

Right to a Speedy Trial

The Fourth Circuit recently held that a delay of twenty-four months, from the time of filing charges to the time of granting of a motion to quash, constituted a violation of the defendant's right to a speedy trial. In *State v. Harris*, 04-0524 (La.App. 4 Cir., 9/10/03), 857 So.2d 16, the defendant was charged with **felony** possession of heroin on July 5, 2001, and arraigned on July 7. Hearings were originally set for August 7th, but defendant's request for a continuance was granted. Thereafter, hearings were re-set and continued upwards of ten times over the next two years — nine continuances were at the State's request, one at the defendant's request, and several were "not attributed to either party."

On March 25, 2002, the State requested a continuance, which was denied. The State entered a nolle prosequi, notifying the court of its intention to re-file charges. On August 15, 2002, the State re-file charges. The defendant filed a motion to quash, which was granted on December 20, 2002. The State appealed, asserting that the trial court erred in granting the motion to quash.

The Fourth Circuit cited *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.101 (1972), in which the United States Supreme Court noted that "The right of a speedy trial is necessarily relative. It is consistent with delays and depends on circumstances." The court applied the *Barker* factors in determining whether the right to a speedy trial has been violated; (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right to a speedy trial; and (4) the prejudice to the defendant. *Barker*, at 530.

The court found that the length of delay in Mr. Harris' case, twenty-four months, far exceeding the durations of delays also found to be "presumptively prejudicial." The Fourth Circuit had found a delay of sixteen months qualifies as prejudicial in *State v. Leban*, 91-2328 (La.App. 4 Cir. 12/15/92). The Court then considered the reason for the delay, the second of the *Barker* factors, and found that the responsibility for most of the delays rested with the State. The Court, in considering the third factor, the defendant's assertion of his right to a speedy trial, noted that although the defendant did not object to the continuances, he did file a motion for a speedy trial. In evaluating the last *Barker* factor, prejudice to the defendant caused by the delay, the court observed that even though the defendant was not incarcerated during the last two years of hearings, he was "required to return to court twelve times."

The court then concluded that "the State's dilatory pattern in pursuing this matter, however, is disturbing." The court affirmed the trial court's granting the defendant's motion to quash. (See also La. C.Cr.P. 578 et seq., regarding trial and indictment deadlines)

Forfeiture

In *State v. Gauthier*, the Third Circuit affirmed the trial court's finding that the State lacked probable cause to justify forfeiture of vehicle and cash found on defendant during a traffic stop.

Defendant was stopped by police for several alleged traffic offenses. The arresting officer also recognized the defendant's car as he had been under investigation for drug trafficking. During the traffic stop, the defendant was observed removing pills from his sock and placing them in his

mouth. Officers were able to retrieve one pill, later determined to be Xanax. Additionally, codeine and marijuana were also found in the vehicle. The vehicle and \$353.00 in cash were seized for civil forfeiture. Defendant and his mother, the vehicle's owner, filed a claim for the seized property.

The Forfeiture Act, La. R.S. 40:2601 provides that property used or intended to be used to facilitate conduct in violation of Louisiana's Uniform Controlled Dangerous Substances Law (La. R.S. 40:961) is subject to forfeiture upon commission of an act or omission punishable by confinement for more than one year. The State bears the burden of showing probable cause for the forfeiture, that is, the evidence must be sufficient to form a reasonable ground for the belief that the property was connected with illegal drug transactions.

The trial court found that no such connection between the property and the offense existed and returned both the vehicle and the currency to the claimants. In so doing, the court found that the \$353.00 found on the defendant was not necessarily drug-related, that it could have just as likely come from one of two checks for a recent accident settlement received by the defendant. As to the vehicle, the court noted that there was no indication that the owner of the car had any knowledge about drug activity. Additionally, it observed that it was questionable as to whether a drug transaction even occurred.

The Third Circuit affirmed the trial court's finding that no probable cause existed for seizure of the vehicle or the currency. However, the appellate court reversed the trial court's award of \$150.00 in damages to Duane Gauthier for loss of the use of the \$353.00, as the statute provides for "any interest earned on monies or other negotiable instruments deposited, held, or invested." As such, the award of \$150 exceeded the scope of the statute. Similarly, the Third Circuit reversed the trial court's award of \$1,000.00 in damages to the vehicle's owner, as there is no provision in the statute supporting damages. Rather, it provides for the return of the vehicle in substantially the same condition as it was when seized.