

IN THE SUPREME COURT OF MISSISSIPPI

STATE OF MISSISSIPPI

APPELLEE

VS.

CAUSE NO.: ~~2000-00080~~ —

2010-75-02039

ONE 1970 MERCURY COUGAR, VIN # 0F9111545940
ONE 1992 FORD MUSTANG, VIN #FACP44E4NF173360
ONE FORD MUSTANG
\$355.00 U.S. CURRENCY
AND WILLIE HAMPTON

APPELLANT

ON APPEAL FROM THE CIRCUIT COURT OF THE 11TH
JUDICIAL DISTRICT OF TUNICA COUNTY
Cause No. 2000-00080

BRIEF OF APPELLEE

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and/or Judges of the Court of Appeals may evaluate possible disqualification or recusal.

Honorable Kenneth L. Thomas
Circuit Court Judge

Honorable John T. Lamar, III
Attorney for Appellee

Willie Ray Hampton
Appellant

Honorable John M. Colette
Attorney for Appellee

Honorable Marvin D. Miller
Attorney for Appellant

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STATEMENT OF ISSUES

I.

Did the Circuit Court err in the manner it conducted the Hearing as required by the Mississippi Court of Appeals?

II.

Did the Circuit Court err in holding that the forfeiture proceedings were properly conducted and that it had previously properly ordered the forfeiture?

STATEMENT OF THE CASE

I. Procedural History

Willie Hampton was arrested on March 21, 2000 by federal and state law enforcement agencies for various offenses related to federal and state controlled substance laws. In conjunction with the arrest, the Tunica County Sheriff's Department seized portions of Hampton's personal property, specifically: a 1970 Mercury Cougar, two Ford Mustangs, and \$355. On March 30, 2000 Tunica County filed a Complaint for Forfeiture in Tunica County Circuit Court. Hampton did not file an answer to the Complaint for Forfeiture until November 1, 2000.

Due to Hampton's ongoing federal criminal and civil cases, Tunica County filed a motion to stay discovery on the forfeiture proceeding. On November 30, 2000, the circuit court entered an order which stayed discovery until the conclusion of Hampton's federal district court proceedings. As a result, nothing else occurred in the forfeiture action until December 17, 2001, when Hampton, acting *pro se*, filed a document entitled "Replevin," which was later interpreted to be Hampton's request for dismissal of the forfeiture petition. It should be noted that this document did not request a hearing on the forfeiture petition.

On or about December 20, 2004, Hampton filed a change of address with the Circuit Clerk, and Tunica County filed an Amended Petition for Forfeiture as well as Notice of Hearing setting the forfeiture hearing for 2:00 p.m. on February 24, 2005. While Hampton was not present at the hearing, he did receive Notice of Hearing as evidenced by the certificate of service. After the February 24, 2005 hearing, the Circuit Court entered an Order forfeiting the subject property to Tunica County. Hampton filed his Notice of Appeal, and the matter was assigned to the Mississippi Court of Appeals for appellate review. One 1970 Mercury Cougar v. Tunica

County, Mississippi, 936 So.2d 988 (Miss. App. 2006).

The Court of Appeals remanded the case back to the Circuit Court in order for the parties to present a record that would allow further analysis of the factors outlined in Barker v. Wingo, 407 U.S. 514 (1972). The Court explained:

On remand, Tunica County will have the opportunity to explain the delay and Hampton will have an opportunity to explain why he did not request a hearing for three (3) years. Hampton would also have an opportunity to detail just what actual prejudice he may have suffered.

One 1970 Mercury Cougar at 992-993.

On July 15, 2010, the Circuit Court conducted a hearing at which Hampton was present via telephone from federal prison in Colorado and counsel for Tunica County was present in person. Both parties were given the opportunity to supplement the record as requested by the Court of Appeals, and at the conclusion of the hearing, the Circuit Court re-affirmed its earlier decision. Hampton appeals the Circuit Court's decision.

II. Statement of Facts

Hampton's claims arise from his investigation, prosecution, and subsequent conviction on federal drug charges in the Northern District of Mississippi. On or about March 21, 2000, federal and state law enforcement agencies executed search warrants and arrested Willie Hampton, charging him with violations of controlled substance laws. Hampton was indicted on April 6, 2000 on three (3) counts of possession with intent to distribute and distributing cocaine base and powder cocaine. He was convicted on January 30, 2001 and sentenced to life in prison on July 11, 2001.

Timeline of Relevant Facts

March 21, 2000: Search warrants executed and property seized.

March 30, 2000: Tunica County filed Complaint for Forfeiture.

April 6, 2000: Willie Hampton indicted in Federal Court.

November 30, 2000: Circuit Court entered an Order granting Tunica County's Motion to stay Discovery.

January 30, 2001: Willie Hampton was convicted of his Federal criminal charges.

July 11, 2001: Willie Hampton was sentenced to life in prison.

December 17, 2001: Willie Hampton filed a document titled "Replevin" which was interpreted by the Mississippi Court of Appeals as his contest to Tunica County's Petition for forfeiture.

