

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

People v McTyere

People v. McTyere, 2023 N.Y. Slip Op. 02235 (App. Div. 2023) · No. 343 KA 20-00180 · Decided April 28, 2023

SUMMARY

The New York Appellate Division, Fourth Department unanimously affirmed Willie McTyere’s convictions for first-degree reckless endangerment and second-degree criminal possession of a weapon. The court rejected challenges concerning statutory speedy trial readiness, constitutional speedy trial preservation, and the timeliness of an order compelling a buccal swab for DNA testing.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Peradotto, J.; Curran, J.; Ogden, J.; Greenwood, J.
JURISDICTION	New York
DECIDED	April 28, 2023
DOCKET	343 KA 20-00180
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a Niagara County Court judgment entered after a jury verdict convicting him of reckless endangerment in the first degree and criminal possession of a weapon in the second degree.
STANDARD OF REVIEW	The court reviewed the denial of the statutory speedy-trial motion and the order compelling DNA testing for error. It also considered whether to exercise its discretionary interest-of-justice review of the unpreserved constitutional speedy-trial claim.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	Willie McTyere v. The People of the State of New York

TOPICS

- speedy trial
- criminal procedure
- discovery criminal
- preservation of error
- appellate procedure

PRACTICE AREAS

criminal procedure

criminal discovery

appellate procedure

QUESTIONS PRESENTED

1. Whether the indictment should have been dismissed because the People were not ready for trial within six months under CPL 30.30.
2. Whether the People's declaration of readiness was illusory because DNA test results had not yet been obtained.
3. Whether defendant's constitutional speedy-trial claim could be reviewed despite his failure to preserve it.
4. Whether County Court properly granted the People's allegedly untimely motion to compel defendant to submit to a buccal swab for DNA testing.

HOLDINGS

1. The indictment was properly not dismissed because the prereadiness delays chargeable to the People, even when combined with the assumed 132 days of chargeable postreadiness delay, did not exceed six months.
2. The declaration of readiness was not illusory because, at the time of the declaration, the People could establish a prima facie case and proceed to trial without the subsequently acquired DNA test results.
3. The constitutional speedy-trial claim was unpreserved because defendant moved to dismiss only on statutory speedy-trial grounds, and the court declined to review it in the interest of justice.
4. County Court properly granted the People's motion to compel defendant to submit to a buccal swab because good cause existed for the delay, the evidence was relevant, and defendant was not prejudiced.

KEY QUOTATIONS

*"The statutory period is calculated by 'computing the time elapsed between the filing of the first accusatory instrument and the People's declaration of readiness, subtracting any periods of delay that are excludable under the terms of the statute and then adding to the result any postreadiness periods of delay that are actually attributable to the People and are ineligible for an exclusion'" ([*1])*

FACTUAL BACKGROUND

Defendant was convicted by a jury of reckless endangerment in the first degree and criminal possession of a weapon in the second degree. The People declared readiness for trial before obtaining DNA test results, and later sought to compel defendant to provide a buccal swab. Defendant challenged the People's readiness calculation, asserted that postreadiness delay should be charged to the People, and argued that the motion for DNA testing was untimely.

PROCEDURAL HISTORY

Niagara County Court denied defendant's motion to dismiss the indictment on statutory speedy-trial grounds, granted the People's motion to compel defendant to submit to a buccal swab for DNA testing, and entered

judgment after the jury convicted defendant. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Barnett, 158 A.D.3d 1279, 1280 (4th Dep't 2018), lv denied 31 N.Y.3d 1078 (2018)
- People v. Cortes, 80 N.Y.2d 201, 208 (1992), rearg denied 81 N.Y.2d 1068 (1993)
- People v. Pratt, 186 A.D.3d 1055, 1057 (4th Dep't 2020), lv denied 36 N.Y.3d 975 (2020)
- People v. Hewitt, 144 A.D.3d 1607, 1607-1608 (4th Dep't 2016), lv denied 28 N.Y.3d 1185 (2017)
- People v. Bargerstock, 192 A.D.2d 1058, 1058 (4th Dep't 1993), lv denied 82 N.Y.2d 751 (1993)
- People v. Burke, 197 A.D.3d 967, 969 (4th Dep't 2021), lv denied 37 N.Y.3d 1159 (2022)
- People v. Williams, 120 A.D.3d 1526, 1526-1527 (4th Dep't 2014), lv denied 24 N.Y.3d 1090 (2014)
- People v. Ruffell, 55 A.D.3d 1271, 1272 (4th Dep't 2008), lv denied 11 N.Y.3d 900 (2008)
- People v. Tyran, 248 A.D.2d 1011, 1011 (4th Dep't 1998), lv denied 92 N.Y.2d 1054 (1999)

OPINION

PER CURIAM.

