

[Cite as *State v. Smith*, 2003-Ohio-7076.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 83022

STATE OF OHIO, :  
 :  
 Plaintiff-Appellant : JOURNAL ENTRY  
 :  
 v. : AND  
 :  
 DARRYL SMITH, : OPINION  
 :  
 Defendant-Appellee :  
 :

DATE OF ANNOUNCEMENT  
OF DECISION: DECEMBER 24, 2003

CHARACTER OF PROCEEDING: Criminal Appeal from  
Common Pleas Court,  
Case No. CR-415468.

JUDGMENT: AFFIRMED.

DATE OF JOURNALIZATION:

APPEARANCES:

For Plaintiff-Appellant: William D. Mason  
Cuyahoga County Prosecutor  
Brian S. Deckert, Assistant  
9<sup>th</sup> Floor Justice Center  
1200 Ontario Street  
Cleveland, OH 44113

For Defendant-Appellee: Jeffrey F. Kelleher  
The Leader Building  
526 Superior Avenue, Suite 410  
Cleveland, OH 44114

TIMOTHY E. McMONAGLE, J.:

{¶1} Plaintiff-appellant, State of Ohio, appeals the judgment of the Cuyahoga County Common Pleas Court that granted the motion to dismiss filed by defendant-appellee, Darryl Smith. For the reasons that follow, we affirm.

{¶2} The record reveals that Cleveland Metropolitan Housing Authority ("CMHA") police arrested defendant-appellee, Darryl Smith ("Smith"), on September 9, 2001 at a CMHA apartment Smith shared with his fiancé, Juanita McClain, for allegedly assaulting Ms. McClain on this date. Smith reportedly spent a few nights in jail, was released without posting bond and without having any charges filed against him. On October 23, 2001, the Cuyahoga County Grand Jury charged Smith with two counts of domestic violence and sent notice by certified mail of these charges, and the date set for arraignment, to the CMHA residence. Although the notice listed the correct street address, it did not contain the apartment number and the notice was eventually returned to the court as "unclaimed." When Smith did not appear at the arraignment hearing set for November 6, 2001, the court issued a *capias* for Smith. On April 17, 2003, approximately 18 months later, Smith was arrested on the outstanding charges.

{¶3} Smith moved to dismiss the charges against him on speedy trial grounds. At the subsequent hearing on the motion, Smith testified that he received no notice of the charges against him nor did he receive any notice that certified mail was being held for him at the post office. Ms. McClain testified similarly and

further testified that she and Smith moved from the CMHA residence sometime in October 2001 and then again in January 2002 to their present address. She testified, however, that she completed paperwork at the post office regarding their changes of address and made arrangements to have their mail forwarded to their current address. Indeed, Smith presented evidence demonstrating that other mail had been forwarded from the CMHA residence to their current address. Moreover, Smith testified that the utilities for both residences have always been in his name and that he continued to receive correspondence from those entities during the residence changes. He also testified and presented documentary evidence that he had a claim for unemployment benefits with the Ohio Department of Job and Family Services pending in October 2001, correspondence of which he properly received at the CMHA residence, as well as a pending workers' compensation claim with The Industrial Commission of Ohio. It is Smith's position that he was unaware that any charges were filed against him as a result of the September 9, 2001 arrest and that he did nothing to evade notice of any such charges.

Indeed, he contends that his whereabouts were easily ascertainable because of his involvement with agencies affiliated with the county and the state. Any failure to act on the part of the state in notifying him of these charges, he argues, is presumptively prejudicial and should not inure to the state's benefit.

{¶4} Acknowledging that the four-part test set forth in *Barker v. Wingo* (1972), 407 U.S. 514, 92, S.Ct. 2182, 33 L.Ed.2d 101,

controls, the parties, nonetheless, disagree on whether Smith suffered any prejudice as a result of the 18-month delay. The state argued then, as it does now, that Smith suffered no prejudice. Smith, on the other hand, contends that prejudice is presumed when there is a delay of more than one year, as there is in this case.

{¶5} Finding the delay prejudicial, the trial court stated:

{¶6} "I guess where I come down on this, therefore, is that the prejudice to [Smith] is substantial here because of the personal impact that it has had on his life. And there is nothing here that shows that [Smith] did anything to evade being found. And there is no evidence before the Court as to what is the most reasonable way and efficient way for the Sheriff's Department to operate here, and I think that [absent] a showing, therefore, that this was the best that can be expected in a situation like this, and particularly I think at the early stage here when they don't - when they don't identify him, and where they haven't got the right address, they don't have an incorrect address, but they don't have as accurate an address that they could have on him. So there is a failure here on the part of the justice system to get this to him, and I think in light of that, the way I'd balance it out, I think the prejudice that [Smith] experiences here outweighs any prejudice in the interest of the justice system they have in prosecuting him in this case, and therefore, I think that his constitutional rights have been violated, so I'm going to grant the motion to dismiss."

{¶7} The state is now before this court and asserts in its single assignment of error that the trial court erred in dismissing the case against Smith.

{¶8} In *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101, the court set forth a four-part test to determine whether the state has violated an accused's constitutional right to a speedy trial. This test includes considering (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his or her right to a speedy trial; and (4) the prejudice to the defendant. *Id.* at 530-532; see, also, *State v. Triplett* (1997), 78 Ohio St.3d 566; *State v. Selvage* (1997), 80 Ohio St.3d 465, 467. *Length of Delay*

{¶9} The length of delay is the "triggering mechanism" that determines the necessity of inquiry into the other factors. *Id.* at 530. One year is generally considered sufficient to trigger a *Barker* inquiry. *Doggett v. United States* (1992), 505 U.S. 647, 652, 112 S.Ct. 2686, 2691, 120 L.Ed.2d 520, 528, fn. 1. Until there is some delay that is presumptively prejudicial, "there is no necessity for inquiry into the other factors that go into the balance." *Barker*, 407 U.S. at 530.

{¶10} In this case, the parties do not dispute that the 18-month delay between indictment and arrest triggers the presumption of prejudice. We must then consider the other factors in the *Barker* test.

*Defendant's Assertion of the Right to Speedy Trial*









