NOT FINAL UNTIL TIME EXPIRES FOR REHEARING, AND IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA, IN AND FOR PASCO COUNTY APPELLATE DIVISION

STATE OF FLORIDA
Appellant,

v.

CANDACE LEE JONES,
Defendant.
_____/

UCN: 512018AP000024APAXWS
Appeal No.: 18-AP-24
Lower No.: 17-MM-4576

On appeal from Pasco County Court,
Honorable Debra Roberts

Oliver L. Moll,
Assistant State Attorney,
for Appellant,

Ryan Thomas Truskoski, Esq.,
for Defendant.

ORDER AND OPINION

The trial court erred when it granted Defendant-Appellee's motion for discharge. For the reasons detailed below, the Court finds that the Pasco County Complaint Affidavit relied upon by State-Appellant was a valid Notice to Appear.

STATEMENT OF THE CASE AND FACTS

The Pasco County Complaint Affidavit

On August 14, 2017, a New Port Richey Police officer issued a Pasco County Complaint Affidavit ("PCCA"). A copy of the PCCA is attached as an exhibit to this Order and Opinion.

Trial Court Procedural History

On August 24, 2017, case number 17-MM-4576 was created and the PCCA was filed. On September 7, 2017, a Notice of Arraignment was mailed to the Appellee. The notice stated that arraignment was set for Tuesday, October 10, 2017, at 9:00 A.M. in

Courtroom 1A of the West Pasco Judicial Center, 7530 Little Road, New Port Richey, FL, 34654.

Per a court event form, during arraignment on October 10, 2017, the Public Defender's Office was appointed and the assistant public defender waived speedy trial.[1] A pretrial conference was set for November 29, 2017.

On February 13, 2018, the Appellee filed a Motion to Suppress evidence. However, the Motion to Suppress was never heard because the Appellee filed a Motion for Discharge.

Motion for Discharge

The Appellee filed her Motion for Discharge on April 8, 2018. In the motion, she asserted that she was arrested on August 14, 2017. She further asserted that the PCCA was not sufficient to function as a Notice to Appear ("NTA") because it failed to provide the time and place that the accused is to appear in court, failed to provide the name and address of the trial court having jurisdiction to try the offense charged, and it was not sworn to by the issuing officer before a notary public or deputy clerk which is required on the two NTA copies to be filed with the Clerk. *See* Fla. R. Crim. P. 3.125(a); (d); (g)(5); (g)(6).

The motion argued that because the PCCA was not a valid NTA, no formal charge had been filed by the time the speedy trial deadline passed on November 12, 2017. She argued that she was entitled to immediate discharge without the benefit of the recapture period on the authority of *State v. Williams*, 791 So. 2d 1088, 1091 (Fla. 2001) ("the State may not file charges based on the same conduct after the speedy trial period has expired") and *State v. Clifton*, 905 So. 2d 172, 176 (Fla. 5th DCA 2005) ("The State may not circumvent the purpose and intent of the speedy trial rule by . . . taking no action after the defendant is arrested and waiting until after the speedy trial period has expired to file formal charges. In these instances, the State has essentially abandoned the prosecution

[1] A court event form filed by the trial court with the Clerk of the Court is part of the record on appeal. *See* Fla. R. App. P. 9.200(a)(1) ("Except as designated by the parties, the record shall consist of all documents filed in the lower tribunal . . ."); *Landry v. Charlotte Motor Cars, LLC*, 226 So. 3d 1053, 1054 n.1 ("The facts stated in this opinion are drawn from the . . . court minutes . . . in the record"). Neither party argued that speedy trial was not waived during arraignment as indicated by the court event form. The Appellee argued before the trial court that the waiver was not valid because the trial court did not have subject matter jurisdiction based upon the PCCA in this case not functioning as an NTA.

and the recapture provisions of the rule do not apply, with the result that the defendant must be discharged.").

On April 16, 2018, the Appellant filed a written Misdemeanor Information that charged the Appellee with Possession of Marijuana on August 14, 2017 in violation of section 893.13(6)(b), Florida Statutes (2017).

Hearing on Motion for Discharge

The hearing on the motion was held on April 18, 2018. The Appellee initially summarized the written motion.

The Appellant argued that the PCCA was a valid NTA. The Appellant further argued that while the PCCA was missing the information alleged by the Appellee, the Notice of Arraignment functioned to amend the PCCA and that the Appellee did in fact appear for arraignment. The trial court stated that the Notice of Arraignment was a hearing notice, not an amended charging document. The Appellant, however, continued to maintain this argument and again re-argued that at arraignment, the Appellee waived speedy trial.

The Appellee responded that even if the Notice of Arraignment cured the defect in the PCCA, it was still missing an oath before a notary public or deputy clerk as required by Rule 3.125(g)(6). The Appellee further argued that the trial court was not vested with subject-matter jurisdiction until the proper filing of a formal charge. The Appellee argued that without jurisdiction, the trial court cannot act or rule on motions.

The Appellant then rebutted the subject-matter jurisdiction argument arguing that even without a formal charging document, the trial court was entertaining a motion filed by the Appellee and therefore had subject-matter jurisdiction.

The Appellee replied that motions to dismiss or for discharge are regularly heard by trial courts specifically to challenge jurisdiction as in this motion for discharge but that does not mean the trial court has subject-matter jurisdiction over the case and any actions taken by the trial court without jurisdiction are a nullity.

The Appellant further rebutted that the officer signed the PCCA under penalty of perjury and was therefore properly sworn.

The Appellee then argued that Rule 3.125(g)(6) requires more than merely signing under penalty of perjury because an NTA is more than simply a probable cause affidavit.

