IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-3558
Summary Calendar

WILLIAM FONTANILLE,

Petitioner-Appellant,

versus

STEVE RADER, Warden,
Louisiana State Correctional & Industrial
School and RICHARD P. IEYOUB,
Attorney General, State of Louisiana,

Respondents-Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana
(CA 92 CV 688 "D")

(June 28, 1993)

Before JOLLY, BARKSDALE, and E. GARZA, Circuit Judges.

PER CURIAM:*

William Fontanille, who now seeks federal habeas relief, was convicted of manslaughter in Louisiana state court. His conviction was affirmed in State v. Myers, 584 So.2d 242, 246 (La. Ct. App.), cert. denied, 588 So.2d 105 (La. 1991), cert. denied, 112 S.Ct. 1945 (1992). The facts relevant to his petition for federal habeas

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

corpus relief are recounted in Fontanille's unsuccessful appeal of his state conviction. See Myers, 584 So.2d at 245-47 & 249. We will not repeat them here.

Fontanille applied for federal habeas corpus relief on February 28, 1992, arguing: (1) that he was denied his right to a speedy trial, (2) that he was improperly denied a motion to sever, (3) that the trial court erred in certain evidentiary rulings, and (4) that there was insufficient evidence to support his conviction. The district court dismissed the petition with prejudice. Fontanille now appeals the decision of the district court and identifies 19 issues for our review. Fontanille has, however, briefed only two of these issues: whether he was denied his right to a speedy trial and whether there was sufficient evidence to support his conviction. The issues Fontanille stated but did not brief need not be considered by this court. Hulsey v. Texas, 929 F.2d 168, 172 (5th Cir. 1991).

I

Fontanille first argues that his right to a speedy trial under the Sixth Amendment was violated. See Barker v. Wingo, 407 U.S. 514, 530 (1972).

Assuming there was a significant delay and that Fontanille adequately asserted his rights to a speedy trial, we turn to consider, in the Wingo analysis, the reasons for the delay. The Louisiana state appellate court characterized the reasons for delay as follows:

> [T]he reason for the initial delay is that a mistrial was declared in the first trial thereby necessitating a second trial. Since the second indictment defendant has filed numerous pre-trial motions in addition to the motions filed by co-defendant. Also defendant's writ application in this Court from the denial of the motion to quash upset the November 6, 1989 trial date thus causing further delay.

Myers, 584 So.2d at 250-51.

Fontanille was indicted for conspiracy and second-degree murder on October 8, 1987. The state filed for a motion for continuance to obtain a blood-spatter expert on January 29, 1988. The court granted the motion, and the resulting continuance delayed the trial until May 4, 1988. The state papers indicate that Fontanille himself also filed a motion for continuance on April 26, 1988. On October 5, 1988, after a hearing on the conspiracy issue, the trial court found that the state had not established a *prima facie* case of conspiracy. The state declared that it was ready to proceed to trial on the murder charge, but Fontanille's counsel stated that he would not be prepared to try the murder charge until after January 1, 1989. The state then sought writs of mandamus, prohibition, and certiorari on the trial judge's ruling on the conspiracy issue. No other substantive matters were handled by the trial court until the application for writs was resolved in June 1989.

The trial was then set for November, but the defendants applied for writs on another issue, and a state court of appeal stayed the matter on November 3, 1989. The Louisiana Supreme Court

denied the application for writs on January 26, 1990, and the trial began two months later, on March 26, 1990.

The delay caused by applications for writs and the time necessary for the state courts to act on them is not chargeable to the state. Hill v. Wainwright, 617 F.2d 375, 379 (5th Cir. 1980). The delay of the trial from May to October 1988, which was responsive to Fontanille's own motion for continuance, also may not be charged to the state. Even if this delay is attributed solely to the State's motion for continuance to obtain a blood-spatter expert, such a delay was reasonable, considering the complex nature of the evidence in the case. See Gray v. King, 724 F.2d 1199, 1202 (5th Cir.), cert. denied, 469 U.S. 980 (1984). The delay from October 5, 1988 to January 1989, occurred because Fontanille's counsel was not prepared to try the murder charge; this delay obviously cannot be attributed to the state.

The acceptable length of delay varies considerably, depending on the particular circumstances of each case, the manner of proof, and the gravity of the crime. Id. Although there were numerous delays caused by both the state and Fontanille, the record does not indicate that the State attempted any deliberate delaying tactics in order to hamper the defense. Barker, 407 U.S. at 531. In sum, this factor in the Wingo analysis does not weigh heavily in Fontanille's favor.

We must next consider whether the defendant was prejudiced by the delay of his trial. For the purposes of the Barker balancing

process, prejudice must be assessed in the light of the interests of defendants that the speedy-trial right was designed to protect. The Supreme Court "has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired." Barker, 407 U.S. at 532 (footnote omitted). Of these, the third one is the most critical, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. Id. Fontanille bears the burden of showing prejudice. Gray, 724 F.2d at 1204.

