Third District Court of Appeal

State of Florida

Opinion filed November 22, 2017.
Not final until disposition of timely filed motion for rehearing.

No. 3D16-2080
Lower Tribunal No. 15-99-A-M

The State of Florida,
Appellant,

vs.

Justin Nathanial Shroyer,
Appellee.

An Appeal from the Circuit Court for Monroe County, Ruth L. Becker, Judge.

Pamela Jo Bondi, Attorney General, and Sandra Lipman, Assistant Attorney General, for appellant.

Michael Ufferman Law Firm, P.A., and Michael Ufferman (Tallahassee), for appellee.

Before EMAS, SCALES and LINDSEY, JJ.

PER CURIAM.

Affirmed.

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
IN AND FOR MONROE COUNTY, FLORIDA

State of Florida,
            Plaintiff

v.   Case No.: 15-CF-99-A-M

Justin Nathaniel Shroyer,
            Defendant

_____/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

    This matter came before the Court September 7, 2016, for hearing on Defendant's
Motion to Dismiss, and the Court having heard testimony, arguments of counsel, and reviewing
applicable law, finds as follows:

INTRODUCTION

Defendant seeks dismissal in this case based on the expiration of speedy trial and the failure of
the State to have exercised due diligence in locating the Defendant for service of the Capias
issued by this Court on June 2, 2015, for an offense allegedly committed on February 9, 2013.

FACTS

The State filed an Information in this case on June 2, 2015, charging the Defendant with Driving
Under the Influence with Serious Bodily Injury. A Capias for the Defendant's arrest was issued
June 2, 2015. No explanation was offered for the two-year delay between the alleged
commission of the crime and the filing of the Information and issuance of the Capias.

Attorney Hal Schumacher requested a crash report from the Florida Highway Patrol (FHP) in
March of 2013. By April of that year, he had also informed FHP that he was representing the
Defendant. He also communicated with the Office of the State Attorney in Marathon, Monroe
County, Florida, regarding his representation of Mr. Shroyer, and that he in fact had knowledge
of his whereabouts in the State.

Corporal David Riso with the FHP did conduct an investigation both within Monroe County in 2013, and in the State of Minnesota where it appeared the Defendant had applied for a driver's license in 2015.

For some undisclosed reason, Mr. Schumacher was not contacted to arrange either the surrender or arrest of his client.

APPLICATION OF LAW AND CONCLUSION

Defendant brings his motion pursuant to Florida Statute 775.15, arguing expiration of the statute of limitations. He cites numerous cases outlining the State's burden to conduct a "diligent search" for the Defendant to execute the issuance of the capias, summons, or other process. See, e.g., State v. Mack, 637 So.2d 18 (4DCA1994); Wiggam v. Bamford, 562 So.2d 389 (4DCA1990); Cunnell v. State, 920 So.2d 810 (2DCA2006); Lucas v. State, 718 So.2d 905 (3DCA1998); Wright v. State, 600 So.2d 1248 (5DCA1992); Chapman v. State, 581 So.2d 995 (2DCA1991); McNeil v. State, 673 So.2d 125 (3DCA1996); Neal v. State, 697 So.2d 903 (2DCA1997); and State v. King, 282 So.2d 162 (SCt1973). He argues that in addition to not availing themselves of defense counsel's willingness to assist in locating his client, the State did not search other sources, such as tax records, a library card, and substance abuse program in Florida (all also provided to them by defense counsel).

The State argues that Mr. Shroyer was absent from the State of Florida for an extended period and unavailable for service of process. The State cites Schuster v. State, 21 So.3d 117 (5DCA2009); and Norton v. State, 173 So.3d 1124 (2DCA2015). No evidence established this contention.

It is therefore **Ordered** and **Adjudged** that Defendant's Motion is granted.

Done and **Ordered** in chambers in Marathon, Monroe County, this the _____ day

of September, 2016.

Ruth Becker, Acting Circuit Judge

Copies furnished to:
Halford Schumacher, Esq.
SAO

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