December 20, 2004: Willie Hampton filed a certificate of name change which was the first filing in this cause in over three (3) years.

Tunica County filed an amended Petition for Forfeiture.

Tunica County filed a Notice of Hearing setting the forfeiture hearing for February 24, 2005.

January 31, 2005: Willie Hampton filed a pleading demanding a speedy trial for the first time.

February 24, 2005: Hearing held on the forfeiture matter and this Court ordered property forfeited.

Willie Hampton did not participate at the hearing even though he had notice.

March 8, 2005: Order forfeiting property was entered.

June 27, 2005: This Court entered an Order denying Willie Hampton's "Replevin" request of the subject property.

July 2005: Willie Hampton files his appeal.

2006: MS Court of Appeals sends case back to trial court for hearing

July 15, 2010: Circuit Court conducts hearing on the records with Mr. Hampton participating by phone and his counsel participating in person

SUMMARY OF THE ARGUMENT

The Trial Court properly allowed Hampton to supplement the Record both as to his delay in requesting a hearing and any actual prejudice he may have suffered as was mandated by the Mississippi Court of Appeals. He appeared telephonically at the July 15, 2010 hearing and his counsel appeared in person and both had every opportunity to introduce evidence of their choosing. Further, Tunica County appeared at the hearing and gave reason why any delay on its part was reasonable under the circumstances. After due consideration, the Circuit Court was not persuaded by Mr. Hampton's argument and has not committed clear error by upholding its previous ruling forfeiting the property at issue to Tunica County. As such, this Court should allow the Circuit Court's ruling to stand.

ARGUMENT

I. Standard of Review

In forfeiture cases, the standard of review is the substantial evidence/clearly erroneous test. Hickman v. State, ex rel. Mississippi Department of Public Safety, 529 So.2d 44, 46 (Miss. 1991). Such a standard limits appellate review of the facts except in cases where the circuit court applies an erroneous legal standard to decide a question of fact. Id. A circuit court's findings will not be disturbed unless they are clearly erroneous or unsupported by substantial evidence. One 1970 Mercury Cougar at 991.

II. THE TRIAL COURT PROPERLY REAFFIRMED ITS PREVIOUS RULING IN FAVOR OF TUNICA COUNTY.

The Court of Appeals remanded this case to the Circuit Court for supplementation of the record in order to facilitate further analysis of the factors outlined in Barker v. Wingo: length of delay, the reason for delay, the defendant's assertion of his right, and prejudice to the defendant. 407 U.S. 514 (1972). Specifically, the Court requested that Tunica County explain its delay in prosecuting the forfeiture action and that Hampton account for his delay in requesting a hearing on the matter as well as any prejudice suffered by him. After affording both parties the opportunity to do just that, the Circuit Court properly reaffirmed its earlier decision. The record reflects that the Circuit Court's findings were well founded and supported by substantial evidence, and as a result, its ruling should be upheld.

Before addressing Hampton's specific arguments, it should be noted that he raises a number of issues for the first time on appeal. However, in Mississippi issues not brought before the trial court are deemed waived, and may not be raised for the first time on appeal. Tate v. State, 912 So.2d 919, 928 (Miss. 2005).

A. The Circuit Court properly allowed Hampton to supplement the record.

As for Hampton's due process related arguments, they seem to be based purely on his dissatisfaction with the Circuit Court's ruling. The Due Process Clause does not ensure a particular outcome in a particular case. It simply guarantees an opportunity to be heard. Matthews v. Eldridge, 424 U.S. 319, 333 (1976). The record is clear in that Hampton was given the opportunity to explain his delay in requesting a hearing as well as any prejudice he suffered. After considering his arguments, the Circuit Court was not persuaded.

Hampton argues that he had the right to be physically present at the remand hearing and because he was not, his due process rights were violated. However, he cites no authority for this position, and in fact, no Mississippi court has ever held that such a right exists. While Mississippi has never addressed the issue directly, at least one court has expressly rejected the idea that the Due Process Clause mandates an incarcerated litigant's presence at a forfeiture hearing. See State v. Golston, 66 Ohio App.3d 423, 435 (1990).

Hampton's reliance on Robinson v. Hanrahan is misplaced. 409 U.S. 38 (1972). In Robinson, the Supreme Court held that the incarcerated litigant's due process rights were violated, not because the individual was not physically present at the hearing, but because he was not properly noticed despite the State's knowledge of his whereabouts. Robinson does not stand for the proposition that an incarcerated litigant has an absolute right to be physically present at a forfeiture hearing. Arguably, Robinson implicitly suggests that the opposite is true so long as the incarcerated party is properly noticed and, as quoted in Hampton's brief, given "an opportunity to present their objections." Robinson at 39-40. Hampton seems to suggest that one must be physically present in order to "present objections," however, such a leap in logic is not supported

by the case law. The Court's opinion says nothing of physical presence, and to suggest otherwise, is a mischaracterization of the holding. Moreover, Hampton was properly noticed and actually did participate and present his objections to the Circuit Court thus further rendering Robinson inapplicable to the case at bar. Hampton's contention that he was subjected to an "illegal hearing" based on his physical absence is wholly without merit.

