

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 1363

STATE OF LOUISIANA

VERSUS

JAMES QUENTIN BRYANT, Jr.

Judgment Rendered: February 10, 2012

**Appealed from the
23rd Judicial District Court
In and for the Parish of Ascension
State of Louisiana
Case No. 19612**

The Honorable Jane Triche Milazzo, Judge Presiding

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State of Louisiana**

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**Counsel for Defendant/Appellee
James Quentin Bryant, Jr.**

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

GAIDRY, J.

The defendant, James Quentin Bryant, Jr., was charged by bill of information with forcible rape, a violation of La. R.S. 14:42.1. The defendant entered a plea of not guilty. The defendant later filed a motion to quash the bill of information, claiming the prescriptive period to commence trial had lapsed. (R. 61).¹ After a hearing, the trial court granted the defendant's motion to quash the bill of information. The State now appeals, arguing that the trial court erred in granting the defendant's motion to quash the bill of information. For the following reasons, we reverse the ruling of the trial court and remand for further proceedings.

ASSIGNMENT OF ERROR

The State herein argues that the trial court erred in granting the defendant's motion to quash the bill of information. The State specifically contends that the trial court erred in determining and assessing any and all suspensions of time and/or interruptions of time in the prosecution of this case. The State notes that in this case the bill of information was filed on February 3, 2006, thus the time limitation in which to bring the defendant to trial commenced to run on that date. The State further notes that preliminary discovery motions were filed and considered satisfied on August 21, 2006. The State contends that subsequent defense and joint continuances suspended the time limitation, and the defendant's failure to appear on May 17, 2010 caused an interruption in the time limitation until the defendant's June 21, 2010 appearance, when the time limitation commenced to run anew.

¹ The defendant's motion to quash also pertained to charges in other bills of information. At issue in the instant appeal is the bill of information under docket number 19612.

Louisiana Code of Criminal Procedure article 578(2) provides that trial of noncapital felonies must be held within two years from the date of the institution of the prosecution. "Institution of prosecution" includes the finding of an indictment, or, as in this case, the filing of a bill of information, or affidavit, which is designed to serve as the basis of a trial. La. Code Crim. P. art. 934(7); *State v. Cotton*, 2001-1781 (La. App. 1st Cir. 5/10/02), 818 So.2d 968, 971, writ denied, 2002-1476 (La. 12/13/02), 831 So.2d 982. A motion to quash is the proper vehicle to assert that the time limitation for the commencement of trial has expired. La. Code Crim. P. art. 532(7). Upon expiration of this time limitation, the court shall, on motion of the defendant, dismiss the indictment and there shall be no further prosecution against the defendant for that criminal conduct. La. Code Crim. P. art. 581. When a defendant has brought an apparently meritorious motion to quash based on prescription, the State bears a heavy burden to demonstrate either an interruption or a suspension of time such that prescription will not have tolled. *State v. Rome*, 93-1221 (La. 1/14/94), 630 So.2d 1284, 1286; *State v. Guidry*, 395 So.2d 764, 765 (La. 1981); *State v. Haney*, 442 So.2d 696, 697-98 (La. App. 1st Cir. 1983).

Louisiana Code of Criminal Procedure article 580, concerning the suspension of the time limitation, states that when a defendant files a motion to quash or other preliminary plea, the running of the periods of limitation established by Article 578 shall be suspended until the ruling of the court thereon; but in no case shall the state have less than one year after the ruling to commence the trial. The prescriptive period is merely suspended until the trial court rules on the filing of preliminary pleas; the relevant period is not counted, and the running of the time limit resumes when the court rules on the motions. A preliminary plea is any pleading or motion filed by the

defense that has the effect of delaying trial, including properly filed motions to quash, motions to suppress, or motions for a continuance, as well as applications for discovery and bills of particulars. *State v. Brooks*, 2002-0792 (La. 2/14/03), 838 So.2d 778, 782 (per curiam).

In the instant case, the defendant is charged with a noncapital felony, thus requiring commencement of trial by February 3, 2008, within two years from the date of the institution of the prosecution (the February 3, 2006 filing date of the bill of information). Nearly five years elapsed from the filing date of the original charging instrument to the date of the filing of the motion to quash, January 28, 2011. Clearly, the two-year prescriptive period for the commencement of trial was exceeded; thus, on its face, the defendant's motion to quash had merit. The State had the burden of showing interruption or suspension of the prescriptive period. In granting the motion to quash the instant bill of information, the trial court, in part, found that a near eight month (236 days) suspension of the time limitation occurred from February 21, 2006, the date of arraignment and motion for bond reduction, to October 16, 2006, the date the defendant's motion for preliminary examination was dismissed and motion for bond reduction was continued to December 18, 2006.² The trial court further concluded that a near six month (180 days) suspension took place from May 22, 2007, the date of a joint continuance, to November 19, 2007, the date of a State continuance. Thus, in accordance with the trial court's calculations, the prescriptive period would have elapsed well before the defendant appeared on June 16, 2009 for

² Apparently considering the defendant's motion for bond reduction, the trial court's calculation of a 236-day suspension at this point is incorrect. The defendant's motion to reduce bond was not a "preliminary plea" suspending the time limitation for commencement of trial for a noncapital felony, since the motion did not concern evidentiary matters bearing on the offense and was unlikely to have caused any delay in the matter proceeding to trial. Nonetheless, we agree with the State's assertion that the trial court failed to consider subsequent continuances that suspended the running of the prescriptive period.

a motions hearing.³ The State contends that further suspensions took place within that February 3, 2006 to June 16, 2009 time frame. Based on the following analysis, we agree with the State's assertion.