To support his claim of prejudice, Fontanille asserts that he was incarcerated for 14 months of the six-year period of delay. He received credit, however, for his time served when he was sentenced. The credit for time served mitigates any oppressive effects of the 14 months of incarceration. Gray, 724 F.2d at 1204. Fontanille has alleged no other specific facts indicating that the delay impaired his defense. Thus, he fails to meet his burden of showing he was prejudiced by the delay of his trial.

In sum, Fontanille has not shown that the Barker balancing process supports his position; he has not shown that his federal constitutional right to a speedy trial was violated.

II

Fontanille additionally challenges the sufficiency of the evidence to support his conviction for manslaughter. Insufficiency of the evidence can support a claim for federal habeas relief only

where the evidence, viewed in the light most favorable to the prosecution, is such that no rational finder of fact could have found the essential elements of the crime beyond a reasonable doubt. Young v. Guste, 849 F.2d 970, 972 (5th Cir. 1988) (citing Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). Where, as here, a state appellate court has reviewed the issue of the sufficiency of the evidence, that court's determination is entitled to great weight in a federal habeas review. Porretto v. Stalder, 834 F.2d 461, 467 (5th Cir. 1987).

Because Fontanille was convicted of a violation of state law, the substantive law of Louisiana defines the elements of the crime that must be proved. Young, 849 F.2d at 972. Under Louisiana law, a jury's verdict of guilty for an uncharged crime will be upheld if the verdict is one that is for a crime provided by statute, that is responsive to the case before it, and that is supported by evidence sufficient for a conviction of the charged offense. State v. Schrader, 518 So.2d 1024, 1034 (La. 1988), cert. denied, Schrader v. Whitley, 498 U.S. 903 (1990). This rule means that in this case, the jury could have returned the verdict of "guilty of manslaughter," not only on the grounds that the evidence proved the elements of manslaughter, but also on the grounds that the evidence proved the elements of second-degree murder and the jury wished to compromise. Id. We find that the evidence is sufficient to support a verdict for the charged offense of second-degree murder,

and consequently it is unnecessary to analyze the evidence under the lesser-included offense of manslaughter.

Under Louisiana law, second-degree murder is the killing of a human being when the offender has a specific intent to kill or to inflict great bodily harm. La. Rev. Stat. Ann. 14:30.1. Specific criminal intent is that state of mind that exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act. La. Rev. Stat. Ann. 14:10. Parties to crimes are either principals or accessories after the fact. La. Rev. Stat. Ann. 14:23. Pursuant to La. Rev. Stat. Ann. 14:24: "All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals."

Fontanille argues that there was no evidence that he had the specific intent to kill or inflict great bodily harm. We find, to the contrary, that the jury was presented with ample evidence from which it could conclude that Fontanille had the requisite specific intent.

The pathologist testified that Janet Myers suffered at least eight severe blows with a blunt object; that one of the blows was to the back of her head and the seven others were to her face and the side of her head. He also testified that it was not possible to determine which blow was struck first, but that the first blow

likely rendered her unconscious and one or another of the blows surely did. The state appellate court found that the severity of the bludgeoning indicated a specific intent to kill or inflict great bodily harm. See Myers, 584 So.2d at 249-50.

The state called an expert in serology, bloodstain pattern interpretation, crime scene reconstruction, and forensic science. The expert explained various types of bloodstains, including impact blood spatter, which indicates blood traveling under force horizontally or upward, rather than flowing or dripping downward. An examination of Fontanille's blue jeans showed approximately eight hundred tiny spots from impact blood spattering. The expert examined about thirty of the spots, and eighteen of those thirty were definitely Janet Myers's blood type. Some of the spots indicated that the blood spattered upward onto the jeans, and some of the spots were on top of others. Fontanille's cap, sweater, and shoes also bore bloodstains and spatters that were or might have been from Janet Myers. The expert concluded that Fontanille had to have been close to Janet Myers at the time the blood spattered from her.

Fontanille was in possession of the baseball bat on the night of the murder, and he parked his car several houses away from the Myerses' home. Myers, 584 So.2d at 249.

Viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found that Fontanille was present during and was involved in the killing of

Janet Myers. The manner in which she was killed showed a specific intent to kill or cause great bodily harm. The evidence would support a finding that Fontanille was guilty of second-degree murder; therefore, under Louisiana state law, the jury could properly return a verdict of "guilty of manslaughter." La. Rev. Stat. Ann. 14:30.1.

In conclusion, the defendant's constitutional right to a speedy trial was not violated. Additionally, the evidence presented to the jury was more than sufficient to sustain a verdict of manslaughter. The decision of the district court dismissing Fontanille's application for a writ of habeas corpus with prejudice is therefore

A F F I R M E D.