20CA2121 Peo v Woodfork 04-07-2022

COLORADO COURT OF APPEALS

Court of Appeals No. 20CA2121
Pueblo County District Court No. 19CR1270
Honorable Kimberly Karn, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Jeffrey Anthony Woodfork,

Defendant-Appellant.

JUDGMENT AND SENTENCE VACATED
AND CASE REMANDED WITH DIRECTIONS
Division V
Opinion by JUDGE WELLING
Dunn and Yun, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced April 7, 2022

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¶ 1 Defendant, Jeffrey Anthony Woodfork, appeals the judgment of conviction entered on a jury verdict finding him guilty of felony menacing and possession of a weapon by a previous offender (POWPO). Woodfork also challenges his sentence. Because we conclude that Woodfork's statutory right to a speedy trial was violated, we vacate the judgment of conviction and sentence and remand to the district court for dismissal of the charges.

I. Background

¶ 2 Woodfork was charged with second degree assault based on allegations that he strangled his intimate partner during a fight.

¶ 3 On August 16, 2019, Woodfork pleaded not guilty, and the district court set a jury trial for January 6, 2020. At the pretrial readiness conference on December 12, 2019, both parties announced that they were ready to proceed to trial. However, the People noted one caveat — two of their witnesses, the victim and the defendant's sister, had been subpoenaed, but had indicated that they wouldn't show up for trial.

¶ 4 On the date of the jury trial, the People requested a continuance because their "two necessary witnesses" — the victim and the defendant's sister — had failed to appear. The People didn't

provide any further details about these witnesses or the substance of the evidence they were expected to provide. Over Woodfork's speedy trial objection, the district court granted the continuance, finding that the factors in section 18-1-405(6)(g)(I), C.R.S. 2021, had been satisfied. The district court found that "[c]learly, these two witnesses are material witnesses. One is the alleged victim . . . . And they are material to the State's case." The court reset Woodfork's jury trial for March 30, 2020, and Woodfork again objected to the resetting on speedy trial grounds.

¶ 5 Thereafter, the district court allowed the People to amend the complaint and information to add felony menacing and POWPO charges.

¶ 6 At two later trial settings, March 30, 2020, and June 1, 2020, the district court found manifest necessity to declare a mistrial due to the COVID-19 pandemic. At both settings, Woodfork (1) objected to the continuance; (2) reiterated that he had not waived his right to a speedy trial under either the state and federal constitutions or the speedy trial statute; and (3) requested that the district court dismiss the charges given that the People's witnesses had again failed to appear.

¶ 7 At the pretrial conference just before his fourth jury trial setting, Woodfork again renewed his objection to the numerous continuances of his jury trial and asserted that his right to a speedy trial had been violated. The district court overruled his objection and, on August 31, 2020, Woodfork's trial began.

¶ 8 A jury found Woodfork guilty of felony menacing and POWPO but acquitted him of second degree assault. The district court sentenced Woodfork to consecutive terms of three years and eighteen months in the custody of the Department of Corrections.

¶ 9 This appeal followed.

II. Statutory Speedy Trial Right

¶ 10 Woodfork contends that prosecution failed to satisfy its burden of proof under section18-1-405(6)(g)(I) and the district court, in turn, violated his statutory right to a speedy trial by granting the January 6, 2020, motion to continue and resetting trial beyond the statutory speedy trial deadline without making sufficient findings. We agree.

¶ 11 Whether a trial date upholds a defendant's statutory right to a speedy trial is a question of law subject to de novo review. *People v. Sherwood*, 2021 CO 61, ¶ 19.

¶ 12 Under Colorado's speedy trial statute, a district court must dismiss with prejudice the charges against a defendant if they are not brought to trial within six months after the date the defendant enters a plea of not guilty. *See* § 18-1-405(1); *People v. Roberts*, 146 P.3d 589, 592 (Colo. 2006). However, in calculating the six-month time period, a court must exclude:

> (g) The period of delay not exceeding six months resulting from a continuance granted at the request of the prosecuting attorney, without the consent of the defendant, if:
>
> (I) The continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that this evidence will be available at the later date . . . .

§ 18-1-405(6)(g)(I).

