

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

STATE OF FLORIDA,

Appellant,

v.

Case No. 5D17-3416

KURT ANDREW GRAMMIG,

Appellee.

_____ /

Opinion filed April 12, 2019

Appeal from the Circuit Court
for Brevard County,
Jeffrey Mahl, Judge.

Ashley Moody, Attorney General,
Tallahassee, and Kellie A. Nielan, Assistant
Attorney General, Daytona Beach, for
Appellant.

Brandon K. Breslow, James Felman, and
Katherine Earle Yanes, of Kynes, Markman
& Felman, P.A., Tampa, for Appellee.

PER CURIAM.

The State appeals the trial court's order granting the defendant's motion to dismiss on statute of limitations grounds. We reverse and remand for further proceedings.

In May of 1986, the State filed an information charging the defendant with sexual battery, aiding and abetting sexual battery, and kidnapping. An arrest capias was issued, but the State did not serve it on the defendant until March of 2012 when he turned himself

in to Minnesota law enforcement. He subsequently filed a motion to dismiss arguing that the statute of limitations had expired. After a lengthy evidentiary hearing, the trial court granted his motion and this appeal timely followed.

We consider whether prosecution of the defendant commenced after the expiration of the statute of limitations due to an unreasonable delay by the State in serving the *capias*. See § 775.15(5), Fla. Stat. (1985).¹ Based upon the totality of the circumstances, we disagree with the trial court's finding that the delay by the State was unreasonable.

Although, arguably, law enforcement could have conducted a more thorough investigation, there was testimony that they made several diligent attempts to locate the defendant. Further, there was uncontradicted evidence that the defendant fled from the state and attempted to avoid prosecution with the use of multiple aliases. Therefore, in considering both the efforts exercised by the State and the defendant's attempts to avoid prosecution, we find that the State met its burden to prove that it served the defendant without unreasonable delay. See *Goings v. State*, 76 So. 3d 975 (Fla. 1st DCA 2011).

REVERSED and REMANDED for further proceedings.

BERGER, EISNAUGLE, and GROSSHANS, JJ., concur.

¹ Section 775.15(5), Florida Statutes (1985), provides, in part:

A prosecution is commenced when either an indictment or information is filed, provided the *capias*, summons, or other process issued on such indictment or information is executed without unreasonable delay. In determining what is reasonable, inability to locate the defendant after diligent search or the defendant's absence from the state shall be considered.