

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ELIZABETH ERIN BARCLAY,

Defendant-Appellant.

UNPUBLISHED

June 5, 2008

No. 278041

Kent Circuit Court

LC No. 06-002845-FH

Before: Davis, P.J., and Murray and Beckering, JJ.

MEMORANDUM.

Defendant was charged with insurance fraud, MCL 500.4511(1), and making a false report of a felony, MCL 750.411a(1)(b). The trial court dismissed those charges without prejudice. Defendant now appeals as of right, asserting that because the dismissal was without prejudice, the filing of new charges will violate her constitutional right to a speedy trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant did not raise this issue before the trial court. “As a general rule, issues that are not raised before a trial court cannot be raised on appeal absent compelling or extraordinary circumstances.” *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). Unpreserved issues are reviewed for plain error affecting defendant’s substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Defendant has not demonstrated a plain error affecting her substantial rights in this matter. At most, she has shown the development of a potential constitutional claim in a future case. Criminal defendants are guaranteed the right to a speedy trial. US Const, Am VI; Const 1963, art 1, § 20; MCL 768.1; MCR 6.004(A). The determination whether a defendant has been denied the right to a speedy trial requires the balancing of the following four factors: “(1) the length of delay, (2) the reason for delay, (3) the defendant’s assertion of the right, and (4) the prejudice to the defendant.” *People v Williams*, 475 Mich 245, 261-262; 716 NW2d 208 (2006). Defendant argues that the without prejudice dismissal in the present case may lead to a violation of her right to a speedy trial in the “new” case. However, any speedy trial claim based on the filing of new charges is an issue that should be raised, if at all, in the new case, where the factors can be appropriately and fully addressed. Because the without prejudice dismissal did not preclude defendant from raising such a claim in the event charges were refiled, there was no

plain error affecting defendant's substantial rights.

Affirmed.

/s/ Alton T. Davis

/s/ Christopher M. Murray

/s/ Jane M. Beckering