IN THE COURT OF APPEALS OF THE STATE OF ALASKA

BRANDON PATRICK COLLINS JR., Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12297 Trial Court No. 3AN-12-11608 CR MEMORANDUM OPINION No. 6636 — May 23, 2018

Appeal from the Superior Court, Third Judicial District, Anchorage, Philip R. Volland, Judge.

Appearances: Brandon Patrick Collins Jr., *in propria persona*, Wasilla, for the Appellant. Nancy R. Simel, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard and Wollenberg, Judges.

Judge MANNHEIMER.

Brandon Patrick Collins Jr. appeals his conviction for second-degree robbery. Collins's conviction stems from an incident at an Anchorage tanning salon.

According to the evidence presented at Collins's trial, Collins entered the tanning salon around 10:00 in the evening, just before the salon's closing time. At that time, there was one employee on duty: a young woman named T.M.

Collins, posing as a potential customer, asked T.M. to show him around the facility. She did so, and then Collins left. A little later, the salon's last customer left the premises. Soon thereafter, Collins re-entered the salon. He immediately walked behind the service counter and stood next to T.M. Collins then forced T.M.'s hands down on the counter, and he pushed her down to a kneeling position. As he did so, Collins asked T.M. where the money was.

T.M. lied to Collins, telling him that she could not open the cash register. She then opened her purse and gave Collins all of the money she had (approximately $50). Collins took the money and left.

Based on this conduct, Collins was convicted of second-degree robbery under AS 11.41.510(a)(1).

Collins's argument that this evidence does not support his conviction for second-degree robbery

On appeal, Collins argues that the evidence we have just described was insufficient to establish the offense of second-degree robbery as defined in AS 11.41.-510(a). Under this statute, a defendant is guilty of second-degree robbery if the State proves that, in the course of taking or attempting to take property from the immediate presence and control of another person, the defendant used force or threatened the immediate use of force upon any person, and if the defendant did so with the intent to prevent or overcome resistance to the taking of the property or the retention of the property after the taking, or with the intent to compel any person to deliver the property or engage in other conduct which might aid in the taking of the property.

Collins points out that, according to T.M.'s testimony, Collins never used or threatened to use a weapon upon T.M., nor did he ever expressly say that he would hurt T.M.

But we are required to view the evidence in the light most favorable to upholding the jury's verdict.[1] Viewing the evidence in that light, Collins used force against T.M. when he took control of her hands and pushed her to her knees. See AS 11.81.900(b)(27), which defines "force" as including "any bodily impact, restraint, or confinement".

Moreover, the jurors could reasonably conclude that when Collins used force upon T.M., he did so with the intent of compelling T.M. to deliver property to him, or with the intent of preventing or overcoming any resistance T.M. might offer to Collins's taking of the property, or to his retention of the property after the taking.

Thus, the evidence was legally sufficient to establish the elements of second-degree robbery as defined in AS 11.41.510(a).

Collins's claim that his grand jury indictment and his conviction were both tainted by the introduction of unfairly prejudicial evidence

Collins argues that both the grand jury proceeding that led to his indictment for robbery and the trial that led to his conviction for this crime were tainted by the introduction of unfairly prejudicial evidence. Collins's argument is based on the fact that, in both proceedings, the prosecutor introduced evidence that T.M. feared she was about to be sexually assaulted when Collins forced her to her knees.

Collins argues that T.M.'s fear of sexual assault was unfounded and, in any event, irrelevant. He further argues that the introduction of this evidence unfairly prejudiced the deliberations of both the grand jury and the trial jury.

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[1] *See Iyapana v. State*, 284 P.3d 841, 848-49 (Alaska App. 2012); *Silvera v. State*, 244 P.3d 1138, 1142 (Alaska App. 2010).

We have examined the record of the grand jury proceeding and the trial, and we are convinced that the introduction of this evidence did not appreciably affect the outcome of either proceeding.[2] Thus, any arguable error was harmless.

For the same reason, we reject Collins's related claim that the prosecutor engaged in improper argument when, during the State's summation, he referred at one point to T.M.'s fear of sexual assault. No objection was made to the prosecutor's argument at the time, so Collins must show plain error. And, again, we conclude that any error was harmless.

Collins's claim that he was denied his constitutional right to a speedy trial

Collins claims that he was denied the right to a speedy trial guaranteed by the federal and state constitutions.[3]

Collins's trial was held approximately 22 months after he was arraigned on the robbery charge, but most of this delay was attributable to nine different requests made by Collins's defense attorneys for continuances of the trial. In each instance, Collins's attorney requested these continuances for reasons related to the investigation and presentation of Collins's defense:

- a delay to obtain transcripts and to perform further investigation of the case;

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[2] *See Stern v. State*, 827 P.2d 442, 445-46 (Alaska App. 1992) (defining the test for evaluating the effect of inadmissible evidence at grand jury proceedings); *Love v. State*, 457 P.2d 622, 631-32 (Alaska 1969) (defining the test for evaluating the effect of inadmissible evidence at trial proceedings).