Hampton's claim that he was entitled to an "evidentiary hearing" on remand is baseless. The Court remanded this case for the limited purpose of presenting "a record that would allow analysis...under the Barker standards." One 1970 Mercury Cougar, 992-993. The record reflects that the Circuit Court provided Hampton with ample opportunity to explain his three (3) year delay in requesting a hearing, and he was unable to do so. The Court, in no uncertain terms, explained that "Mr. Hampton is to make a record as to why he did not request a hearing for three years." (Tr. 5, lines 5-7) In response, Hampton contented that he requested "a speedy trial on December 7, 2000," which appears to be a reference to the document entitled "Replevin" filed by Hampton on December 17, 2000. (Tr. 18, lines 2-4) While this document was later interpreted to be Hampton's Answer to the Complaint for Forfeiture, it did not request a hearing on the matter, and Hampton never filed any such request until January 31, 2005. Hampton further attempted to justify his failure to request a hearing by saying, "It was not on me to exert my right to a speedy trial. It was my attorney's," implicitly conceding that no request for a hearing was ever made. (Tr. 18, lines 4-5).

Additionally, Hampton was given the opportunity to explain any prejudice he suffered as a result of the delay pursuant to Barker. Despite his insistence that he was prejudiced, Hampton never actually articulated actual prejudice. The record is void of anything which would indicate that Hampton suffered prejudice as a result of the delay. Without a showing of actual prejudice, delay may be considered harmless. One 1970 Mercury Cougar at 992. It must also be noted that

while Hampton acted *pro se*, there was an attorney present on Hampton's behalf to, according to Hampton, "represent my appearance in court." (Tr. 15, lines 14-16) With counsel present, Mr. Hampton could have called witnesses and introduced both documentary and testimonial evidence, but Hampton chose to rely on his own ability to make his case. Tunica County should not be forced to continue this litigation because Mr. Hampton did not adequately present his case when he was given every opportunity on July 15, 2010.

As evidenced by the record, the Circuit Court's findings on the issues of Hampton's delay in asserting his rights to a hearing as well as any prejudice suffered by him were proper.

B. Tunica County properly supplemented the record with regard to the delay in prosecuting the forfeiture action.

Pursuant to the Court's directive, Tunica County augmented the record regarding their reasons for reasonable delay in initiating the forfeiture action. As counsel explained on the record, Tunica County was judicially estopped from pursuing the forfeiture matter based on the Circuit Court's Order staying discovery until the conclusion of Hampton's pending federal criminal and civil actions. (Tr. 6, lines 17-22) The first time that Tunica County could have brought this matter before the Court was only after it received permission from the Circuit Court to conduct a hearing on the forfeiture petition. Hampton was sentenced to federal prison on July 11, 2001, however, his federal civil case was not dismissed until August 24, 2009. (R.E. 74) In December, 2004, Tunica County sought to lift the stay and proceed with the hearing. Counsel further explained that the motion was made in 2004 because it had become evident that Hampton would be involved in protracted federal civil litigation for some time. (Tr. 7, lines 10-16). Due to the fact that Mr. Hampton's federal civil case was stalling and was not going to be resolved at anytime soon, Tunica County made an *ore tenus* motion to proceed with the forfeiture hearing, and that permission was granted by this Court. Tunica County then immediately filed a Notice

of Hearing setting the hearing for February 24, 2005. By certificate of service thereon, Tunica County gave Mr. Hampton adequate notice of the hearing. (R.E. 75, 76)

Once relief was granted by allowing the forfeiture hearing to take place, this matter was promptly adjudicated by this Court. Mr. Hampton did not assert his rights to a speedy trial until January 31, 2005 which was over three (3) years after the filing of the Petition to Forfeit, and once asserted, this Court held the hearing on this matter less than a month later, with Mr. Hampton choosing not to participate. (R.E. 7).

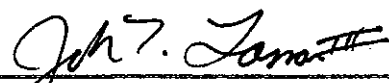
For the foregoing reasons, Tunica County has accounted for its reasonable delay in prosecuting the forfeiture action pursuant to the Court's request. As a result, the Circuit Court's findings were based on substantial, credible evidence, and its decision should be affirmed.

CONCLUSION

Based on the foregoing reasons, Tunica County respectfully requests the Court to affirm the Circuit Court's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John T. Lamar, III., do hereby certify that I have this day forwarded, by United States mail, postage prepaid, a true and correct copy of the above and foregoing Appellee's Brief to the following:

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Honorable Johnny Walls
Circuit Court Judge
P.O. Drawer 548

Cleveland, MS 38732

(elected in place of the Honorable Kenneth L. Thomas who served as the Trial Court Judge)

This the 13 day of December, 2011.


JOHN T. LAMAR, III
Certifying Attorney