is not sufficient to show an abuse of discretion in the trial court’s decision to rule on the motions when it did.

The dismissal of this case is the result of an absence of any showing of any reason why the defendants were not brought to trial in 1974, and the presentation of undisputed evidence which strongly supports a conclusion that the defendants' ability to prepare a defense was unconstitutionally damaged during the 30-plus years since 1974. By the time the People rekindled the charges in 2008 and 2009, only one direct eyewitness to the 1974 home invasion who identified the defendants remained available, Mercure Washington. The defendants showed his identification had significant reliability issues. Virtually all of the physical evidence was gone. All the original investigative interviews were gone. Possible alibi witnesses who may have been able to testify regarding the defendants whereabouts in 1974 (e.g., individuals who had been arrested with Turner and Threlkeld in May 1974 in Michigan) could not be found.

The People's argument that the prosecution will be hindered in preparing a case just as much as the defendants are in preparing a defense is a truism that does not affect our view of the constitutional issue in this case. The critical issue here is whether the defendants' due process right to prepare and present a defense was impaired. (*United States v. MacDonald, supra*, 435 U.S. at p. 858.) There is more than ample substantial evidence in the record to support the trial court's finding of impairment in this case.

This leaves us to consider the justification for the People's 30-plus year delay in bringing Threlkeld and Turner to trial. The record, fairly summarized, does not show any justification for the delay. On the contrary, the record truly is a perfect void; it does not actually show anything about what the People did or failed to do between late 1974 and 2006 to get the current case on track for trial. At the hearing on the motions to dismiss, the prosecutor conceded there had been "negligence" in bringing the current case to trial. In truth, however, nothing can be said about the delay because nothing is actually known about the delay.

This is what the record does show. Almost immediately after the 1974 home invasion, LASD investigators identified Threlkeld and Turner as suspects. A complaint was filed and arrest warrants issued. In 2006, the case was revisited after a member of the public inquired about the outcome of the case, and whether anyone had ever been

arrested or convicted. When LASD Detective Brandenburg reviewed the information available, a conclusion was reached that the case was unsolved because there were no outstanding warrants in the system, there was no current court case filing, and no arrests had been made.

Upon digging further, LASD detectives learned that the warrants which had been placed in the system in 1974 had been taken out of the system (the record does not show when), but they did not know who removed them or why. As LASD Detective Tommy Harris described the situation: “The only thing that we discovered in going through all the different . . . papers we had in teletypes, there was a notation in there that said, ‘Warrant removed from system, FBI notified,’ [but] it didn’t indicate who removed it or why it was removed or anything of that nature.”

In the course of the 2006 renewed investigation, LASD Detectives Brandenburg and Harris learned that a month after the 1974 complaint was filed, Threlkeld and Turner were arrested in Michigan for robbery. Authorities in Michigan somehow became aware of the Los Angeles arrest warrants and detainers, but were unwilling to release Threlkeld or Turner to California until after the Michigan robbery case concluded. In 2007, Detective Brandenburg traveled to Michigan to search for documents and answers explaining why Threlkeld and Turner were not turned over to LASD after the Michigan case ended. Detective Brandenburg learned that Threlkeld and Turner were not convicted on the robbery charge, and that an extradition proceeding had been initiated (at least as to defendant Turner, aka Ronald R. Busby), but nothing in the Michigan files showed whether LASD had been contacted in connection with the extradition proceeding. A court document in the extradition proceeding in the Michigan courts indicated that the extradition case was ordered dismissed on December 5, 1974. Notations on the order show the prosecuting attorney requested the dismissal on the following grounds:

“California unable to fulfill the requirements of extradition Defendant [Turner] to be [turned over to] Federal authorities on Federal matter.”⁵

LASD Detective Brandenburg also reviewed the “murder book” from the 1974 investigation in an attempt to piece together what he believed happened to the original 1974 warrants and detainers. Notations in the murder book showed that Threlkeld and Turner were acquitted of the Michigan robbery charges, and that, by some point about September 5, 1974, LASD detectives knew about the acquittal because the last note in the murder book stated that investigators were preparing certified copies of the complaint and were following the extradition proceedings. The prosecuting attorney in Michigan moved to dismiss the extradition, but Detective Brandenburg could not find out why because the prosecuting attorney’s case file had been destroyed.

To the extent that LASD detectives or Los Angeles County Deputy District Attorneys who handled the investigation and case in 1974 might have been able to shed light on why the extradition proceedings in Michigan were not completed, they were not called to testify at the hearing on the motions to dismiss, and did not otherwise provide any information by way of declaration.

Taken all together, there is no evidence in the record to show any justification for the delay between late 1974 and 2008 and 2009 in bringing Threlkeld and Turner to trial.

II. Forfeiture

The People contend the defendants are precluded from claiming their rights to a speedy trial and due process were violated because they fled California’s jurisdiction and “resisted extradition.” We disagree.

The People’s legal argument that a defendant may be found to have waived his or her speedy trial rights by his or her conduct is correct. (See, e.g., *People v. Perez* (1991) 229 Cal.App.3d 302, 307-316.) The problem with the People’s argument is that it lacks evidentiary support. For reasons overlying those discussed above in addressing the

⁵ Another documents showed that Turner had been wanted on federal forgery charges in Los Angeles, and that he was arrested “in Judge Evans’ Courtroom” in the State of Michigan on the federal charges on December 5, 1974.

speedy trial issue, we must reject the People’s forfeiture argument because there is no evidence in the record showing that the defendants resisted extradition. At best, the evidence shows a prosecuting attorney in Michigan requested that the extradition proceeding be dismissed because California authorities were “unable to fulfill the requirements of extradition.” There is no evidence of the actions, if any, undertaken by the People, or by defendants, concerning extradition. Examined in the light of the trial court’s ruling, the evidence in the record shows this case was, for unknown reasons, not prosecuted on the People’s part, leaving it dormant for more than 30 years. We do not see sufficient evidence in the record of conduct on the part of defendants to find that they forfeited their speedy trial rights.

DISPOSITION

The trial court’s order of November 8, 2010, granting the motions to dismiss, is affirmed.

BIGELOW, P. J.

We concur:

FLIER, J.

GRIMES, J.