

**IN THE SUPERIOR COURT OF MORGAN COUNTY
STATE OF GEORGIA**

STATE OF GEORGIA,

v.,

Defendant.

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Case No. _____ NUMBER

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**PLEA IN BAR AND MOTION TO DISMISS BASED UPON A VIOLATION OF
THE DEFENDANT’S RIGHT TO A SPEEDY TRIAL**

Comes Now, the Defendant in the above-styled case, by and through her counsel of record, and respectfully moves that the Court enter an order dismissing the charges of all charges she faces in this case based upon a violation of the Defendant’s right to a speedy trial under the Sixth Amendment to the Constitution of the United States and Art. I, Sec. I, Par. XI (a) of the 1983 Georgia Constitution. In furtherance of this motion, the Defendant respectfully shows this Honorable Court the following:

1.

The Defendant was arrested on December 12, 2012.

2.

Following her arrest on December 12, 2012, the Defendant received three (3) uniform traffic citations charging her with “DUI/ALCOHOL/LESS SAFE” (Citation No. _____), driving while license suspended (Citation No. _____), and failure to maintain lane (Citation No. _____). (See, Exhibit A).

3.

At the time of her arrest, the Defendant did not receive any notice that she was being charged with driving under the influence of drugs or driving while under the combined influence of drugs and alcohol. (See, Exhibit A).

4.

The Defendant was summoned to appear in the Franklin County Probate Court on February 28, 2013. She appeared pro se and demanded a jury trial on that date. (See, Exhibit A).

5.

On August 21, 2013, the State filed an accusation charging the Defendant with driving while under the combined influence of benzoylecgonine, methadone, and alcohol to the extent that it was less safe for her to drive. (See, Exhibit B).

6.

By certified mail, the Defendant sent a letter to the Georgia Bureau of Investigation – Division of Forensic Sciences requesting an independent test of the samples she submitted. That request was received by the Georgia Bureau of Investigation – Division of Forensic Sciences on October 7, 2013. (See, Exhibit C).

7.

On July 15, 2014, this Honorable Court entered an Order requiring the facilitation of independent testing of any samples still in existence and being held by the Georgia Bureau of Investigation – Division of Forensic Sciences. (See, Exhibit D).

8.

Subsequent to the entry of that Order by the Court, it was disclosed that, despite Ms. _____'s letter received on October 7, 2013, the Defendant's blood samples were destroyed by the Georgia Bureau of Investigation – Division of Forensic Sciences.

ARGUMENT AND CITATION OF AUTHORITY

Pursuant to *Barker v. Wingo*, 407 U.S. 514, 530-533(IV), 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), and *Doggett v. United States*, 505 U.S. 647, 651-654(II), 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992), the Court should employ a two-stage analysis in

evaluating a defendant's plea in bar based upon an alleged violation of the Sixth Amendment right to a speedy trial.

In the first stage of the analysis, the court must determine whether the pretrial delay is sufficiently long to be considered presumptively prejudicial. The pretrial delay is measured from the accused's arrest, indictment, or other formal accusation [whichever comes first-see *Boseman v. State*] to the trial or, if the accused files a motion to dismiss the indictment, until the trial court denies the motion. If the delay has passed the point of presumptive prejudice, the court must proceed to the second step of the Barker-Doggett analysis, which requires the application of a delicate, context-sensitive, four-factor balancing test to determine whether the accused has been deprived of the right to a speedy trial.

Grizzard, 688 S.E.2d at 405, quoting *West v. State*, 295 Ga.App. 15, 16, 670 S.E.2d 833 (2008)(citations omitted).

The four factors that form the core of the constitutional speedy trial balancing test are: (1) whether the delay before trial was uncommonly long, (2) whether the government or the criminal defendant is more to blame for that delay, (3) whether, in due course, the defendant asserted the right to a speedy trial, and (4) whether he or she suffered prejudice as the delay's result. None of the Barker-Doggett factors is either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. The four factors emphasized in Barker and Doggett do not constitute an exhaustive list; they have no talismanic qualities and must be considered together with such other circumstances as may be relevant given the animating principles behind the speedy trial guarantee. Thus, the second stage of the constitutional speedy trial analysis requires courts to engage in a difficult and sensitive balancing process and necessarily compels them to approach speedy trial cases on an ad hoc basis.

Grizzard, 688 S.E.2d at 405-406 (citations and punctuation omitted), quoting *West*, 295 Ga.App. at 16-17.

1. Length of delay

Approximately 2 years and 2 months elapsed from the time of the Defendant's December 12, 2012 arrest until the present date. "[A]ny delay approaching a year raises a threshold presumption of prejudice." (Citation omitted.) *Id.* at 3; see also, *State v. Reid*, 298 Ga. App. 235, 238, 679 S.E.2d

802 (2009)(“[a]s the delay approaches one year[,] it generally is presumptively prejudicial”) (punctuation omitted).

