

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)