¶ 13 The burden of complying with the speedy trial statute is on the prosecutor and the district court. *See Roberts*, 146 P.3d at 593. Satisfying that burden includes making a record sufficient for an appellate court to determine that all three elements of section 18-1-405(6)(g)(I) have been met — namely that (1) evidence material to the state's case is unavailable; (2) the prosecutor exercised due

diligence to make the evidence available; and (3) there are reasonable grounds to believe that the evidence will be available on the new trial date. *Roberts*, 146 P.3d at 593-94; *see also Marquez v. Dist. Ct.*, 200 Colo. 55, 57, 613 P.2d 1302, 1304 (1980) ("The burden includes making a record sufficient for an appellate court to determine statutory compliance.").

¶ 14 In making a sufficient record, the prosecutor is required to "explain[] the significance and purpose of the unavailable evidence" and the trial court must "evaluate the prosecutor's statements and weigh the competing interests." *Roberts*, 146 P.3d at 594. Unsupported allegations that "a witness is material and unavailable for trial" are insufficient. *Id.* (concluding that "[a] minute entry made by the [district] court indicating that the People's chief witness [was] missing [was] insufficient absent a showing of materiality"); *see also Marquez*, 613 P.2d at 1304 (record insufficient where it did not include a showing of the missing witness's materiality or that the witness would be available at a later date, or specific findings by the trial court establishing the statutory elements); *cf. People v. Grenemyer*, 827 P.2d 603, 604-05 (Colo. App. 1992) (record sufficient where the trial found that the

continuance was attributable to the absence of the victim, despite the prosecutor's exercise of due diligence, to obtain the victim's presence for trial and the prosecutor demonstrated that the victim's testimony was material and the victim would be available to testify at a later date).

¶ 15 Where the People fail to establish that they have satisfied all three elements necessary for a continuance, or where the district court fails to make specific findings that the elements were satisfied, a defendant's motion to dismiss the charges must be granted. *See Marquez*, 613 P.2d at 1303-04; *Sweet v. Myers*, 200 Colo. 50, 53-54, 612 P.2d 75, 77-78 (1980) (concluding that the defendant was entitled to a dismissal of the charges because the district court granted the People's motion for a continuance, which was based purely on unsupported claims, without any indication of due diligence or the witness's availability at the later trial date); *cf. Roberts*, 146 P.3d at 594-96 (concluding that the information provided by the prosecutor demonstrated compliance with section 18-1-405(6)(g)(I), and thus the defendant's right to a speedy trial was not violated).

¶ 16 Because the People must establish three elements to obtain a continuance, and because we conclude the first element was not satisfied as it relates to the victim witness, we consider only this element.

¶ 17 At the time the district court applied section 18-1-405(6)(g)(I), the People hadn't made any proffer related to the significance and purpose of the victim's testimony — that is, the materiality of the unavailable evidence. Rather, the prosecutor stated only that "my two necessary witnesses are not here." There is nothing in the record showing that the district court weighed the materiality of the victim's testimony or the competing interest of Woodfork's right to a speedy trial. *See Roberts*, 146 P.3d at 594. Further, when the district court addressed the speedy trial issue it didn't make any specific findings about the materiality of the victim's testimony. Simply stating that "[c]learly [the] witness[] [is a] material witness" because "[she] is the alleged victim" was insufficient. *See id.*; *Marquez*, 613 P.2d at 1304.

¶ 18 Under these circumstances, we conclude that the People didn't satisfy their burden to demonstrate the absent witnesses were material. Thus, the district court, in turn, erred by granting the

motion for continuance under section 18-1-405(6)(g)(I). Because the record is insufficient to support application of that statutory provision, the January 6, 2020, continuance can't be excluded from the speedy trial computation; and the district court was required to try Woodfork by the February 16, 2020, speedy trial deadline. Therefore, the trial date of August 31, 2020, was beyond the time for a speedy trial and the district court should have dismissed the charges against Woodfork based on his timely motion. *See Marquez*, 613 P.2d at 1304.

¶ 19 Because we conclude that the district court violated Woodfork's statutory right to a speedy trial, we need not consider the remaining contentions he raises in his opening brief.

III. Conclusion

¶ 20 The judgment of conviction and sentence are vacated and the case is remanded to the district court with directions to dismiss the charges with prejudice.

JUDGE DUNN and JUDGE YUN concur.