

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JASON MILLS,	§	
	§	No. 484, 2005
Defendant-below,	§	
Appellant,	§	Court Below: Superior Court of the
	§	State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	I.D. No. 0403010565
	§	
Plaintiff-below,	§	
Appellee.	§	

Submitted: January 18, 2006

Decided: April 17, 2006

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

ORDER

This 17th day of April 2006, upon consideration of the briefs of the parties it appears to the Court that:

(1) Defendant-Appellant, Jason Mills appeals his conviction of criminal impersonation and possession of a firearm and ammunition by a person prohibited in the Superior Court on September 9, 2005. He was sentenced to five years of mandatory incarceration followed by probation. On appeal Mills makes two claims. First, he claims that the seizure leading to his arrest was unlawful. Second, Mills claims that the Superior Court violated his right to speedy trial. On his first claim, Mills has failed to show plain error. The second claim is much

closer. While we express our disapproval of the delay, we find no constitutional violation and affirm the convictions in this case.

(2) On March 12, 2004, Mills was a front-seat passenger in a vehicle operated by Kathleen Kienle. New Castle Police stopped the vehicle for speeding. Officer Burke approached the vehicle on the passenger side and asked both Kienle and Mills for identification. Mills identified himself as Clinton King and produced a Delaware State Identification Card in that name. Officer Burke noticed several handgun brochures on the floorboard at Mills' feet. It appeared that Mills was trying to kick the brochures under the seat out of view. A computer check revealed that there was an outstanding arrest warrant for Kienle. Officer Burke arrested Kienle and asked Mills to step out of the vehicle. Officer Burke questioned Mills about the handgun brochures, but he denied any knowledge of them. Kienle told the Officer Burke that her bracelet had come lose and asked him to put it in her purse in the car. Officer Burke did so and found packages of crack cocaine in her purse. Mr. Kienle told Officer Burke and testified at trial that the cocaine belonged to Mills. A search of the trunk of the car revealed a handgun and ammunition. Kienle told Officer Burke and testified at trial that she had bought the handgun and ammunition for Mills.

(3) Mills' first claim is that his detention and the seizure of the evidence were unlawful. Mills contends that he was illegally detained at the time of the

motor vehicle stops and that the fruits of the detention should have been suppressed. We review for plain error because Mills failed to raise this claim before the Superior Court. Plain error review is limited to material defects that are apparent on the face of the record.

(4) A person only has standing to challenge evidence seized as a result of a violation of one's own constitutional rights.¹ A person must demonstrate his own "legitimate expectation of privacy in the invaded place" before he may challenge the validity of a search or seizure.² For Fourth Amendment purposes, automobiles are treated differently than houses.³

(5) With respect to the fruits discovered as a result of Kienle's arrest, Mills lacks standing to seek suppression of the evidence. Here, the vehicle was driven by and registered to Kienle. The search was incident to Kienle's arrest. There is no evidence that Mills owned the vehicle or exercised control over it. Mills, as a passenger in the vehicle, had no reasonable expectation of privacy in the car's trunk where the handgun and ammunition were found.⁴ Absent other factors that are not present here, any reasonable expectation of privacy in the car belongs to its owner or driver, but not a mere passenger. Accordingly, Mills lacks standing to suppress evidence obtained from Kienle, a third party.

¹ *United States v. Payner*, 447 U.S. 727 (1980).

² *Wilson v. State*, 812 A.2d 225 (Del. 2002) (citing to *Rakas v. Illinois*, 439 U.S. 128 (1978)).

³ *Rakas v. Illinois*, 439 U.S. 128 (1978).

⁴ *See Harris v. State*, 806 A.2d 119 (Del. 2002).