On October 2, 2006 (241 days from the institution of prosecution), the defendant filed a motion for preliminary examination and the motion was dismissed on October 16, 2006. Thus, a brief, fourteen-day suspension occurred from the date of the motion to the trial court's dismissal. Specifically, the calculation resumes on October 16, 2006, giving the State 489 more days from that date (until February 17, 2008) to try the case.⁴ As noted by the trial court and by the State, an oral joint motion to continue took place on May 22, 2007 and was ruled on (granted) on that same date. (R. 339-40). Under the plain language of La. Code Crim. P. art. 580, the continuance suspended the running of the prescription period and gave the State no less than one year after the ruling on the motion to commence trial. *State v. Simpson*, 506 So.2d 837, 838-39 (La. App. 1st Cir.), writ denied, 512 So.2d 433 (La. 1987). Thus, at that point the State had until May 22, 2008 to commence trial. Further defense or joint motions to continue took place. Significantly, on April 22, 2008 (one month prior to the May 22 deadline noted above), when the defense attorney requested a trial date in June, the trial court allowed the parties to pick a mutually-agreeable trial date (the date was not stated at the time and the State denotes the date as

³ Although the trial court indicated that this appearance took place on June 17, 2009, in accordance with the record, the defendant actually appeared on June 16, 2009. The one day differential has no effect on the trial court's analysis.

⁴ We note that although the trial court ordered the defendant's motion for discovery satisfied on August 21, 2006, and on October 16, 2006 the State acknowledged that said motion had been filed and satisfied, based on the record before us, this court is unable to ascertain the filing date of the motion for discovery. Since the burden is on the State to prove a suspension, we find that the State failed to carry its burden of proof that a suspension occurred regarding the defendant's motion for discovery. However, as previously indicated, we agree with the State's assertion that the trial court failed to consider subsequent continuances that suspended the running of the prescriptive period.

open in its appeal brief on page 11). Again, the continuance suspended the running of the prescription period and gave the State no less than one year after the ruling on the motion to commence trial. Thus, at that time the date by which the State was required to commence trial was extended to April 22, 2009.

However, as noted by the State, at a pretrial status conference on April 21, 2009, the defense counsel agreed to a June 17, 2009 trial date. The status conference constituted grounds of suspension for purposes of Article 580 because it directly affected, by mutual assent, the State's ability to bring this case to trial in a timely manner. Whether the State and defense intended the result or not, the effect of their mutual agreement was to extend prescription beyond the date of April 22, 2009 in the same manner as if counsel had joined in a continuance for that avowed purpose. See State v. Fish, 2005-1929 (La. 4/17/06), 926 So.2d 493, 495 (per curiam). Thus, at that point, the State had one year from the pretrial status conference (until April 21, 2010) to commence trial. Subsequently, on June 16, 2009, the trial court set the trial for October 21, 2009 without objection by the parties. The State argues that this proceeding qualifies as a preliminary pleading to continue the matter. Based on our review of the transcript, we disagree. There is no indication that the defendant agreed with the date set by the trial court or joined with the continuance in any manner. Thus, we decline to extend the ruling of *Fish* relied on above to that proceeding. Similarly, the State notes that on October 20, 2009 (minute entry and transcript not included in the record), the trial court continued the trial date on its own motion to November 17, 2009.

However, on November 17, 2009, a mutually-agreeable trial date was set. After agreeing to remove the defendant's ankle bracelet, the trial court

noted that the parties would reset the case. In that regard, the defense counsel stated, "We can set it. We can just set it for status in March?" The State agreed with the defense proposal. This mutual agreement constituted grounds of suspension for purposes of Article 580, and thereby the State had until November 17, 2010 to commence trial. Before this deadline, specifically on January 19, 2010, the defendant's new counsel filed a motion to enroll as counsel of record. On March 15, 2010 in open court, the defendant and his new counsel were present and were given notice of a May 17, 2010 hearing. On May 13, 2010, the new defense counsel filed a written motion for continuance where he noted that a hearing on preliminary motions was scheduled to take place on May 17, 2010 for this case and other pending cases. The defense counsel requested to move the matter to the next available hearing date, June 21, 2010. The record does not reflect a ruling on this motion. Despite being given notice in open court on March 15, 2010, the defendant and defense counsel failed to appear on May 17, 2010.

Louisiana Code of Criminal Procedure article 579 sets forth certain events that shall interrupt the time limitation set forth in Article 578. Article 579 provides in relevant part that the period of limitation established by Article 578 shall be interrupted if the defendant fails to appear at any proceeding pursuant to actual notice, proof of which appears of record. La. Code Crim. P. art. 579(A)(3). Pursuant to subsection B of Article 579, the periods of limitation established by Article 578 shall commence to run anew from the date the cause of interruption no longer exists.

The defendant reappeared on June 21, 2010 and filed a written motion "to offer evidence of specific instances of sexual behavior by the alleged victim." Based on the foregoing, we agree with the State's assertion that the time limitation commenced to run anew from the date the defendant

reappeared giving the State until June 21, 2012 to commence trial. Presumably, the evidence of specific instances of sexual behavior motion filed by the defense on the date of reappearance constituted a preliminary plea which had the effect of delaying trial and was grounds of suspension for purposes of Article 580 until the trial court's July 30, 2010 ruling thereon. At any rate, the defendant's motion to quash filed on January 28, 2011 was premature. We therefore hold the trial court's grant of the defendant's motion to quash on June 20, 2011 was clearly erroneous. For the foregoing reasons, we reverse the trial court's ruling granting the motion to quash and remand for further proceedings.

DECREE

The trial court's rule granting the defendant's motion to quash the State's bill of information is reversed and remanded.

REVERSE RULING GRANTING DEFENDANT'S MOTION TO QUASH THE BILL OF INFORMATION. REMAND.