

**STATE OF LOUISIANA**

\*

**NO. 2006-KA-1148**

**VERSUS**

\*

**COURT OF APPEAL**

**FAITH MENNE**

\*

**FOURTH CIRCUIT**

\*

**STATE OF LOUISIANA**

\*\*\*\*\*

APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 455-346, SECTION "K"  
HONORABLE ARTHUR HUNTER, JUDGE

\*\*\*\*\*

**JAMES F. MCKAY III**  
**JUDGE**

\*\*\*\*\*

(Court composed of Judge Patricia Rivet Murray, Judge James F. McKay III,  
Judge David S. Gorbaty)

EDDIE J. JORDAN, JR.  
DISTRICT ATTORNEY OF ORLEANS PARISH  
DAVID S. PIPES  
ASSISTANT DISTRICT ATTORNEY OF ORLEANS PARISH  
New Orleans, Louisiana 70112-1221  
Counsel for Plaintiff/Appellant

## **REVERSED AND REMANDED**

### **STATEMENT OF CASE**

On November 4, 2004, the defendant was charged by bill of information with multiple offender theft under the provisions of La. R.S. 14:67.10 in case number 453-382. The defendant appeared for arraignment on November 22, 2004, and pled not guilty. Motions were heard on December 16, 2004, and the court found probable cause. The case was set for trial on January 14, 2005. The docket master reflects that on that date the state entered a *nolle prosequi* and dismissed the case. In its brief, the State admits that the *nolle prosequi* was entered after its oral motion for a continuance was denied.

The case was reinstated on January 14, 2005, under case number 455-346. On February 28, 2005, the defendant filed a motion to quash asserting as the sole basis that the district attorney improperly utilized its

ability to dismiss as a method of obtaining a continuance when it was not prepared for trial. Subsequently, the State filed an opposition memorandum. On March 18, 2005, the district court granted defendant's motion to quash, and the state filed a notice and motion for appeal, which was granted.

On May 10, 2005, the district court entered a *per curiam* regarding this case and twenty-nine other cases in which the trial court had granted defense motions to quash. The district court stated that it had granted the motion to quash because the State had failed to conform its motion for a continuance to the requirements of La. C.Cr.P. art. 707 *et. seq.* Article 707 provides that a motion for a continuance must be in writing, must specifically allege the grounds upon which it is based, and must be filed at least seven days prior to the commencement of trial. The court asserted that the state had improperly utilized the *nolle prosequi* to grant itself the continuance it sought but had been denied. Additionally, the *per curiam* specified that in as much as the motions to quash were based on a violation of the right to a speedy trial they were denied on that basis.

## **STATEMENT OF FACT**

The facts concerning the offense are irrelevant and none are contained in the record.

## **ASSIGNMENT OF ERROR NUMBER 1**

Citing *State v. Anderson*, 2005-1116, (La. App. 4 Cir. 8/23/06), 940 So.2d 682, the State contends that the trial court improperly granted defendant's motion to quash. *Anderson* concerned one of the cases addressed by the trial court in its *per curiam* and addressed whether the trial could properly grant a motion to quash on the basis of the State's purported improper use of its power to dismiss and reinstitute charges. After reviewing the grounds enumerated in La. C.Cr.P. arts. 532 and 534 for quashing a bill of information this Court concluded that the granting of a motion to quash was not a permissible response to the State's failure to comply with La. C.Cr.P. art. 707. Furthermore, this Court noted that the State has plenary authority pursuant to La.C.Cr.P. art. 576 to dismiss a charge and then reinstitute prosecution where doing so will not circumvent the statutory time limits for commencing trial under La.C.Cr.P. art. 578. In reversing, this Court remarked, "[a]lthough the district court judge may have been frustrated by the State's failure to be prepared for trial, we find no valid basis upon which he could quash the bill of information in this case." 2005-1116, p. 6, 940 So.2d at 685.

As has been established, in some circumstances the State's use of its plenary authority to dismiss and reinstitute may implicate a defendant's constitutional speedy trial rights. *See generally, State v. Love*, 2000-3347

(La.5/23/03), 847 So.2d 1198. In *Anderson*, this Court declined to address whether the defendant's speedy trial rights had been violated because the district judge had specified "that the denial of the right to a speedy trial was *not* the basis upon which the defendants' motion to quash was granted." 2005-1116, p. 7, 940 So.2d at 686.

Here, the sole basis asserted by the defendant in support of her motion to quash was the improper use of the State's ability to dismiss cases. Moreover, in Ms. Menne's circumstance there is no basis to consider that her constitutional right to a speedy trial was violated under the four-part *Barker v. Wingo* analysis. Only two months elapsed between the filing of the bill of information and the State's dismissal and more than one month of that time was occupied by arraignment and defense motions. Clearly, the delay in this case was not presumptively prejudicial.

In sum, it is evident that the trial court erroneously granted the motion to quash. The district attorney controls dismissing and reinstating cases, and the defendant's constitutional right to a speedy trial was not violated by the State's dismissal and reinstatement of these charges.

## **CONCLUSION**

For the above reasons we reverse the trial court's judgment granting the defendant's motion to quash the bill of information and remand the

matter for further proceedings consistent with this opinion.

**REVERSED AND REMANDED**