(6) Mills also contends that he was illegally detained. Specifically, Mills claims that there was no reasonable suspicion to detain him or to require him to produce identification. While Mills has no standing with respect to the stop and search of the vehicle, he has standing to object to the circumstances under which his person was seized. Under the Fourth Amendment, an officer may order both the driver and the passengers of a car to exit it during the course of a valid traffic stop.⁵ During a valid investigatory stop, “the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer’s suspicion. But the detainee is not obliged to respond.”⁶ “[Q]uestions concerning a suspect’s identity are a routine and accepted part of many *Terry* stops. The ability to briefly stop a suspect, ask questions, or check identification in the absence of probable cause promotes the strong government interest in solving crimes and bringing offenders to justice.”⁷ “[I]t is well established that an officer may ask a suspect to identify himself in the course of a *Terry* stop...”⁸ Here, the Superior Court did not plainly err in allowing evidence of the questions asked by the Officer.

⁵ *Caldwell v. State*, 780 A.2d 1037 (Del. 2001)(citing to *Maryland v. Wilson*, 519 U.S. 408, 412-14 (1997)).

⁶ See *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984).

⁷ *Hiibel v. Sixth Judicial Dist. Court*, 542 U.S. 177, 186 (U.S. 2004) (internal quotations omitted).

⁸ *Id.*

(7) Mills' second claim is that the two continuances of trial granted to the State deprived Mills of his constitutional right to a speedy trial. The standard and scope of review applicable to this issue is *de novo* because Mills filed a motion for a speedy trial which was denied as moot.

(8) As the United States Supreme Court has observed, it is impossible to determine with precision when the right to a speedy trial is denied.⁹ Delaware Courts have adopted the four-part test announced in *Barker v. Wingo* to determine whether a defendant's right to speedy trial has been violated.¹⁰

The Barker Court held that courts should assess four factors in determining whether a particular defendant has been deprived of the right to a speedy trial: (1) the length of delay, (2) the reason for the delay, (3) the defendant's assertion of the right to a speedy trial, and (4) prejudice to the defendant. None of the four factors is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." Rather they "are related factors and must be considered together with such other circumstances as may be relevant." Because "these factors have no talismanic qualities, courts must still engage in a difficult and sensitive balancing process." Consequently, we will examine each factor in turn.¹¹

If, however, the length of the delay is not presumptively prejudicial, the court will not examine the remaining three factors.¹² We will apply the test under *Barker* to Mills' claim.

⁹ *Barker v. Wingo*, 407 U.S. 514, 521 (1972).

¹⁰ *Middlebrook v. State*, 802 A.2d 268, 273 (Del. 2002) (quoting *Barker*, 407 U.S. at 530).

¹¹ *Middlebrook v. State*, 802 A.2d 268, 273 (Del. 2002) (quoting *Barker*, 407 U.S. at 530) (citations omitted).

¹² *Id.*

(9) The first factor, length of delay, weighs in favor of Mills. The State concedes that the length of delay in this case between the arrest and the start of the trial raises a presumption of prejudice to Mills. The right to a speedy trial attaches as soon as the defendant is accused of a crime through arrest or indictment, whichever occurs first.¹³ In this uncomplicated case, Mills was arrested in March of 2004 but not tried until June of 2005. Accordingly, the first factor, length of delay, weighs in favor of Mills.

(10) The second factor is the reason for the delay. This Court has explained that different weights are assigned to different potential reasons for the delay.¹⁴ A deliberate attempt by the State to delay the trial in order to hamper the defense weighs heavily against the State. A more benign reason for delay such as overcrowded courts weighs less heavily against the State. This Court further explained in *Middlebrook* that a missing witness may justify appropriate delay and will not weigh against the State.¹⁵

(11) Here, the State requested two continuances: the first time because a witness was unavailable, and the second because the prosecutor was in another trial. The Superior Court granted both requests. The trial date of November

¹³ *Id.* (citing *US v. Marion*, 440 U.S. 307, 320 (1971)).

¹⁴ *Id.* at 274 (citing *Barker*, 407 U.S. at 531).

¹⁵ *Id.* at (citing *Barker*, 407 U.S. at 531; *Key v. State*, 463 A.2d 633, 636 (Del. 1983)).

16, 2004 was postponed until March 8, 2005. The second continuance resulted in a postponement of trial from March 8, 2005 until June 23, 2005.