[3] See the Sixth Amendment to the United States Constitution and Article I, Section 11 of the Alaska Constitution.

- a delay because Collins's attorney would not be available for the scheduled trial date, and because the attorney wanted more time to prepare motions in the case;
- a delay to allow the State to respond to, and the court to rule on, an anticipated defense motion to dismiss the indictment;
- a delay because Collins's attorney would again not be available for the scheduled trial, and because the attorney expected to file further motions in the case;
- a delay because Collins's attorney expected to file an additional motion in the case;
- a delay to allow the defense attorney to conduct further investigation, and because the defense attorney would again not be available for the scheduled trial date;
- a delay to hold a representation hearing (because Collins expressed his desire to represent himself), and to allow the Office of Public Advocacy to determine whether the agency had a conflict of interest;
- a delay to allow the court to review a police personnel file and to decide whether to grant a defense motion for disclosure of materials contained in that file; and
- a delay to allow the defense attorney to review the personnel materials disclosed by the court, and to decide whether the defense should conduct further investigation based on those materials.

When a defendant asserts that their trial was delayed so long as to violate their constitutional right to a speedy trial, the delays attributable to the defense are excluded from the calculation. *Rutherford v. State*, 486 P.2d 946, 952 n. 15 (Alaska 1971); *Davis v. State*, 133 P.3d 719, 725 (Alaska App. 2006). Here, the delays sought by Collins's attorneys amounted to the great majority of the time between his

arraignment and his trial. We thus conclude that Collins was afforded the speedy trial guaranteed by the United States Constitution and the Alaska Constitution. [4]

Collins argues that the result in his case should be different because, when his attorneys requested all of these continuances, the trial judge ignored or failed to enforce a standing order that was promulgated in 2009 by the Anchorage superior court. This standing order, which applied to criminal proceedings, imposed a special procedural requirement under Alaska Criminal Rule 45 (Alaska's speedy trial rule) for defense requests to continue a defendant's trial.

Under Criminal Rule 45, a defendant must be brought to trial within 120 days from the time the defendant is served with the criminal charge, but the running of this 120-day period is tolled during any period of delay resulting from (among other things) "an adjournment or continuance granted at the timely request or with the consent of the defendant and the defendant's counsel." *See* Criminal Rule 45(d)(2).

Criminal Rule 45 itself does not specify any particular format to be used when the defense requests a continuance of a proceeding. But the Anchorage superior court's 2009 standing order declared that any defense request for a continuance of trial had to be accompanied by the defendant's signed written waiver of the time under Criminal Rule 45.

(The standing order also declared that all other tolling of the time for bringing a defendant to trial would be governed by the normal provisions of Rule 45.)

As we have already explained, Collins's attorneys requested nine different continuances of the trial. None of these nine requests were accompanied by Collins's written waiver of Rule 45. However, in each instance, Collins was present in court with

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[4] *See Barker v. Wingo*, 407 U.S. 514, 530-33; 92 S.Ct. 2182, 2191-94; 33 L.Ed.2d 101 (1972); *State v. Wright*, 404 P.3d 166, 178 (Alaska 2017).

his attorney, and he made no objection to his attorney's requests for a delay of trial. (In fact, two of these requests were supported by the defense attorney's affidavit in which the attorney declared that Collins had been informed of the proposed continuance, and that Collins did not object.)

The judge who heard and granted these nine defense requests for a delay of trial never objected to the fact that Collins's attorneys failed to comply with the additional procedural requirement imposed by the Anchorage superior court's standing order. (Ironically, Collins's judge was the deputy presiding judge who had promulgated the Anchorage standing order several years before.)

Collins went to trial without his attorneys ever filing a motion asserting that Rule 45 had been violated. The failure to file such a motion constituted a waiver of whatever claim Collins might have had under Rule 45. *See* Criminal Rule 45(f).

However, in this appeal, Collins does not assert that Rule 45 was violated. Rather, Collins claims that his *constitutional* right to a speedy trial was violated because his attorneys' various requests for a delay of the trial were not accompanied by Collins's written waivers, as required by the Anchorage superior court's standing order.

We reject this claim for two reasons.

First, the Anchorage superior court's standing order did not purport to regulate any aspect of the constitutional right to a speedy trial. By its terms, the standing order imposed an additional procedural requirement on defense requests for a continuance of trial under *Criminal Rule 45*. And as we have just explained, this appeal does not involve Collins's right to a speedy trial under Criminal Rule 45.

Second, even now, Collins does not assert that he was opposed to his attorneys' various requests for a continuance of the trial.

We therefore conclude that Collins's constitutional right to a speedy trial was not violated. And for much the same reasons, we reject Collins's claim that he was

denied due process of law when the superior court failed to enforce the written waiver provision of the Anchorage superior court's standing order pertaining to the procedural requirements of Criminal Rule 45.

Conclusion

The judgement of the superior court is AFFIRMED.