Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **10th day of May, 2024** are as follows:

BY Crichton, J.:

2023-KK-00723 *STATE OF LOUISIANA VS. KATHLEEN MOUTON* (Parish of Jefferson Davis)

REVERSED. SEE OPINION.

Crain, J., dissents and assigns reasons.
McCallum, J., dissents for reasons assigned by Justice Crain.

SUPREME COURT OF LOUISIANA

No. 2023-KK-00723

STATE OF LOUISIANA

VS.

KATHLEEN MOUTON

On Writ of Certiorari to the Court of Appeal, Third Circuit,
Parish of Jefferson Davis

CRICHTON, J.

We granted the writ application in this case to decide two issues relating to the time limitation to commence a criminal trial pursuant to La.C.Cr.P. art. 578. First, we address whether a motion for preliminary examination filed prior to the institution of prosecution tolls the time limitation to commence trial once charges are formally filed. We hold that the motion did not suspend the limitation period because defendant did not re-urge the motion after the State filed the bill of information. Second, we determine whether the limitation period was interrupted when courts were closed due to Hurricane Laura. We hold that, consistent with the orders issued by this Court addressing the impacts of Hurricane Laura,[1] the storm suspended, but did not interrupt, the limitation period. Based on these conclusions, we find that in this case, the State failed to timely commence trial. Thus, we overturn the court of appeal and reinstate the trial court's grant of defendant's motion to quash.

BACKGROUND

Defendant, Kathleen Mouton, was arrested in Jefferson Davis Parish on a charge of attempted second degree murder in violation of La. R.S. 14:30.1 and 14:27, on August 1, 2018. On August 10, 2018, defense counsel filed a motion for a

[1] On August 27, 2020, Hurricane Laura made landfall in Louisiana. Thereafter, this Court issued two orders suspending all time limitations pertaining to the prosecution of criminal matters in multiple parishes, including Jefferson Davis Parish. The orders commenced on August 21, 2020, and expired on October 21, 2020. *See* La.S.Ct. Orders 2020-28, 2020-32.

preliminary examination. The trial court granted the motion and ordered the hearing be held on September 13, 2018. On that date, defense counsel indicated that he had received discovery from the State and, according to the minute entry, "the matter was passed without date" on defense motion. Nine months later, on June 13, 2019, the State filed a bill of information charging defendant with attempted manslaughter in violation of La. R.S. 14:31 and 14:27. The matter was fixed for trial on six occasions but was continued each time. The first time, on June 24, 2020, defendant requested the continuance, but thereafter, the state sought each continuance.

On August 17, 2022, defendant filed a motion to quash based on untimely prosecution. La.C.Cr.P. art. 532(7). The State opposed the motion arguing that the time limit to bring the case to trial had not expired because the period of limitation was suspended by the pending motion for preliminary examination filed by defendant on August 10, 2018. On August 29, 2022, the trial court granted defendant's motion to quash, reasoning the motion for preliminary examination did not suspend the time limit to commence trial because it was filed before prosecution was formally initiated. That same day, defense counsel noted on the record that he withdrew the motion for preliminary examination.

The court of appeal granted the State's writ application and reversed the ruling of the trial court. *State v. Mouton*, 2022-0650 (La. App. 3 Cir. 4/21/23) (unpub'd). The court did not address whether the motion for preliminary examination suspended the limitation period. Instead, the court found that on August 27, 2020, the two-year limitation period was interrupted by the court closure in Jefferson Davis Parish due to the impact of Hurricane Laura. The court explained that the limitation period began running anew on August 27, 2020, and thus the State had two years from that date in which to commence trial. As such, the motion to quash filed on August 17, 2022, was premature and should have been denied.

