

STATE OF LOUISIANA

*

NO. 2003-KA-0381

VERSUS

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COURT OF APPEAL

JAMALL SHINE

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 432-065, SECTION "A"
HONORABLE CHARLES L. ELLOIE, JUDGE

JAMES F. MCKAY III
JUDGE

(Court composed of Judge Patricia Rivet Murray, Judge James F. McKay III,
Judge Dennis R. Bagneris, Sr.)

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REVERSED AND REMANDED

The State as appellant brings this appeal, arguing that the trial court erred in granting the defendant's motion to quash the bill of information.

We agree and reverse the trial court's decision.

On October 26, 2001, the State charged Jamall Shine with public intimidation of a witness in a criminal trial, in violation of La. R.S. 14:122 (3), in case number 425-784. At arraignment on November 13th Shine pleaded not guilty. After a hearing on December 19th the trial court found probable cause to bind the defendant over for trial. On January 15, 2002, the day set for trial, the State moved for a continuance. The continuance was granted over the objection of the defense. On January 22nd the defense requested and received a trial continuance. A hearing to determine defense counsel was held on February 5th, and trial, which was set for February 19th, was reset with no reason for the delay given. On March 21st the State again moved for a continuance, and when the trial court denied the motion, the State entered a *nolle prosequi* and indicated that the case would be reinstated.

On August 1, 2002, the case was reinstated as case number 432-065, and the defendant appeared for arraignment on September 11th. On October 3rd the court was closed because of a storm, and on November 14th the

defendant failed to appear. At the next hearing on December 4th, the defense filed a motion to quash. The motion was heard and granted on January 21, 2003. The State objected and was granted an appeal.

There are no facts in the record concerning the offense.

At the January 21st hearing on the motion, defense counsel pointed out that when the State was denied a continuance, it elected an illegal continuance by entering a *nolle prosequi* and then reinstating the case. The assistant district attorney answered that the state has authority to dismiss and reinstitute cases under La. C.Cr.P. article 61. The trial court then asked the defendant if he was working, and when he answered that he was, the court announced that the motion to quash was granted.

In a recently decided case, the Louisiana Supreme Court vacated this Court's decision which held that a defendant's right to a speedy trial had been violated where there was a twenty-one month delay between the filing of the original bill of information and the denial of the defendant's motion to quash. *State v. Love*, 2000-3347 (La. 5/23/03), WL 21205365, ___ So. 2d ___, reversing *State v. Love*, 99-1842 (La. App. 4 Cir. 11/8/00), 775 So. 2d 717. In *Love*, after the State was denied a continuance, it entered a *nolle prosequi* and then reinstated the charges; the defendant moved to quash, and the district court denied the defendant's motion to quash. The defendant

then pleaded guilty under *North Carolina v. Alford*, 400 U. S. 25 (1970), and *State v. Crosby*, 338 So.2d 584 (La. 1976), and argued on appeal that the trial court erred in denying his motion to quash. The Supreme Court stated at the outset that the only issue on appeal was whether the trial court's denial of the motion to quash resulted in a violation of the defendant's right to a speedy trial; the State's right to *nolle prosequi* a case when a continuance was denied, and its right to reinstate the case were not at issue. However, the court noted that it is the facts and circumstances of each individual case that determine the propriety of the motion to quash where the district attorney enters a *nolle prosequi* then reinstitutes the charges.

In *State v. Love*, the Court reviewed the defendant's right to a speedy trial according to the factors set out in *Barker v. Wingo*, 407 U.S. 514 (1972):

A defendant's right to a speedy trial is a fundamental right imposed on the states by the Due Process Clause of the Fourteenth Amendment of the United States Constitution. *Klopfer v. North Carolina*, 386 U. S. 213, 223, 87 S.Ct. 988, 18 L. Ed.2d 1 (1967). See also La. Const. (1974) art. 1, § 16. The underlying purpose of this constitutional right is to protect a defendant's interests in preventing oppressive pretrial incarceration, limiting possible impairment of his defense, and minimizing his anxiety and concern. *Barker*, 407 U.S. at 515.

The United States Supreme Court made the following observations concerning a defendant's Sixth Amendment right to a speedy trial in *Barker*:

The right to a speedy trial is a more vague concept

than other procedural rights. It is, for example, impossible to determine with precision when the right has been denied. We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate. As a consequence, there is no fixed point in the criminal process when the State can put the defendant to the choice of either exercising or waiving the right to a speedy trial. If, for example, the State moves for a 60-day continuance, granting that continuance is not a violation of the right to speedy trial unless the circumstances of the case are such that further delay would endanger the value the right protects. It is impossible to do more than generalize about when those circumstances exist.... Thus, as we recognized in *Beavers v. Haubert*, [198 U.S. 77 (1905)], any inquiry into a speedy trial claim necessitates a functional analysis of the right in the particular context of the case:

"The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights of a defendant. It does not preclude the rights of public justice. 198 U.S., at 87.

The amorphous quality of the right also leads to the unsatisfactorily severe remedy of dismissal of the indictment when the right has been deprived. This is indeed a serious consequence because it means that a defendant who may be guilty of a serious crime will go free, without having been tried. Such a remedy is more serious than an exclusionary rule or a reversal for a new trial, but it is the only possible remedy.

Id. at 522-23 (footnote omitted).

In determining whether a defendant's right to speedy trial has been violated, courts are required to assess the following factors: (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*, 407 U.S. at 530; *State v. Alfred*, 337 So. 2d 1049, 1054 (1976) [on rehearing]. Under the rules established in *Barker*, none of the four factors listed above is "either a necessary or sufficient condition to the finding of a deprivation of the right to speedy trial." *Id.* at 533. Instead, they are "related factors and must be considered together ... in a difficult and sensitive balancing process." *Id.*

State v. Love, 2000-3347, pp. 14-15 (La. 5/23/03).

Considering Jamall Shine's right to a speedy trial under the first *Barker* factor, we note that the length of the delay was fifteen months from the time of the filing of the first case on October 26, 2001, to the granting of the motion to quash on January 21, 2003. In *State v. DeRouen*, 96-0725 (La. App. 4 Cir. 6/26/96), 678 So.2d 39, a fifteen-month lapse between filing of charges and granting of the motion to quash was not considered prejudicial.

Under La. C.Cr.P. art. 578(2), the State has two years from the filing of the bill of information to bring a defendant to trial. The bill of information in this case was filed on October 26, 2001, and thus, the State had until October of 2003—an additional ten months—to bring the defendant to trial. We note that the record indicates that only two continuances were requested prior to the *nolle prosequi*: one by the State, and one by the defense.

Although the remaining *Barker* factors are not at issue because the fifteen-month delay is not presumptively prejudicial and does not trigger

further analysis under that case, we note that under none of the factors does the defendant's right to a speedy trial appear to have been violated. The reasons for the delay, factor two, appear to be equally divided between the State and the defendant. The State requested two continuances and the defendant requested one and then did not appear for one hearing.

Additionally, as to the third and fourth factors, the defendant did not assert his right to a speedy trial until he moved for a motion to quash, and he was not incarcerated during the fifteen-month period, and therefore, he was not prejudiced by the delay.

In *State v. Love*, 2000-3347 (La. 5/23/03), the Supreme Court found that the defendant had not shown enough prejudice to support the quashing of the multiple bill. Similarly, in the case at bar, we find that under the balancing test set forth in *Barker*, the defendant's constitutional protection of a speedy trial has not been violated; therefore, the district court erred in granting Shine's motion to quash the bill of information.

Accordingly, the judgment is reversed and the case remanded to the trial court.

REVERSED AND REMANDED