

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

STATE OF GEORGIA,	:	
	:	
v.,	:	Case No. _____ NUMBER
	:	
_____	:	
	:	
<i>Defendant.</i>	:	

ORDER GRANTING THE DEFENDANT’S MOTION FOR DISCHARGE AND ACQUITTAL

The Defendant in the above-styled case filed a Plea in Bar and Motion to Dismiss Based Upon a Violation of the Defendant’s Right to a Speedy Trial on April 4, 2014. The State filed a response to the Defendant’s motion on April 15, 2014. A hearing upon the Defendant’s motion was held on June 2, 2014. Both the State and the Defendant were represented at the hearing. Having considered the applicable law and facts of this case, this Court hereby GRANTS the Defendant’s motion for discharge and acquittal based upon the violation of the Defendant’s constitutional right to a speedy trial. In support of this ruling, the Court finds as follows:

The Defendant was arrested for DUI, speeding, and possession of marijuana on May 31, 2011. Three days prior to the expiration of statute of limitations, on May 28, 2013, the Fulton County Solicitor General filed in the Fulton County State Court Clerk’s office an accusation against the Defendant. The accusation included four separate counts: driving under the influence of a drug, reckless driving, speeding, and possession of marijuana. Approximately eighteen (18) months passed between the date that the Defendant’s bound over from the City of Atlanta Municipal Court and the date on which an accusation was filed by the Fulton County Solicitor’s Office. The Defendant was scheduled for an arraignment on October 10, 2013, and he waived formal arraignment upon the charges and entered a not guilty plea. This case was scheduled to appear on the Court’s December 2013 trial calendar, but the State sought and was granted a continuance from that calendar in order to have marijuana tested.

This case was next scheduled for trial on March 24, 2014. Prior to trial in pre-trial motions, it was disclosed that only the urine sample the Defendant submitted following his arrest was tested by the GBI’s Division of Forensic Sciences. The Defendant’s blood

samples were not tested by the GBI, and at the hearing, Ms. Denise _____, a toxicologist at the GBI, testified that the blood samples had been destroyed. No notice was provided to the Defendant prior to the destruction of the blood samples.

The United States Supreme Court's decision in *Barker v. Wingo*, 407 U.S. 514 (1972), is the controlling authority when considering whether a defendant has been denied his constitutional right to a speedy trial. Under *Barker* and its progeny, the court must examine the following factors and engage in a balancing test of the factors: (1) the length of the delay, (2) the reasons for the delay, (3) the defendant's assertion of the right to speedy trial, and (4) demonstrated prejudice to the Defendant.

Length of Delay. The constitutional right to a speedy trial attaches on the date of the arrest or when formal charges are initiated, whichever first occurs. *State v. White*, 282 Ga. 859, 861 (2008). As the delay approaches one year, it generally is "presumptively prejudicial." The length of time between the Defendant's arrest and the hearing on the Defendant plea in bar and motion to dismiss is approximately 3 years and 2 days, which is sufficiently long to be presumptively prejudicial. *Ruffin v. State*, 663 S.E.2d 189 (Ga. 2008)(two years, two months, and twenty-three days is presumptively prejudicial); *Perry v. _____*, 322 S.E.2d 273 (Ga. 1984)(delay of more than two year is "deplorable"). Thus, the Court weighs this factor heavily against the State.

Reason for the delay. The Defendant was arrested for DUI, speeding, and possession of marijuana on May 31, 2011. Three days prior to the expiration of statute of limitations, on May 28, 2013, the Fulton County Solicitor General filed in the Fulton County State Court Clerk's office an accusation against the Defendant. The accusation included four separate counts. Among the four counts were charges of driving under the influence of a drug, reckless driving, speeding, and possession of marijuana. Approximately eighteen (18) months passed between the date that the Defendant's case was bound over from the City of Atlanta Municipal Court and the date on which an accusation was filed by the Fulton County Solicitor's Office. No explanation was offered for the eighteen (18) months that elapsed between the date of the bind over and the filing of the accusation. Additionally, the State sought and was granted a continuance from the first

trial calendar that this case appeared upon in order to have marijuana tested. There was no delay that was attributable to the Defendant in this case.

“Where no reason appears for the delay, we must treat the delay as caused by the negligence of the State in bringing the case to trial.” *Brannen v. State*, 553 S.E.2d 813 (Ga. 2001). To the extent the delay is unexplained, the delay should be construed against the State. *Jernigan v. State*, 239 Ga. App. 65, 67 (1999); see also, *Ruffin v. State*, 284 Ga. 52, 60-61 (2008); *Goddard v. State*, 2012 Fulton County D.Rep. 1718 (where the Court recognizes that the “government” includes all state actors, even trial and appellate court judges). Because of the unexplained delay and the State’s request for a continuance in order to test marijuana, the reason for the delay weighs heavily against the State.

The Defendant’s Assertion of the Right to Speedy Trial. The Defendant moved the Court to grant his plea in bar after he learned that the blood sample evidence was destroyed without being tested. The Defendant did not initially move the Court for a speedy trial; however, when the prejudice to his case became known to him, he asserted the motion. “A defendant who fails to demand a speedy trial does not forever waive his right.” *Teasley v. State*, 704 S.E.2d 248, 256 (Ga. App. 2010); citing, *Barker*, 407 U.S. at 528, 92 S.Ct. 2182.

Thus, *Barker* Court 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.

“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.” *Barker*, 407 U.S. at 527, 92 S.Ct. 2182. Given that the Defendant asserted his right to a speedy trial when the prejudice to the defense that resulted from the destruction of the blood samples became known to him, this factor weighs slightly against the Defendant.

Demonstrated Prejudice to the Defendant. The Defendant was not provided any notice that his blood sample was going to be destroyed by the State prior to any testing. The delay in filing the accusation against the Defendant and seeking a continuance to

obtain a test of alleged marijuana resulted in the Defendant not having any knowledge of the lack of testing of his blood until March 24, 2014. It is undisputed that the blood sample that was taken from the Defendant was the best evidence of whether psychoactive metabolites that may have caused impairment of the Defendant's mental and physical faculties were present in the Defendant. The destruction of the blood sample significantly impaired the Defendant's ability to check and possibly rebut the opinions of Ms. _____ and the arresting officer in this case. "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. The Court finds that the delay in bring this case to trial significantly prejudiced the Defendant, and this factor weighs heavily against the State.

5. Balancing the factors

Based upon a consideration of the evidence in this case and weighing of the *Barker v. Wingo* factors, the Court finds that the Defendant's constitutional right to a speedy trial under the Sixth Amendment to the U.S. Constitution, as well as Art. I, Sec. I, Par. I and XI of the Georgia Constitution, has been violated. The only factor weighing slightly against the Defendant is his failure to assert his right to a speedy trial sooner. The 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 failure of the State and its agent, the GBI Crime Lab, to test the Defendant's blood 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.

Accordingly, the Defendant is hereby DISCHARGED and ACQUITTED of all charges pending against him in this case.

SO ORDERED, this ____ day of June, 2014.

The Honorable Susan E. Edlein
Fulton County State Court

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