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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3054-16T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

VANESSA NORSWORTHY,

Defendant-Appellant.

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Argued February 6, 2018 – Decided May 2, 2018

Before Judges Fasciale and Moynihan.

On appeal from Superior Court of New Jersey,  
Law Division, Morris County, Municipal Appeal  
No. 16-023.

John Menzel argued the cause for appellant.

Paula Jordao, Assistant Prosecutor, argued the  
cause for respondent (Fredric M. Knapp, Morris  
County Prosecutor, attorney; Paula Jordao, on  
the brief).

PER CURIAM

Defendant appeals from her de novo Law Division convictions  
after pleading guilty to driving while intoxicated, N.J.S.A. 39:4-

50, and possession of an open container in a motor vehicle, N.J.S.A. 39:4-51b. She argues:

POINT I

BOTH THE STATE AND MUNICIPAL COURT DENIED DEFENDANT A SPEEDY TRIAL BY FAILING TO BRING HER TO COURT, PARTICULARLY DURING A 313-DAY PERIOD OF INCARCERATION, THUS CAUSING DELAY SO EXCESSIVE AS TO WARRANT DISMISSAL OF THE COMPLAINTS.

A. THE EXTRAORDINARILY LONG DELAY HERE WEIGHS HEAVILY IN FINDING A VIOLATION OF DEFENDANT'S RIGHT TO A SPEEDY TRIAL.

B. DELAYS IN THIS CASE ARE PRINCIPALLY ATTRIBUTABLE TO THE STATE AND VIOLATED DEFENDANT'S RIGHT TO A SPEEDY TRIAL.

C. DEFENDANT DID NOT ACQUIESCE TO DELAY BUT RATHER REPEATEDLY ASSERTED HER RIGHT TO A SPEEDY TRIAL.

D. DEFENDANT HAS BEEN PREJUDICED BY DELAY, GIVEN THE ANXIETY SUFFERED IN WAITING FOR DISPOSITION OF THIS MATTER.

We disagree with defendant's arguments and affirm.

Defendant was charged on February 12, 2013, with the offenses to which she pleaded guilty.<sup>1</sup> Her motion to dismiss the charges on speedy trial grounds was originally scheduled in the municipal court on September 29, 2014. Defendant did not appear because she had another court proceeding in Pennsylvania. The matter was

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<sup>1</sup> Defendant was also charged with numerous other motor vehicle violations that were dismissed as part of a plea agreement.

adjourned until October 27, 2014, on which date the judge denied defendant's speedy trial motion and accepted her guilty plea.<sup>2</sup>

"The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and imposed on the states by the Due Process Clause of the Fourteenth Amendment." State v. Tsetsekas, 411 N.J. Super. 1, 8 (App. Div. 2009). "The constitutional right . . . attaches upon defendant's arrest." Ibid. (alteration in original) (quoting State v. Fulford, 349 N.J. Super. 183, 190 (App. Div. 2002)). Since it is the State's duty to promptly bring a case to trial "[a]s a matter of fundamental fairness," the State must avoid "excessive delay in completing a prosecution" or risk violating "defendant's constitutional right to speedy trial." Ibid.

The four-part test to determine when a violation of a defendant's speedy-trial rights contravenes due process – announced in Barker v. Winco, 407 U.S. 514, 530-33 (1972) and subsequently adopted by our Supreme Court in State v. Szima, 70 N.J. 196, 200-01 (1976) – requires "[c]ourts [to] consider and balance the '[l]ength of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.'" Tsetsekas, 411 N.J. Super. at 8 (third alteration

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<sup>2</sup> The Law Division judge denied defendant's municipal appeal on January 25, 2017.

in original) (quoting Barker, 407 U.S. at 530). "No single factor is a necessary or sufficient condition to the finding of a deprivation of the right to a speedy trial." Id. at 10. Courts are required to analyze each interrelated factor "in light of the relevant circumstances of each particular case." Ibid.

"These four factors are . . . applied when [a] defendant asserts a speedy trial claim arising from delay in a municipal court drunk driving prosecution." Fulford, 349 N.J. Super. at 189; see, e.g., Tsetsekas, 411 N.J. Super. at 8. We will not overturn a trial judge's factual determination whether a defendant was deprived of due process on speedy-trial grounds unless the judge's ruling was clearly erroneous. State v. Merlino, 153 N.J. Super. 12, 17 (App. Div. 1977).

Our judiciary "is, as a matter of policy, committed to the quick and thorough resolution of DWI cases." Tsetsekas, 411 N.J. Super. at 11 (quoting State v. Farrell, 320 N.J. Super. 425, 446 (App. Div. 1999)). To that end, "[i]n 1984, Chief Justice Wilentz issued a directive, later echoed in Municipal Court Bulletin letters from the Administrative Office of the Courts, that municipal courts should attempt to dispose of DWI cases within sixty days." Ibid. (quoting Farrell, 320 N.J. Super. at 446-47).