(12) The delay due to witness unavailability does not weigh against the State in this case. However, the delay due to the prosecutor's caseload and the Superior Court's overcrowded docket does. While the State was responsible for part of the delay in bringing this case to trial because of the unavailability of a prosecutor and the overcrowded docket, there is no evidence on the record that the prosecution intended to hamper the defense through deliberate delay. On balance, this factor does weigh against the State, but more lightly than a deliberate delay.

(13) The third factor, defendant's assertion of the right to a speedy trial, is in equipoise and therefore neutral. On several occasions Mills asserted his right to a speedy trial, but on the two occasions that actually postponed his trial, Mills did not assert his right to a speedy trial in opposition to the State's requests for a continuance.

(14) A defendant's assertion of his right to a speedy trial is of considerable significance in determining whether there has been a speedy trial violation.¹⁶ "If and when a defendant asserts his rights are factors of considerable significance in determining whether there has been a speedy trial violation. Both factors are

¹⁶ *Id.* (citing *Bailey*, 521 A.2d 1069, 1082 (Del. 1987)).

entitled to strong evidentiary weight.”¹⁷ The failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.¹⁸

(15) Mills first asserted his right to speedy trial in May of 2004, two months after his arrest on March 13.¹⁹ Mills again asserted his right to speedy trial a year later in April of 2005. The Superior Court denied the April 2005 motion as moot because at that time the trial had been scheduled to take place in June of 2005²⁰. Finally, Mills filed *pro se* letters with the court requesting a speedy trial. Mills asserted his right to a speedy trial on several occasions, but failed to assert in on the two occasions when it could have affected the outcome of a scheduling decision. The failure to assert his right to a speedy trial in opposition to a request for continuance weighs against Mills. On balance, this factor favors neither the State nor Mills.

(16) Finally, the fourth factor, prejudice to the defendant from the delay, weighs against Mills and tips the balance against him. The prejudice prong is considered in light of the three interests of a defendant that the speedy trial right

¹⁷ *Bailey*, 521 A.2d at 1082 (citing *Whalen v. State*, 492 A.2d 552, 568-69 (Del. 1985)). Note that in *Bailey*, the Defendant was inconsistent in his desire for a speedy trial. “When we examine *Bailey*'s speedy trial motions in the context of the history of this case, i.e., the filing of motions, petitions, and interlocutory appeals, we conclude that *Bailey* made a conscientious choice to conduct his defense along alternative lines, some of which were mutually inconsistent with his announced desire to have a speedy trial.” *Id.*

¹⁸ *Id.* (citing *Barker*, 407 U.S. at 532).

¹⁹ Mills' preliminary hearing was March 19, 2004. His indictment was filed on May 17, 2004.

²⁰ We hold this denial to have been erroneous. The mere fact that a trial date has been set does not make the application of *Barker* factors moot when the delay is presumptively prejudicial.

was designed to protect: (1) preventing oppressive pretrial incarceration; (2) minimizing anxiety and concern of the accused; and (3) limiting the possibility that the defense will be impaired.²¹

(17) Mills was incarcerated before trial for approximately fifteen months but he was also being held for other reasons, specifically an Immigration and Naturalization Service detainer. Even if bail had been reduced to unsecured status, Mills would have remained in custody. The delay in this case was significantly less than the egregious delay in *Middlebrook*. There is no evidence in the record before us that Mills suffered undue anxiety or that his defense was in any way impaired. We conclude that the fourth factor not only weighs against Mills, it also outweighs the two factors we have found to be in his favor.

(18) We express our disapproval of the delay in this case and reiterate that the provision of a speedy trial is not only in the interest of the accused, it is in the public interest.²² Each case is determined on its own facts, however. After engaging in the sensitive balancing process using the *Barker* factors, we conclude that Mills' was not denied his right to a speedy trial guaranteed by the Sixth Amendment of the United States Constitution.²³

²¹ *Middlebrook* at 276 (citing *Barker*, 407 U.S. at 532).

²² *Middlebrook* at 273.

²³ We will not address Mills' conclusory assertion that he was denied his right to a speedy trial under Article I, Section 7 of the Delaware Constitution because this claim was not fully and

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

fairly presented to this Court as an issue on appeal. *Ortiz v. State*, 869 A.2d 285, 291 fn. 4 (Del. 2005).