DISCUSSION

A motion to quash may be granted if the limitation period for the commencement of trial has expired. La.C.Cr.P. arts. 532(7), 581. For felonies other than capital offenses, trial must commence within two years of instituting the prosecution of the charged offense. La.C.Cr.P. art. 578(A)(2). "Institution of prosecution" is defined as "the finding of an indictment, or the filing of an information, or affidavit, which is designed to serve as the basis of a trial." La.C.Cr.P. art. 934(7). The time to commence trial may be extended by the effect of suspension or interruption. *See, e.g.*, La.C.Cr.P. arts. 579, 580. Once the accused shows that the State has failed to bring her to trial within the time specified by La.C.Cr.P. art. 578, the State bears a heavy burden of demonstrating that either an interruption or a suspension of the time limit extended the time to commence trial. *State v. Morris*, 99-3235, p. 1 (La. 2/18/00), 755 So.2d 205, 205 (per curiam).

In this case, the State instituted prosecution on June 13, 2019 when it filed the bill of information charging defendant with attempted manslaughter. Absent suspension or interruption, the limitation period for the commencement of trial would have lapsed on June 13, 2021. When the motion to quash was filed on August 17, 2022, trial had not commenced. Thus, on its face, the motion to quash had merit, and the State bore the burden to show that the limitation period had not expired when the motion to quash was filed.

In the trial court, the State argued that defendant's motion for preliminary examination suspended the limitation period. Article 580 of the Code of Criminal Procedure is the controlling provision for suspension of the time limits and provides, in pertinent part,

> A. 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 trial.

A preliminary plea is "any plea filed after the prosecution is instituted and before the trial that causes the trial to be delayed." *State v. Elfert*, 247 La. 1047, 1052, 175 So.2d 826, 828 (1965). These include "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, p. 6 (La. 2/14/03), 838 So.2d 778, 782. Motions filed before the institution of prosecution cannot suspend the limitation period because the limitation period has not yet begun to run. The issue before the Court is whether a prematurely filed motion, such as the one here, suspends the limitation period once formal prosecution is instituted.

Until the decision by the Third Circuit in the present case, the only court to address this issue was the Second Circuit in a series of three cases over four years all involving the same assistant district attorney and defense attorney. In *State v. Duncan*, 29,896 (La. App. 2 Cir. 10/29/97), 702 So.2d 328 ("*Duncan I*"), the court of appeal found that since the defendant had not re-urged any of his prematurely filed motions after prosecution was instituted, the limitation period was not suspended. In a subsequent case, coincidentally involving the same defendant, the Second Circuit relied on its prior decision in *Duncan I,* and held,

> Preliminary pleas filed by a defendant prior to the institution of prosecution do not have the effect of suspending prescription under La.C.Cr.P. art. 580. *State v. Duncan,* [29,896, 702 So.2d 328]. Such preliminary pleas are in fact premature, and to suspend the two-year prescriptive period, the record must reflect that the defendant re-urged them *after* prosecution was instituted. *Id.*

State v. Duncan, 33,971, p. 4 (La. App. 2 Cir. 11/3/00), 771 So.2d 254, 257 ("*Duncan II*"). Following *Duncan II*, the State sought review in this Court. While that writ application was pending, the Second Circuit issued an *en banc* opinion abrogating its two *Duncan* decisions "to the extent that they hold that pending motions to suppress do not become preliminary pleas after prosecution has been instituted." *State v. Oliver*, 34,292, p. 7 (La. App. 2 Cir. 5/9/01), 786 So.2d 317, 322.

Drawing on a principle of civil law that "a prematurely filed motion can be cured by subsequent prerequisite acts," the court concluded that in a case in which the motions have not been withdrawn "when prosecution is instituted by the filing of a bill of information, or by indictment, then the defect of prematurity is cured and the motions become preliminary pleas." *Id.*, 34,292 p. 6, 786 So.2d at 322. Therefore, the premature motions to suppress "became viable preliminary pleas after the bills of information were filed for purposes of La.C.Cr.P. art. 578 and the running of prescription was suspended." *Id*., 34,292 p. 7, 786 So.2d at 322.[2]

In this case, the State relied on the reasoning of *Oliver* to support its argument that the limitation period had not lapsed when defendant filed her motion to quash. The trial court correctly rejected this argument. Like the trial court, we decline to adopt the Second Circuit's holding in *Oliver*, 34,292, 786 So.2d 317.