2. Reasons for delay

Approximately three (3) months delay existed between the Defendant's date of arrest _____ date in the Franklin County Probate Court. In the Probate Court, the Defendant demanded a jury, and a delay of nearly six (6) months existed between the date the Defendant demanded a jury trial and the filing of an accusation by the District Attorney's office. Subsequent to the filing of the accusation by the District Attorney's officer, the Defendant sought an independent test of her blood samples. The Georgia Bureau of Investigation – Division of Forensic Sciences responded by a letter dated November 18, 2013 that “we will need a copy of the court order or the written authorization from the prosecuting agency, prior to the release of the specimen(s).” (Emphasis supplied). (See Exhibit E). This Honorable Court held a hearing on July 11, 2014 for the State to determine whether the Defendant's blood samples were still in existence, and it was subsequently determined that they were not.

“[T]he weight we assign to official negligence compounds over time as the presumption of evidentiary prejudice grows. Thus, our toleration of such negligence varies inversely with its protractedness.” *Grizzard*, 688 S.E.2d at 406(punctuation omitted), quoting *State v. Sutton*, 273 Ga. App. 84, 86, 614 S.E.2d 206 (2005).

The delay in this case is most likely due to negligence on behalf of the State in filing an accusation and in the State's law enforcement agency in facilitating the preservation and independent testing of the Defendant's blood samples. This factor should weigh against the State.

3. Assertion of the right

The Defendant demanded a jury trial in the Probate Court of Franklin County on or about February 28, 2013. The Franklin County District Attorney's office is the prosecuting agency within the Probate Court.

4. Prejudice to the Defendant

At no point in time prior to the filing of the accusation in the Franklin County Superior Court was the Defendant ever put on notice that she was being charged with driving under the influence of drugs or driving while under the combined influence of drugs and alcohol. The State's filing of an accusation on August 21, 2013, charging the Defendant with driving while under the combined influence of benzoylecgonine, methadone, and alcohol to the extent that it was less safe for her to drive triggered her request for an independent test. The delay in filing an accusation putting the Defendant on notice that she was being charged with driving while under the combined influence of drugs and alcohol while the law enforcement arm of the State destroys the blood samples that are the basis for this charge causes irreparable harm to the development of possible defenses for the Defendant.

"In evaluating the final Barker-Doggett factor, 'we consider three interests which the speedy trial right is designed to protect: preventing oppressive pretrial incarceration, minimizing anxiety and concern of the defendant, and, *most importantly, limiting the possibility that the defense will be impaired.*'" Grizzard, 688 S.E.2d at 407 (punctuation omitted), quoting *Nelloms*, 274 Ga. at 181, 549 S.E.2d 381.

5. Balancing the factors

The only factor possibly weighing against the Defendant is her failure to assert his right to a speedy trial sooner. "Yet the Supreme Court in *Barker* was quite clear that '[a] defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process. Moreover, ... society has a particular interest in bringing swift prosecutions, and society's representatives are the ones who should protect that interest.'" Grizzard, 688 S.E.2d at 408, quoting *Barker*, 407 U.S. at 527(III), 92 S.Ct. 2182.

Thus, Barker soundly rejected the concept ‘that a defendant who fails to demand a speedy trial forever waives his right.’ The Supreme Court reasoned that ‘presuming waiver of a fundamental right from inaction is inconsistent with this Court’s pronouncements on waiver of constitutional rights,’ which requires ‘an intentional relinquishment or abandonment of a known right or privilege,’ indulging ‘every reasonable presumption against waiver.’

Grizzard, 688 S.E.2d at 408 (citations punctuation omitted), quoting Barker, 407 U.S. at 525(III), 92 S.Ct. 2182.

Further, prejudice to the Defendant, which is the most significant factor in the speedy trial analysis under *Grizzard*, weighs heavily in favor of the Defendant. The delay in filing an accusation putting the Defendant on notice that she was being charged with driving while under the combined influence of drugs and alcohol while the law enforcement arm of the State destroys the blood samples that are the basis for this charge severely impaired the ability of the Defendant to develop possible defenses and rebuttal evidence which is essential to overcoming the State’s reliance upon purported scientific tests.

WHEREFORE, the Defendant respectfully prays that this Honorable Court dismiss all charges she faces in this case based upon the violation of the Defendant’s right to a speedy trial under the Sixth Amendment to the Constitution of the United States and Art. I, Sec. I, Par. XI (a) of the 1983 Georgia Constitution.

Respectfully submitted, this 23rd day of February, 2015.

D. BENJAMIN SESSIONS
State Bar No. 141280
Attorney for Defendant

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I hereby certify that I have served the foregoing pleading in the above-reference case to the Franklin County District Attorney's Office by e-mail and by depositing same in the U.S. Mail with adequate affixed thereon to ensure deliver of same.

Respectfully submitted, this 23rd day of February, 2015.

D. BENJAMIN SESSIONS
State Bar No. 141280
Attorney for Defendant