**[Cite as *State v. Hickinbotham*, 2019-Ohio-2978.]**

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

| | | |
|---|---|---|
| STATE OF OHIO | : | JUDGES: |
| | : | |
| | : | Hon. W. Scott Gwin, P.J. |
| Plaintiff-Appellant | : | Hon. John W. Wise, J. |
| | : | Hon. Patricia A. Delaney, J. |
| -vs- | : | |
| | : | Case No. 2018CA000142 |
| | : | |
| ROBERT HICKINBOTHAM | : | |
| | : | |
| | : | |
| Defendant-Appellee | : | O P I N I O N |

| | |
|---|---|
| CHARACTER OF PROCEEDING: | Appeal from the Stark County Court of Common Pleas, Case No. 2000 CR 0737 |
| JUDGMENT: | REVERSED, VACATED, AND REMANDED |
| DATE OF JUDGMENT ENTRY: | July 16, 2018 |

APPEARANCES:

| For Plaintiff-Appellant: | For Defendant-Appellee: |
|---|---|
| JOHN D. FERRERO, JR.<br>STARK CO. PROSECUTOR<br>RONALD MARK CALDWELL<br>110 Central Plaza South, Ste. 510<br>Canton, OH 44702-1413 | STEVEN A. REISCH<br>Stark Co. Public Defender's Office<br>201 Cleveland Ave. S.W., Ste. 104<br>Canton, OH 44702 |

*Delaney, J.*

{¶1} Appellant state of Ohio appeals from the September 10 and September 19, 2018 judgment entries of the Stark County Court of Common Pleas granting the motion to dismiss of appellee Robert Hickinbotham.

**FACTS AND PROCEDURAL HISTORY**

{¶2} The facts of the courses of criminal conduct underlying the charged offenses are not before us in the record.

{¶3} On June 27, 2000, a secret indictment was issued in Stark County, Ohio, charging appellee with five counts of gross sexual imposition (G.S.I.) pursuant to R.C. 2907.05(A)(4), all felonies of the third degree. The victims of the offenses were under the age of 13. The offenses were charged as follows:

| Count | Offense | R.C. Sec. | Penalty Level | Victim | Dates of Continuing Course of Conduct |
|---|---|---|---|---|---|
| I. | G.S.I. | 2907.05(A)(4) | F3 | Jane Doe | Aug. 15, 1998-Jun. 5, 1999 |
| II. | G.S.I. | 2907.05(A)(4) | F3 | Mary Roe | Apr. 24, 1991-Aug. 31, 1993 |
| III. | G.S.I. | 2907.05(A)(4) | F3 | Mary Roe | May 17, 1996-May 17, 1997 |
| IV. | G.S.I. | 2907.05(A)(4) | F3 | Susan Roe | Apr. 24, 1991-Aug. 31, 1993 |
| V. | G.S.I. | 2907.05(A)(4) | F3 | Susan Roe | Apr. 24, 1995-Apr. 24, 1996[1] |

.

{¶4} A warrant on the indictment was issued on June 29, 2000.

[1] Appellant's bill of particulars of July 26, 2018 states Count V occurred as a continuing course of conduct from on or about May 17, 1996 to on or about May 17, 1997. The dates listed in the chart are those noted in the secret indictment filed June 27, 2000 and the indictment return of July 2, 2018.

{¶5} The warrant was returned on July 2, 2018.

{¶6} Appellee appeared before the trial court and entered pleas of not guilty on July 6, 2018.

{¶7} On July 9, 2018, appellee filed a motion to dismiss, arguing speedy-trial time lapsed due to an unreasonable delay in commencing prosecution. Appellee cited R.C. 2901.13(A)(3), noting the offenses in Counts II through V ended prior to 1998, but the complaint was not served upon him until July 2, 2018, and no efforts were made to serve the warrant prior to July 2, 2018.[2]

{¶8} Appellant filed a written response in opposition, arguing the "statute of limitations clock" did not begin to run until the child victims disclosed the abuse to the Stark County Department of Jobs and Family Services ("Agency") in April of 1999; therefore the instant prosecution was commenced within 20 years. Appellant asserted the abuse of Mary and Susan Roe [Counts II through V] was disclosed on April 23, 1999, and the abuse of Jane Doe was disclosed on September 22, 1999. Therefore, the statute of limitations does not expire until April 2019 and September 2019, respectively.