The *Oliver* court employed a principle announced by this Court to address when a party in a civil case files a motion for appeal before the final judgment is signed. This Court held that the subsequent signing of the judgment cured the prematurity of the otherwise valid motion, thereby permitting its consideration. *See Overmier v. Traylor*, 475 So.2d 1094 (La. 1985). By applying this "cure" concept to prematurely filed preliminary pleas, *Oliver* turned limitation principles upside down, leading to the absurd result that, at the moment the limitation period should commence, it is instead suspended.

The *Oliver* court justified this outcome on the grounds that a defendant would not be denied the opportunity to heard on a prematurely filed motion. However, this reasoning only demonstrates that the prematurity of the filing is *not* a defect that needs to be cured in order to give the motion effect. Moreover, a defendant's right

[2] Due to the course-change by the Second Circuit in *Oliver*, this Court granted the writ application in *Duncan II* and remanded the matter to the court of appeal to reconcile with *Oliver*, 34,292, 786 So.2d 317. *State v. Duncan*, 2000-3296 (La. 11/21/01), 801 So.2d 1081 ("*Duncan III*"). No writ was applied for following the decision in *Oliver*. Accordingly, this is the first time since *Duncan III* that this Court has faced this issue.

to be heard on a motion filed before the institution of charges does not necessitate the limitation period be suspended once charges are formally lodged. Unlike in *Overmier*, 475 So.2d 1094, where this Court sought to uphold the party's right to appeal while efficiently addressing the technical defect of the motion, *Oliver* fails to preserve the underlying right at hand—that a defendant be brought to trial in a timely manner.

Instead, we hold that only when a premature motion is timely re-urged after the initiation of prosecution does it suspend the limitation period. When the motion is re-urged, the limitation period is suspended as though it were filed for the first time. That is, the period "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." La.C.Cr.P. art. 580. In this case, defendant did not re-urge the motion for preliminary examination after the state instituted prosecution, thus it did not suspend the limitation period.

* * *

Having found that the time limit to commence trial had not been suspended by the motion for preliminary examination, we must now address the court of appeal's reversal of the trial court's decision to grant defendant's motion to quash. Rather than relying upon *suspension* due to the pending motion, the court of appeal instead found that the trial court closure due to Hurricane Laura *interrupted* the limitation period. As a result, the limitation period had not yet expired when the motion to quash was filed. We reject this reasoning as well.

The Code of Criminal Procedure provides, in pertinent part, "[t]he period of limitation established by Article 578 shall be interrupted if: . . . The defendant cannot be tried because of insanity or because his presence for trial cannot be obtained by legal process, or *for any other cause beyond the control of the state*[.]" La.C.Cr.P. art. 579(A)(2) (emphasis added). The article further provides, "[t]he periods of

limitation established by Article 578 shall commence to run anew from the date the cause of interruption no longer exists." La.C.Cr.P. art. 579(B). In this case, if the limitation period was interrupted, the State would have two years from the resolution of the interruption to bring defendant to trial.

The court of appeal relied on its prior decision, *State v. Simmons*, 2022-0208 (La. App. 3 Cir. 10/19/22), 350 So.3d 599, *writ denied*, 2022-1622 (La. 2/7/23), 354 So.3d 675. In *Simmons,* the court held that the orders issued by this Court to address the effects of Hurricane Laura[3]—orders that explicitly *suspended* the limitation period—"should not change the legislature's statutory provision that a cause beyond the control of the State *interrupts* prescription." *Id.*, 2022-0208, p. 21, 350 So.3d at 611 (referring to La.C.Cr.P. art. 579(A)(2)). In so ruling, the court relied, in part, on *State v. Bibbins,* 2014-0971 (La. 12/8/14), 153 So.3d 419 (per curiam), where this Court held that Hurricane Isaac interrupted the two-year limitation period to bring defendant to trial. In *Bibbins*, this court cited *State v. Patin*, 2011-0488 (La. App. 4 Cir. 5/23/12), 95 So.3d 542 and *State v. Brazile*, 2006-1611 (La. App. 4 Cir. 5/30/07), 960 So.2d 333, *writ denied*, 2007-1339 (La. 1/7/08); 973 So.2d 733, where the Fourth Circuit found that Hurricane Katrina interrupted the limitation period to bring the defendants to trial.