The Appellee argued that because it is a formal charging document, it must be signed before a notary public or deputy clerk just like an Information.

The Appellant then went into more detail regarding its waiver of speedy trial argument by citing to Rule 3.191(j)(2) which provides that discharge cannot be granted if the failure to hold trial is attributable to the accused and that a waiver of speedy trial is such a failure attributable to the accused, citing to *State v. Gibson*, 783 So. 2d 1155, 2001 (Fla. 5th DCA 2001). The Appellant also pointed out that the Appellee further delayed the trial by filing a motion to suppress. However, the trial court was not persuaded by this argument, stating "That's not the same issue, sir. That's a whole different issue."

The Appellant then added to its valid NTA argument by arguing that the PCCA was sufficient to put the Appellee on notice for the crime charged, that the crime charged was never changed, and that an NTA can be amended just like an Information to correct any defects.

The Appellee argued that *Gibson* was distinguishable because the wavier of speedy trial occurred after a proper formal charging document had been filed; specifically a timely-filed written Information.

Order Granting Motion for Discharge

The trial court orally granted the Motion for Discharge and issued a written order holding that the motion was granted. On May 29, 2018, the trial court issued an "Amended Order on Defense's Motion to Discharge Defendant" which added the following:

> This case is dismissed as no formal charge was filed within the 90-day misdemeanor speedy trial window. Under Fla. R. Crim. P. 3.191(p), *State v. Williams*, 791 So. 2d 1088, 1091 (Fla. 2001), and *State v. Clifton*, 905 So. 2d 172, 176 (Fla. 5th DCA 2005), defendant is immediately and permanently discharged from the crime alleged.

The Appellant timely-filed a Notice of Appeal on April 27, 2018.

STANDARD OF REVIEW

The issue under review "involves the interpretation of the rules of procedure with regard to the right to a speedy trial and is therefore a question of law subject to *de novo* review by this Court." *State v. Nelson*, 26 So. 3d 570, 573-74 (Fla. 2010).

LAW AND ANALYSIS

Both an arrest and the issuance of a Notice to Appear trigger the running of the speedy trial period.[2] Fla. R. Crim. P. 3.191(a), (d). A Notice to Appear is a formal charging document. Fla. R. Crim. P. 3.125. Where a Notice to Appear properly names the offense charged, the statute number, and a narrative sufficiently detailed to enable a defendant to prepare a defense without being embarrassed, it is sufficient. *State v. Critzer*, 381 So. 2d 301, 302 (Fla. 5th DCA 1980). The PCCA in this case was clearly sufficient to function as an NTA. The officer checked the box for "Notice to Appear." The officer wrote in the Probable Cause Statement section that Appellant "was issued an NTA." The PCCA informed Appellee that she was charged with possession of marijuana, less than 20 grams, and cited to the correct statute number. Thus, the PCCA was sufficient to function as a proper Notice to Appear in this case.

That the law enforcement officer failed to complete the "Bond/Court Info" section and failed to have a copy of the NTA sworn before a notary does not change this result. To hold that the failure to include the court information and notary stamp in this case rendered the PCCA not a valid NTA would be to place form over substance. *Cf. Briseno v. State*, 449 So. 2d 312, 312 (Fla. 5th DCA 1984) (holding that excluding a defense witness's testimony based solely on the fact that a rule of criminal procedure had been violated placed form over substance because the trial court had failed to consider whether the rule violation surprised the State in preparing for trial).

Public policy also weighs towards this result. The purpose of an NTA is to allow those individuals accused of minor violations of the law to avoid being handcuffed and taken to jail or, after being taken to jail, allows for an individual's release by a booking officer without having to be incarcerated or required to bond out prior to first appearance.

While not necessary to resolve this appeal, the Court notes that even if it could be argued that the PCCA was not a valid NTA, speedy trial discharge without the benefit of the recapture period would not be appropriate in this case. This is not a case where the State ceased prosecution, leading a defendant to believe that she was not being charged with a crime, thus preventing her from exercising her speedy trial rights. *See State v.*

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[2] The PCCA reflects that the Appellee was arrested and the PCCA was issued on August 14, 2017. Therefore, regardless of whether the PCCA functioned as an NTA, the speedy trial period began to run on that date.

Williams, 791 So. 2d 1088 (Fla. 2001). After the PCCA was filed, the parties, Appellee included, acted and proceeded as if she was being prosecuted for possession of marijuana. After the PCCA was filed, the Appellee was mailed a Notice of Arraignment. During the arraignment, she appeared, pled not guilty, and waived speedy trial. Additional pretrial hearings were held after the arraignment. Thus, the Appellee did not believe that the Appellant had ceased prosecution and the Appellee was not prevented from exercising her speedy trial rights.

CONCLUSION

Because the PCCA put the Appellee on notice for the crime with which she was charged and did not embarrass her in the preparation of her defense, the PCCA was a valid NTA formally charging her with Possession of Marijuana, despite the document's defects. The NTA was issued within the speedy trial period. Therefore, the trial court's order granting the Appellee's motion for discharge must be reversed.

It is therefore, ORDERED and ADJUDGED that the trial court's order granting the Appellee's motion for discharge is hereby REVERSED. The cause is REMANDED for further proceedings consistent with this opinion.

DONE AND ORDERED in Chambers at New Port Richey, Pasco County, Florida this ____ day of _____,

Original Order entered on January 24, 2019, by Circuit Judges Daniel D. Diskey, Susan G. Barthle, and Shawn Crane.

Copies to:
Honorable Debra Roberts
Ryan Truskoski, Esq.
Office of the State Attorney
Staff Attorney