{¶9} Appellant further argued the statute of limitations had not begun to run because appellant purposely sought to avoid prosecution pursuant to R.C. 2901.13(H):[3]

* * * *.

[2] The pertinent portion of R.C. 2901.13(A)(3) states: "Except as otherwise provided in divisions (B) to (J) of this section, a prosecution of any of the following offenses shall be barred unless it is commenced within twenty years after the offense is committed:
A violation of section * * * 2907.05 * * * of the Revised Code * * *."

[3] R.C. 2901.13(H) states, "The period of limitation shall not run during any time when the accused purposely avoids prosecution. Proof that the accused departed this state or concealed the accused's identity or whereabouts is prima-facie evidence of the accused's purpose to avoid prosecution."

> In this case, [appellee] was interviewed at his house by the Carroll County Sheriff's office on June 11, 1999. At that time, [appellee] was made aware of the accusations against him by [Mary and Susan Roe]. At that time, no further action was taken. On December 20, 1999, however, Carroll County Sheriff's office again performed a courtesy interview of [appellee] along with a Stark County case worker, in which he admitted to his contact with the third victim, [Jane Doe]. The indictment against [appellee] was filed on June 27, 2000, and when an attempt was made to have him served at his residence in Carroll County, it was discovered [appellee] no longer lived there. In March 2001, it was later discovered that [appellee] had left Ohio and was living in Florida.
>
> Therefore, [appellee's] departure from Ohio to the State of Florida, in the months after his confession to Carroll County Sheriff [*sic*] and prior to indictment is prima facie evidence of his intention to avoid prosecution, which additionally toll[s] the statute of limitations in this case.
>
> * * * *.
>
> Response to Motion to Dismiss, July 27, 2018.

{¶10} Appellee filed a "Motion to Dismiss Supplemental" in reply on August 16, 2018, asserting, e.g., that the record was devoid of evidence that he deliberately fled to avoid prosecution.

{¶11} The trial court scheduled the matter for an evidentiary hearing on September 7, 2018. Appellant called two witnesses at the hearing: Denise Smith, the

Program Administrator of the Agency, and C.J. Stantz, the Operations Commander of the Stark County Sheriff's Office ["SCSO"].

{¶12} Smith testified she is responsible for, e.g., maintaining the records of the Agency. Upon her direct examination by appellant, she was (apparently) shown two intake reports.[4] T. 7. The first was dated April 23, 1999; the "children of concern" in the report were Mary and Susan Roe, ages 14 and 16 at the time of the report; the alleged perpetrator was appellee; and the "nature of the concern" was "sexual abuse." T. 8-10. The second report, dated September 22, 1999, documented a call or office visit regarding child abuse and neglect; the subject of the report was Jane Doe, age 9 at the time of the report; and "the subject or alleged perpetrator of that report" was appellee.[5] T. 10-11. The case worker assigned to the first case was someone with the last name Valentine and the case worker assigned to the second case was Marty Pireu. T. 11.

{¶13} Stantz testified that as Operations Commander, he has a supervisory role over most of the daily functions of the SCSO, including the processing and execution of arrest warrants. There are five possible "pickup radiuses" assigned to warrants: 1 is nationwide, 2 is within the state of Ohio, 3 is "within a 100-miles radius," 4 is adjacent to Stark County, and 5 is Stark County-only. The pickup radius assigned to a warrant depends upon the type of charge or type of warrant, and follows a schedule. T. 15. The pickup radius might be adjusted "depending on whether we know where the individual is

[4] As will be further discussed infra, appellant did not mark these documents as evidence at the evidentiary hearing; nor was there any attempt to admit any of the referenced documents into evidence. These documents have not been made part of the record for our review. Our descriptions thereof are thus entirely dependent upon the testimony of the witnesses at the hearing on September 7, 2018.

[5] The report was not entered into evidence. It is not evident from the testimony alone that this report references sexual abuse.

at or there is some type of request from the prosecutors or the courts to change that pick-up radius * * *." T. 15. Only the command staff has authority to change the pickup radius. Stantz offered the example of a warrant with a radius of 5, meaning Stark County-only: if the SCSO learned the subject identified in the warrant is in Tuscarawas County, and the SCSO verified with Tuscarawas County that the subject was there, the SCSO would ask Tuscarawas County to pick up the subject and the SCSO would go to Tuscarawas County to get them.