Critically, those cases preceded the legislature's 2020 enactment of La.C.Cr.P. art. 958, empowering this Court to issue short, 30-day orders of suspension of "all time periods, limitations, and delays pertaining to the initiation, continuation, prosecution . . . of any prosecution of any state . . . criminal . . . matter . . ." in the event "the governor has declared a disaster or emergency pursuant to the provisions of R.S. 29:721 *et seq*." It was on that basis that this Court issued orders in 2020 addressing courts impacted by Hurricane Laura, including those in

[3] *See, supra,* note 1.

Jefferson Davis Parish where this case was prosecuted. The *Simmons* holding that the court closure *interrupted* the limitation period effectively rendered moot the legislatively authorized orders issued by this Court that the limitation period be *suspended*. In that regard, the *Simmons* decision was incorrect when it was decided, and the court of appeal erred in applying it to this case. Accordingly, we conclude the Third Circuit erred in finding that the court closure related to Hurricane Laura interrupted the time limitation under La.C.Cr.P. art. 579 when legislatively authorized orders from this Court ordered the time limitations suspended.

This Court's orders suspending the limitation period gave the State 60 additional days to bring defendant to trial, or until August 23, 2021.[4] Nearly a year after that date, when defendant filed the motion to quash, the State had not commenced trial. Thus, the trial court properly granted defendant's motion to quash due to untimely prosecution, and the Third Circuit erred in overturning that decision. For these reasons, we reverse the ruling of the court of appeal and reinstate the trial court's grant of the motion to quash.

REVERSED

[4] When defendant requested and was granted a continuance on June 24, 2020 (less than one year before the expiration of the two-year period on June 13, 2021) the State was permitted a year from that date to commence trial pursuant to La.C.Cr.P. art. 580, or until June 24, 2021. Thus, adding the 60 days from the suspension of the limitation period due to Hurricane Laura, brings the deadline to commence trial to August 23, 2021.

SUPREME COURT OF LOUISIANA

No. 2023-KK-00723

STATE OF LOUISIANA

VS.

KATHLEEN MOUTON

On Writ of Certiorari to the Court of Appeal, Third Circuit,
Parish of Jefferson Davis

Crain, J., dissenting.

Defendant is accused of committing a violent crime—attempted manslaughter of Dmarcus Charles. She will not stand trial for the alleged offense because the majority finds the statutory trial delay was not suspended by defendant's motion for a preliminary examination. This holding is based on two premises: (1) a motion for preliminary examination is premature if filed before the state formally initiates prosecution, and (2) a preliminary plea suspends the trial delay only if filed or re-urged after the delay begins to run. I respectfully submit both of these premises are incorrect.

When a defendant files a "preliminary plea," the statutory trial delay is suspended "until the ruling of the court thereon." La. Code Crim. Pro. art. 580. The word "preliminary" in Article 580 indicates a pleading filed before trial. When a defendant seeks pretrial relief, the state logically should not be penalized by the passage of time while the defendant's request is pending. By his own action, the defendant raised a matter that must be addressed before trial. To that end, this court has broadly construed "preliminary plea" to include a host of pretrial pleadings, including motions to suppress, motions to continue, motions for a bill of particulars, and applications for discovery. *See State v. Brooks*, 02-0792 (La. 2/14/03), 838 So.

2d 778, 782. Like those pleadings, a motion for a preliminary examination is filed before trial, requests pretrial relief, and thus constitutes a preliminary plea, particularly considering the source article allows the motion to be filed even before indictment or filing of the charge. *See* La. Code Crim. Pro. art. 292.

The majority ostensibly agrees a motion for preliminary examination is a preliminary plea under Article 580, but the court finds defendant's motion did not suspend the trial delay because it was "premature" and not "timely re-urged after the initiation of prosecution." I respectfully disagree. A motion for preliminary examination may be filed any time after a party's arrest. *See* La. Code Crim. Pro. art. 292. More specifically, a preliminary examination may be requested and granted "at any time, either on [the court's] own motion or on request of the state or of the defendant before or after the defendant has been indicted by a grand jury." La. Code Crim. Pro. art. 292. The trial court's authority to conduct a preliminary examination "exists from the very moment a party is arrested, and continues until the charge is finally disposed of." *State v. Bertrucci*, 155 La. 1081, 1084; 99 So. 882, 883 (1924). As explained by Article 292 Revision Comment (a):

> The provisions of this article giving the state and the defendant a right to a preliminary examination at any time prior to an indictment or the filing of an information . . . conform to the source provision.