Although we have not suggested that "any delay beyond the sixty-day goal is excessive," as "[t]here is no set length of time

that fixes the point at which delay is excessive," ibid., the delay in both the commencement and final adjudication of this case was certainly inordinate, see id. at 11-12 (holding a delay of 344 days excessive); Farrell, 320 N.J. Super. at 428 (holding a delay between summons and trial completion of 663 days to be inexcusably extensive).

As to the first Barker factor, the Law Division judge recognized six hundred and twenty-two days elapsed between arrest and disposition. Although his finding that the municipal court and prosecutor "were diligent in their attempts to proceed to trial" pertains to the second Barker factor, he correctly stated that the "relatively lengthy period of time . . . [had to] be viewed in the context" of the other factors.

"Barker's second prong examines the length of a delay in light of the culpability of the parties." Tsetsekas, 411 N.J. Super. at 12. "[D]ifferent weights should be assigned to different reasons" proffered to justify a delay. Barker, 407 U.S. at 531. Purposeful delay tactics weigh heavily against the State. Tsetsekas, 411 N.J. Super. at 12 (citing Barker, 407 U.S. at 531). "A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the

defendant." Barker, 407 U.S. at 531. "[A] valid reason, such as a missing witness, should serve to justify appropriate delay." Ibid. And, "[d]elay caused or requested by the defendant is not considered to weigh in favor of finding a speedy trial violation." Farrell, 320 N.J. Super. at 446.

Although the record does not present us with a complete history, we discern defendant, following her arrest for this offense, was incarcerated on unrelated charges during the periods: February 13, 2013 to March 8, 2013 in Somerset County; April 9, 2013 to May 29, 2013 in Somerset County; May 29, 2013 to June 26, 2013 in Sussex County;<sup>3</sup> June 26, 2013 to July 2, 2013 in Montgomery County, Pennsylvania; August 4, 2013 to August 14, 2013<sup>4</sup> in Somerset County; and August 28, 2013 to June 30, 2014 in Somerset County.

On two dates when defendant was incarcerated – February 20, 2013 and August 28, 2013 – she failed to appear for scheduled court hearings. We cannot attribute those delays to the State

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<sup>3</sup> The State's brief indicates defendant was incarcerated in Sussex County on May 29 but released from Somerset County on June 26. Based on our review of the New Jersey County Correction Information System Inmate Lookup List appended to the State's brief, we believe defendant was incarcerated in Sussex County.

<sup>4</sup> The State's brief sets this date as August 24. Again, our review of the Inmate Lookup List and defendant's brief lead us to believe the correct date is August 14.

because there is nothing in the record to show that the court or the prosecutor had prior notice she was incarcerated so as to impose an obligation to secure her appearance.

During defendant's last period of incarceration beginning August 28, 2013, the municipal court made numerous attempts to secure defendant's presence in court. A case management conference was held in municipal court on August 28, 2013 and, as per defendant's brief, an order to produce issued.<sup>5</sup> On September 4, 2013, the municipal court requested the Law Division to issue an order compelling the Somerset County jail to produce defendant for a September 25 court hearing; that order was reportedly retracted by a Law Division judge.<sup>6</sup> The municipal court sent another order on September 12, 2013 to produce defendant. During the October 27, 2014 speedy trial motion in municipal court, defendant's counsel argued that the municipal police department was willing to transport defendant from the Somerset County jail during her last period of incarceration, but the jail "would not release her and would not allow her to come and answer for those charges."

The Law Division judge acknowledged defendant's claim "that the Somerset County Sheriff's Office was a significant cause of

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<sup>5</sup> We were not provided with a copy of a transcript for that date.

<sup>6</sup> We did not receive a copy of that order. Nor do we perceive from the record the reason the order was retracted.

the delays," but concluded the delays – that he found "attributable to the State" – did "not weigh heavily against the State" because

nothing indicates, and the [d]efendant does not assert, that the delays were the result of purposeful obstruction or hesitation by the [m]unicipal [c]ourt or [p]rosecutor. In fact, as the [d]efendant's brief explains, "[t]he public defender noted how [defendant's] case had been listed [fifteen] times and how, despite the willingness of local officials to proceed with the case, efforts to bring [defendant] to court have been frustrated by [s]tate action via the Somerset County Sheriff."

We previously held the fact a "defendant is incarcerated cannot in and of itself justify a denial of speedy trial. Writs may be sent to facilities where a defendant is incarcerated for purposes of bringing him [or her] to trial." State v. McNamara, 212 N.J. Super. 102, 105 (App. Div. 1986). And we fully cognize it was the court's obligation to secure defendant's presence in court despite the recalcitrant Sheriff's Office. Our Supreme Court, in State v. Garcia, 195 N.J. 192, 204-05 (2008) (alterations in original), declared:

Ultimately, the court is responsible for ensuring that its duly issued orders are honored. To that end, the court is armed with the power to hold those in willful disobedience of its commands in contempt. See N.J.S.A. 2A:10-1(c) (permitting punishment for contempt in case of "[d]isobedience or resistance by . . . any person whatsoever to any lawful writ, process, judgment, order, or command of the court"); N.J.S.A. 2A:10-6



(defining penalty for "[a] sheriff or other officer to whom any writ, process, judgment or order of the Superior Court is directed or delivered, who shall be adjudged in contempt of the court for failure to make return thereof or thereto").