{¶14} Stantz was (apparently) shown a "warrant jacket," which, he testified, did not contain the actual warrant in the instant case.[6] He testified that a warrant jacket is usually filled out when a warrant is issued; it contains the suspect's name and "information about who he is." T. 16. The warrant jacket also contains "attempts, marks anytime there is an attempt done or something done with the warrant * * *." T. 16.

{¶15} Stantz testified that the warrant jacket in the instant case pertained to a warrant for appellee; appellee's listed address was 1274 Poinsettia, Scio, Ohio; and the jacket contained a capias upon a secret indictment for G.S.I. T. 17-18. The pickup radius on the warrant was 2, meaning throughout the state of Ohio, because "[d]ue to the address being in Ohio and the degree of the offense, it would have been an Ohio-only warrant."

{¶16} Asked about attempts made to serve the warrant, Stantz testified as follows:

> * * * *.
>
> [Stantz]: * * *. It looks like on 6/29 of 2000 it was sent to Carroll County Sheriff's Office for an attempt at that residence on Poinsettia.

[6] The warrant jacket was not entered into evidence.

[Prosecutor]: And is that typically how they handle warrants; if it's out of county, for example, that they would send it or fax it to the local authorities for service?

[Stantz]: Absolutely. We would send it and ask them, hey, would you attempt this warrant. If you find them there, we'll come get them; that's a typical (*sic*).

[Prosecutor]: Is there anything on that warrant jacket to indicate that service was completed at that Poinsettia Drive address?

[Stantz]: No. If service was completed, it would have said arrested on the on the warrant or it would have some type of notation that arrest was made and we picked them up (*sic*).

[Prosecutor]: Is there information located on that warrant jacket that indicates that a new address was discovered for that particular Defendant at some point in time?

[Stantz]: It looks like 12/4 of 2000 it says, Per Chryssa, possible address—it's kind of hard to see, something North Merlin Terrace capital—yeah; looks like maybe some address possibly in Florida but I can't make out exactly what that address is.

[Prosecutor]: Okay.

[Stantz]: Kind of written.

[Prosecutor]: At that time that the warrant was updated with a new address of possibly in Florida, was the pickup radius changed on this particular offense?

[Stantz]: It does not appear it was, no, ma'am.

[Prosecutor]: Do you have any personal knowledge as to why that would not have happened at that time?

[Stantz]: No personal knowledge at all.

[Prosecutor]: Are there different reasons that a pickup radius may not change on a particular offense even if we have a potential address for a suspect outside of the state of Ohio?

[Stantz]: Typically, from my experience, if it's just a possible address, we have no verification that they're there, typically it would not be changed. If we have some type of verification from either a law enforcement or a reliable source that says this is where he's living at, we'll send out the local police agency for that agent, you know, where that address is to verify, and then we will, we will change the pickup radius at that time.

* * * *.

[Prosecutor]: At some point in time, if you can reference the jacket, the pickup radius did change on that particular warrant?

[Stantz]: Correct.

[Prosecutor]: Okay. Do you understand the circumstances as to why that pickup radius was changed eventually?

[Stantz]: I do.

[Prosecutor]: And can you explain to the Court why that happened?

[Stantz]: We were contacted by, I believe it's the Sheriff's Office, I could be wrong, it might have been the locals in Florida; that they had an

> individual living in their area, they knew where he lived at, they had his current address. They contacted us at that time. We did change the radius to pickup radius of 1 Florida only, which means we would only go to Florida to pick him up because we were able to verify where he was living at.
>
> * * * *.
>
> T. 19-22.

{¶17} Upon cross-examination, Stantz said he had no information about appellee's parents living with him in Florida, or that family members knew or may have known where appellee was. Stantz confirmed that in 2001, it would have been possible to check a LEADS terminal for a Florida operator's license issued to appellee.

{¶18} Appellee did not present any evidence at the hearing on the motion to dismiss.

{¶19} On September 10, 2018, the trial court entered a judgment entry dismissing Counts I through V of the indictment based upon a violation of appellee's right to due process.

{¶20} On September 17, 2018, appellant filed a motion to clarify the judgment entry of dismissal and to stay proceedings pending appeal. Appellant argued, e.g., that appellee's motion to dismiss did not apply to Count I, although that count was also dismissed by the trial court.

{¶21} On September 19, 2018, the trial court filed a judgment entry noting that Count I was included in the decision to dismiss because appellant failed to establish due diligence in executing the arrest warrant, thereby violating appellee's right to due process, and denied appellant's motion for stay pending appeal.