A pretrial examination is mandatory when requested before formal initiation of prosecution. *See* La. Code Crim. Pro. art. 292. If requested afterward, a trial court has discretion to deny or limit the pretrial examination. *See* La. Code Crim. Pro. arts. 292 and 296; *State v. Hamilton*, 312 So. 2d 656, 658 (La. 1975); *State v. Jackson*, 258 La. 632, 637; 247 So. 2d 558, 559 (1971).

Here, as authorized by Article 292, defendant filed a motion for a preliminary examination on August 10, 2018. That motion was not premature, defective, or otherwise in need of curing. It was a valid pleading from inception and remained

pending until dismissed on August 29, 2022. Until that time, pursuant to Article 580, the trial delay was suspended.

Holding otherwise, the majority relies on *State v. Elfert*, 247 La. 1047; 175 So. 2d 826 (1965), where the court stated, "A preliminary plea within the meaning and contemplation of this article is any plea filed after the prosecution is instituted and before the trial that causes the trial to be delayed." *Elfert*, 247 La. at 1052; 175 So. 2d at 828. Notably, *Elfert* cites no authority for this statement. For the pleading before the *Elfert* court—a motion to continue—no authority was needed. A motion to continue is always "filed after the prosecution is instituted" and, if granted, "causes the trial to be delayed." The timing of the motion was not an issue. Considered in context, the *Elfert* court's statement is an observation relevant to the pleading under review, not an exhaustive definition applicable to all preliminary pleas. If the latter was intended, presumably the court would have offered some analysis, explanation, or support for the definition. It did not.

The majority now adopts *Elfert*'s observation as a uniform definition applicable to all pretrial pleas, reasoning that "[m]otions filed before the institution of prosecution cannot suspend the limitation period because the limitation period has not yet begun to run." This proposition—that a legal delay cannot be suspended by something that occurred before it began to run—is contrary to our law. Before it begins to run, prescription is suspended as between the spouses during marriage, parents and children during minority, tutors and minors during tutorship, curators and interdicts during interdiction, and caretakers and minors during minority. *See* La. Civ. Code art. 3469. In each of those situations, at the moment the prescriptive period should begin to accrue, it is suspended due to a pre-existing legal relationship between the parties. Similarly, under the doctrine of *contra non valentem*, liberative prescription is suspended before it begins to run when the cause of action is not known or reasonably knowable by plaintiff, or the debtor has done some act that

prevents the creditor from availing himself of the cause of action. *See Mitchell v. Baton Rouge Orthopedic Clinic, L.L.C.*, 21-0061 (La. 10/10/21), 333 So. 3d 368, 374; *Wimberly v. Gatch*, 635 So. 2d 206, 211 (La. 1994).

The majority opinion provides a good example of the statutory trial delay being suspended before it began to run. Addressing the state's alternative argument about the effect of Hurricane Laura, the majority correctly concludes this court's emergency orders, together with Louisiana Code of Criminal Procedure article 958, suspended all statutory delays for criminal prosecutions from August 21, 2020, through October 21, 2020. Significantly, that suspension applied to all criminal proceedings in the designated parishes, including new proceedings initiated during the period of suspension. For any bill of information filed while the emergency orders were in effect, the corresponding trial delay was immediately suspended—before it began to run.

As these authorities confirm, a legal delay can and often is suspended at the very moment it otherwise would have begun to accrue. That occurred here when defendant's motion for preliminary examination, although filed before the trial delay began, remained pending after the state filed the bill of information. Under the plain language of Article 580, this properly filed preliminary plea suspended the trial delay "until the ruling of court thereon." That ruling occurred on August 29, 2022. For these reasons, I respectfully dissent and would affirm the court of appeal's judgment reversing the trial court's granting of the motion to quash.