People v McTyere (2023 NY Slip Op 02235) People v Mctyere 2023 NY Slip Op 02235 Decided on April 28, 2023 Appellate Division, Fourth Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided on April 28, 2023 SUPREME COURT OF THE STATE OF NEW YORK Appellate Division, Fourth Judicial Department PRESENT: WHALEN, P.J., PERADOTTO, CURRAN, OGDEN, AND GREENWOOD, JJ. 343 KA 20-00180 [*1]THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, vWILLIE MCTYERE, DEFENDANT-APPELLANT.

KATHLEEN A. KUGLER, CONFLICT DEFENDER, LOCKPORT (JESSICA J. BURGASSER OF COUNSEL), FOR DEFENDANT-APPELLANT. Appeal from a judgment of the Niagara County Court (Sara Sheldon, J.), rendered December 13, 2019. The judgment convicted defendant upon a jury verdict of reckless endangerment in the first degree and criminal possession of a weapon in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed. Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of reckless endangerment in the first degree (Penal Law § 120.25) and criminal possession of a weapon in the second degree (§ 265.03 [3]).

We reject defendant's contention that County Court erred in denying his motion to dismiss the indictment on the ground that the People were not ready for trial within six months of the commencement of the criminal action (see CPL 30.30 [1] [a]). "The statutory period is calculated by 'computing the time elapsed between the filing of the first accusatory instrument and the People's declaration of readiness, subtracting any periods of delay that are excludable under the terms of the statute and then adding to the result any postreadiness periods of delay that are actually attributable to the People and are ineligible for an exclusion' " (People v Barnett, 158 AD3d 1279, 1280 [4th Dept 2018], lv denied 31 NY3d 1078 [2018], quoting People v Cortes, 80 NY2d 201, 208 [1992], rearg denied 81 NY2d 1068 [1993]).

Even assuming, arguendo, that defendant's contention that the People's declaration of readiness was illusory is preserved for our review, we conclude that it is without merit. At the time the People announced their readiness for trial, they would have been able to establish a prima facie case and proceed to trial even without the subsequently acquired DNA test results (see People v Pratt, 186 AD3d 1055, 1057 [4th Dept 2020], lv denied 36 NY3d 975 [2020]; People v Hewitt, 144 AD3d 1607, 1607-1608 [4th Dept 2016], lv denied 28 NY3d 1185 [2017]; People v Bargerstock, 192 AD2d 1058, 1058 [4th Dept 1993], lv denied 82 NY2d 751 [1993]).

Moreover, even assuming, arguendo, that defendant correctly contends that 132 days of postreadiness delay are chargeable to the People, we conclude that such period plus the periods of prereadiness delay that were chargeable to the People did not exceed six months (see Hewitt, 144 AD3d at 1607-1608). Defendant's further contention that he was denied his constitutional right to a speedy trial is not preserved for our review inasmuch as he moved to dismiss the indictment on statutory speedy trial grounds only (see People v Burke, 197 AD3d 967, 969 [4th Dept 2021], lv denied 37 NY3d 1159 [2022]; People v Williams, 120 AD3d 1526, 1526-1527 [4th Dept 2014], lv denied 24 NY3d 1090 [2014]), and we decline to exercise our power to review that contention as a matter of discretion in the interest of justice (see CPL 470.15 [6] [a]).

Defendant additionally contends that the court erred in granting the People's untimely motion to compel him to submit to a buccal swab for DNA testing. As relevant here, CPL former 240.90 (1) provided that a motion by a prosecutor for discovery "shall be made within [45] days after arraignment, but for good cause shown may be made at any time before commencement of trial."

We conclude that the court did not err in granting the motion, considering the proffered reasons for the People's delay in making the motion, the relevance of [*2]the evidence, and the lack of prejudice to defendant from the delay (see People v Ruffell, 55 AD3d 1271, 1272 [4th Dept 2008], lv denied 11 NY3d 900 [2008]; People v Tyran, 248 AD2d 1011, 1011 [4th Dept 1998], lv denied 92 NY2d 1054 [1999]).

We have considered defendant's remaining contentions and conclude that none requires reversal or modification of the judgment. Entered: April 28, 2023 Ann Dillon Flynn Clerk of the Court