{¶22} Appellant now appeals from the trial court's judgment entries of September 10 and September 19, 2018, as a state's appeal of right pursuant to R.C. 2945.67(A).

{¶23} Appellant raises one assignment of error:

**ASSIGNMENT OF ERROR**

{¶24} "THE TRIAL COURT ERRED IN DISMISSING ALL FIVE COUNTS OF GROSS SEXUAL IMPOSITION ON THE GROUND THAT [THE] STATE HAD NOT EXERCISE[D] DUE DILIGENCE IN LOCATING AND ARRESTING DEFENDANT, AND THEREBY VIOLATED SUBSTANTIVE DUE PROCESS, WHEN THE STATUTE OF LIMITATIONS HAD NOT EXPIRED FOR THE CHARGED OFFENSES."

**ANALYSIS**

{¶25} Appellant argues the trial court erred in dismissing Counts I through V on the basis of a constitutional due-process violation. We agree.

{¶26} Appellee's motion to dismiss was premised upon an alleged violation of his right to speedy trial. A speedy-trial claim involves a mixed question of law and fact. *State v. Jenkins*, 5th Dist. Stark No. 2009-CA-00150, 2010-Ohio-2719, ¶ 31, citing *State v. Larkin*, 5th Dist. Richland No. 2004-CA-103, 2005-Ohio-3122. As an appellate court, we must accept as true any facts found by the trial court and supported by competent, credible evidence. *Id*. With regard to the legal issues, however, we apply a de novo standard of review and thus freely review the trial court's application of the law to the facts. *Id.*

{¶27} The offenses in this case are five counts of gross sexual imposition pursuant to R.C. 2907.05(A)(4) against three victims under the age of 13. Prosecution of a violation

of R.C. 2907.05 "shall be barred unless it is commenced within twenty years after the offense is committed." R.C. 2901.13(A)(3)(a).[7] Pursuant to R.C. 2901.13(J), however:

> The period of limitation for a violation of any provision of Title XXIX of the Revised Code that involves a physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of a child under eighteen years of age * * * shall not begin to run until either of the following occurs:
>
> (1) The victim of the offense reaches the age of majority.
>
> (2) A public children services agency, or a municipal or county peace officer that is not the parent or guardian of the child, in the county in which the child resides or in which the abuse or neglect is occurring or has occurred has been notified that abuse or neglect is known, suspected, or believed to have occurred.

{¶28} The testimony of Denise Smith established a report of sexual abuse perpetrated by appellee against Mary and Susan Roe was made to the Agency on April 23, 1999, and a report concerning Jane Doe was made on September 22, 1999. Before the trial court, appellee argued his right to speedy trial was violated because the warrant for his arrest was not executed within twenty years of the *conduct* alleged in the offenses.

---

[7] At the time of the conduct giving rise to the instant charges, pursuant to R.C. 2901.13(A)(1), a six-year statute of limitations applied to G.S.I. By amendment effective March 9, 1999, however, the Ohio General Assembly extended the statute of limitation for sex crimes including G.S.I. to 20 years. The amendment applies retroactively to offenses committed prior to the amendment if the statute of limitations for such offenses had not yet expired by March 9, 1999. See, *State v. Massey,* 5th Dist. Stark No. 2004 CA 00291, 2005-Ohio-5819, ¶ 10. Appellee conceded the 20-year period is applicable in the original motion to dismiss before the trial court and on the record at the hearing. T. 20.

As noted supra, however, the statute of limitations for the instant offenses runs from the date of *disclosure*, and the dates of disclosure in the instant case are uncontroverted. The warrant was returned on July 2, 2018.[8] Appellant did not violate the statute of limitations.[9]

{¶29} The instant case involves a delay between indictment and arrest. That delay, however, is within the parameters of the statute of limitations. The trial court acknowledged that the prosecution was commenced within the prescribed time period, but found appellant violated appellee's due process nevertheless in failing to execute the warrant with "reasonable diligence." Appellant's obligation to exercise reasonable diligence, however, arises from the statute of limitations itself. R.C. 2901.13(F), supra. Whether the prosecution exercised reasonable diligence under division (F) of R.C. 2901.13 is immaterial if the defendant was prosecuted within the applicable statute of limitations. *State v. Walker*, 10th Dist. Franklin No. 06AP-810, 2007-Ohio-4666, ¶ 55.

{¶30} At the conclusion of the evidentiary hearing, the trial court stated the statute-of-limitations issue was separate from a due process issue; implicitly, although appellant executed the warrant on the indictment within 20 years of disclosure, appellant presented

---

[8] The date of appellee's arrest in Florida is not in the record. The return of the warrant in Stark County was docketed on July 2, 2018. Appellant asserts appellee was arrested and returned via extradition on July 2, 2018. Brief, 3.

[9] Appellant has not renewed the argument that appellee purposefully avoided prosecution pursuant to R.C. 2901.13(H). Appellant's statement of the case states appellee "fled the state of Ohio" before he could be arraigned upon the secret indictment, but there was no evidence before the trial court that appellant was aware of the secret indictment; nor is evidence in the record of any interaction appellee may have had with the Carroll County Sheriff's Department. As noted supra, the circumstances of appellee's location and arrest in Florida are not in the record. We have frequently noted "that the record cannot be enlarged by factual assertions in the brief." *State v. Gomez*, 5th Dist. Muskingum No. CT2018-0025, 2019-Ohio-481, --N.E.3d--, ¶ 32, internal citations omitted.

insufficient evidence of reasonably-diligent efforts to serve the arrest warrant within that time. Ultimately, the trial court found appellant violated appellee's due process in failing to execute the warrant earlier.

{¶31} The trial court applied the analysis of the U.S. Supreme Court in *Barker v. Wingo* to the instant case. 407 U.S. 514, 530–31, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). In *Barker,* the Court identified factors for a court to evaluate if a defendant argues his speedy-trial rights have been violated:

> A balancing test necessarily compels courts to approach speedy trial cases on an ad hoc basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.
>
> *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972).

{¶32} We disagree with the trial court's application of the *Barker* factors to the facts of the case *sub judice*. The Supreme Court noted the importance of the first factor: "The length of the delay is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." *Id.*, 407 U.S. at 531. In the instant case, as determined supra, prosecution was commenced within the applicable statute of limitations. If the

argued delay is within the period of the statute of limitations, we cannot conclude the delay is presumptively prejudicial.

{¶33} The instant case presents a collision between the statute of limitations, constitutional speedy-trial rights, and due process. While an 18-year delay in executing a warrant might be fatal in a different case, here we find the statute of limitations prevails. The right to a speedy trial is encompassed within the Sixth Amendment to the United States Constitution, which provides that an "accused shall enjoy the right to a speedy and public trial * * *." See also, Section 10, Article I of the Ohio Constitution. Ohio courts have found that "prejudice resulting from pre-arrest delay is best protected by the due process clause and the relevant statute of limitations." *State v. Stevens*, 8th Dist. Cuyahoga No. 67400, 1994 WL 716350, *5.

{¶34} Speedy-trial concerns are less of an issue here. The United States Supreme Court has enumerated three basic goals of the Sixth Amendment's right to a speedy trial: 1) To prevent undue and oppressive incarceration prior to trial, 2) to minimize anxiety and concern accompanying public accusation, and 3) to limit the possibility that a long delay will impair the ability of an accused to defend himself. *Smith v. Hooey,* 393 U.S. 374, 378, 89 S.Ct. 575, 21 L.Ed.2d 607 (1969), citing *United States v. Ewell,* 383 U.S. 116, 120, 86 S.Ct. 773, 15 L.Ed.2d 627 (1966). In the instant case, during the period of delay, appellee was not incarcerated and was not publicly accused due to the secret indictment. Appellee presented no evidence that his ability to defend himself has been compromised. Where there is no evidence, or even allegations, that a defendant's position has been so prejudiced by the delay that a fair adjudication is not possible, the defendant cannot prevail on a speedy-trial claim. *Stevens, supra,* 1994 WL 716350, *5.

To prevail on a claimed violation of the speedy trial clause, the accused bears the burden of demonstrating prejudice occasioned by the delay. *Id.*, citing *Barker, supra.* In the instant case, appellee cannot succeed on a speedy-trial claim because he made no attempt to establish prejudice. He cannot prevail upon a due-process claim, either, because the delay in the instant case is not presumptively prejudicial.

{¶35} We find the analysis of the Twelfth District in *State v. Packard*, 52 Ohio App.3d 99, 101–02, 557 N.E.2d 808, 812 (12th Dist.1988), to be helpful in resolving the perceived conflict between appellee's speedy-trial rights and appellant's fulfillment of the statute of limitations:

> * * * *. In a case where no specific time periods have been set within which an accused must be brought to trial, a period of delay of over three years would be "presumptively prejudicial." In this case, however, specific time periods have been set within which an accused must be brought to trial. R.C. 2901.13(A)(1) set that limit at six years. **We must presume that in setting a six-year time period within which a felony prosecution must be commenced, the legislature felt that such a length of time would not hinder a defendant in putting on a defense. To find otherwise would be to assume that the legislature failed to consider the speedy trial statutes in promulgating this code section. Where the legislature has set such a time period for the commencement of prosecution in a case such as this one, we must find that a delay of three years, which is within the six-year time frame, is not prejudicial in the absence of evidence to the contrary.** (Emphasis added).

* * * *.

{¶36} If a defendant is arrested on an outstanding warrant within the limitations period, the warrant was properly executed and this prosecution was timely commenced within the meaning of R.C. 2901.13(F). *State v. Bruce*, 11th Dist. No. 2017-P-0034, 2018-Ohio-1980, 113 N.E.3d 15, ¶ 41. Where prosecution is commenced within the period of the statute of limitations, any period of delay in commencing prosecution that falls within the 20-year time frame is not prejudicial in the absence of specific evidence to the contrary. See, *State v. Lanier*, 2nd Dist. Montgomery No. 15729, 1997 WL 34963, *2, citing *Packard, supra,* 52 Ohio App.3d at 102 and *State v. Collins*, 118 Ohio App.3d 73, 691 N.E.2d 1109 (2nd Dist.1997).

{¶37} The trial court in the instant case found the delay of 18 years in executing the warrant to be presumptively prejudicial and addressed appellant's failure to exercise reasonable diligence in terms of a violation of due process. The *Barker* factors, however, are addressed to speedy-trial violations, and we find that under the circumstances of the instant case, the delay in executing the warrant was not so presumptively prejudicial as to trigger an analysis of the remaining *Barker* factors. Additionally, under the lens of a speedy-trial analysis, appellee has not alleged, much less proven, that a fair adjudication is not possible. In *United States v. Lovasco*, 431 U.S. 783, 789, 97 S.Ct. 2044, 52 L.Ed.2d 752 (1977), the U.S. Supreme Court noted statutes of limitations "provide predictable, legislatively enacted limits on prosecutorial delay" and are "'the primary guarantee[ ] against bringing overly stale criminal charges.'" In the instant case, the applicable statute of limitations was met and a speedy-trial violation has not been established.

{¶38} We further note the trial court applied our analysis in *State v. Jenkins*, 5th Dist. Stark No. 2009-CA-00150, 2010-Ohio-2719, to its discussion of due process and reasonable diligence. In *Jenkins,* we applied the *Barker v. Wingo* factors to a case in which a defendant argued that a fourteen-year delay between secret indictment in 1995 and subsequent arrest in 2008 prejudiced his defense and impaired his Sixth Amendment speedy-trial rights. *Id.* The offense at issue was attempted aggravated trafficking. The state conceded the delay of 14 years in executing the arrest warrant was presumptively prejudicial, thereby triggering application of the remaining *Barker* factors. *Id.* at ¶ 49. The trial court had found the applicable six-year statute of limitations was tolled by actions of the defendant, a conclusion we disagreed with and reversed. *Id.* at ¶ 64. The conclusion that the six-year statute of limitations had long-since expired when the warrant was finally executed was key to our decision that the trial court should have granted the motion to dismiss. *Id.* at ¶ 66.

{¶39} *Jenkins* is thus significantly different than the instant case; the triggering events requiring application of the *Barker* factors are not present here. We therefore find the trial court erred in granting appellee's motion to dismiss. Appellant's sole assignment of error is sustained; the dismissal of the charges is vacated and this cause is remanded for further proceedings consistent herewith. *See, State v. Snyder*, 5th Dist. Fairfield No. 02-CA-48, 2002-Ohio-7049, ¶ 19.

## CONCLUSION

{¶40} Appellant's sole assignment of error is sustained. The decisions of the trial court granting appellee's motion to dismiss are reversed and vacated, and this matter is remanded to the trial court for further proceedings consistent with this opinion.

By: Delaney, J.,

Gwin, P.J. and

Wise, John, J., concur.