Notwithstanding the court's failure to compel defendant's production after her incarceration in Somerset County on August 28, 2013, we note defendant, on October 2, 2013, requested the municipal court recall her detainer and allow her to appear "as soon as [her] release date [from the county jail was] scheduled."<sup>7</sup> Thus, contrary to defendant's present argument that the ten-month delay during her last incarceration in Somerset was attributable to the State, the period of delay attributable to the State was only approximately one month until October 2.<sup>8</sup>

Further, there is no evidence in the record – except for the period of incarceration beginning on August 28, 2013 – that defendant informed the court or the State that she was in any of

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<sup>7</sup> The Law Division judge said a public defender also requested the court to recall the detainer on October 21, 2013. We do not see that request in the record.

<sup>8</sup> Despite defendant's request for a court date after her release from jail, on October 22, 2013, the municipal court – according to the Law Division judge – rescheduled the court date for November 27, 2013 and issued "a [w]arrant" to effect defendant's transfer from Somerset County jail to Morris County jail; our record is barren of those actions, and of the results, if any, thereof.

the multiple jails – in New Jersey and Pennsylvania – in which she was housed.

We also consider that defendant failed to appear on March 20, 2013; she was not in jail and the municipal court issued a bench warrant for her arrest. That delay was attributable to her, as was the adjournment granted at her request after her release from jail so she could enter a halfway house in late July 2014. The Law Division judge found the adjournment request indicated defendant would not be available "for about a month after her admission to the facility"; the case was adjourned to August 25, 2014. Finally, defendant failed to appear on September 29, 2014, the date the municipal court heard counsel's motion to dismiss, because she had to appear in a Pennsylvania court; the municipal court judge reserved on the speedy trial motion until October 27, 2014.

Based on our careful review of these facts, we cannot agree with defendant's assertion that the reasons for the delays in resolving this case "weigh heavily against the State."

We note in analyzing the third Barker factor, a defendant's assertion of the right to a speedy trial need not be "by way of formal motion." State v. Smith, 131 N.J. Super. 354, 363-64 (App. Div. 1974), aff'd o.b., 70 N.J. 213 (1976). A defendant's mere comments that he or she was "'ready for trial' and 'wanted it to

occur sooner rather than later'" are sufficient assertions of a defendant's speedy-trial right. State v. May, 362 N.J. Super. 572, 597 (App. Div. 2003). A court may also consider "the frequency and force of the [defendant's] objections" when assessing whether the defendant properly invoked the right. Barker, 407 U.S. at 529.

The Law Division judge found defendant formally moved for a speedy trial on September 29, 2014 – five hundred and ninety four days after her arrest. There is no evidence defendant asserted her speedy trial rights while she was incarcerated; nor did defendant seek a trial date or dismissal. Her only request, on October 2, 2013, was for discovery.

The fourth prong of the Barker test considers the prejudice to a defendant caused by delay. "[P]roof of actual trial prejudice is not 'a necessary condition precedent to the vindication of the speedy trial guarantee.'" Tsetsekas, 411 N.J. Super. at 13-14 (quoting Merlino, 153 N.J. Super. at 15). Although the delay may not prejudice a

defendant's liberty interest or his [or her] ability to defend on the merits[,] . . . significant prejudice may also arise when the delay causes the loss of employment or other opportunities, humiliation, the anxiety in awaiting disposition of the pending charges, the drain in finances incurred for payment of counsel or expert witness fees and the "other costs and inconveniences far in excess of what

would have been reasonable under more acceptable circumstances."

[Id. at 13 (quoting Farrell, 320 N.J. Super. at 452).]

The impairment of an accused's defense is considered "the most serious since it [goes] to the question of fundamental fairness." Szima, 70 N.J. at 201.

We find unpersuasive defendant's contention that she was prejudiced by the long passage of time resulting in the "fear that recollections of witnesses will be clouded or compromised." The only witness defendant specifies is herself who, despite allocating a factual basis for her guilty plea, "could recall neither where she had been drinking nor how much she had consumed." While defendant cannot say whether her lack of recall was due to the passage of time or her inebriated state, she points to no specific facts that she cannot recall that would be relevant and material to her defense of the charges.

The Law Division judge found defendant was not incarcerated on these charges, and that there was "no evidence of or allegation that the defendant incurred excessive costs"; nor did she claim "the delays caused a loss of employment or any type of humiliation or anxiety." He concluded "any weight afforded to the final Barker factor is minimal." We agree.

Balancing the four Barker factors, that are "related factors to be considered with such other circumstances as may be relevant," ibid., we do not find the Law Division's denial of defendant's speedy-trial application to be erroneous. Without question, the delay in adjudicating this case was much too long. But considering the reasons for most of the adjournments, the delays caused by defendant, the late assertion of her rights, and the lack of prejudice suffered by defendant, we conclude there was no violation of defendant's constitutional speedy-trial right. Dismissal of this case is not warranted.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION