

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO, Plaintiff, vs. JAMES A. EARNEY, Defendant.	CASE NO. CR-02-7144 <i>MEMORANDUM DECISION ON MOTION TO DISMISS RE: SPEEDY TRIAL</i>
STATE OF IDAHO, Plaintiff, vs. DAVID D. HENDRICKSON, Defendant.	CASE NO. CR-02-7143 <i>MEMORANDUM DECISION ON MOTION TO DISMISS RE: SPEEDY TRIAL</i>

These matters have come before the court on the defendants' Motions to Dismiss for lack of speedy trial. The cases have been combined for purposes of preliminary hearing as well as the pending motions; however, they have been severed for the purpose of trial. Mr. Earney is represented by Stanton P. Rines and Mr. Hendrickson by Scot D. Nass. The state is represented by James C. Daugherty, Deputy Prosecuting Attorney for Kootenai County.

STATEMENT OF FACTS AND PROCEDURE

In the early morning hours of July 4, 2001, a shooting occurred within the City of Coeur d' Alene that resulted in criminal charges being pursued against James A. Earney and David Dennis Hendrickson. After protracted legal proceedings, both Defendants were brought to trial in December of 2002. Both Defendants now seek to have the charges dismissed based upon a violation of their right to a speedy trial. The following timeline is helpful to analyze the factors that caused the cases to be tried seventeen months after criminal charges were first brought:

July 5, 2001 Criminal complaints were filed against Earney in Case No. CR-01-12557 and against Hendrickson in Case No. CR-01-12558. Earney and Hendrickson were charged with attempted murder in the second-degree under ***I.C. §§ 18-4001, 4002, 4003, and 18-306*** and with an enhancement for the use of a deadly weapon during the commission of a crime under ***I.C. § 19-2520***. The assigned Magistrate Judge, Barbara Buchanan, consolidated both cases for preliminary hearing on July 13, 2001.

July 20, 2001 and August 31, 2001 Preliminary hearing was conducted over the course of two days. On August 31, 2001, Judge Buchanan entered orders amending the charges and holding the Defendants to answer. Concluding that the State did not submit sufficient evidence to support charges of attempted murder, the magistrate found probable cause for charges of aggravated assault under

I.C. § 18-901 and 18-905. The cases were bound over to district court and assigned to Judge Charles W. Hosack.

September 12, 2001 The State filed motions asking the magistrate to reconsider the orders amending the charges and holding the Defendants. On November 7, 2001, Judge Buchanan issued orders denying the motions to reconsider.

September 27, 2001 Informations were filed charging the Defendants with aggravated assault along with weapon enhancement. The district court set the cases for jury trial to commence December 10, 2001.

November 20, 2001 The State filed notices of appeal challenging the magistrate's ruling that amended the charges and the orders denying the motions to reconsider. The record is not entirely clear, but it appears that for some reason the appeal was assigned directly to the Idaho Supreme Court rather than to the district court. On November 29, 2001, the Idaho Supreme Court conditionally dismissed the appeal.

December 6, 2001 The State moved to dismiss the charges against the Defendants in order to re-file the cases. The motion was granted and orders dismissing the informations without prejudice¹ were signed by Judge Hosack on February 13, 2002.

April 19, 2002 New charges again alleging attempted second-degree murder were filed against Earney in Case No. CR-02-7144 and

¹ It should be noted that the defendants objected to the dismissal without prejudice and urged the court to dismiss with prejudice.

against Hendrickson in Case No. CR-02-7143. This time the State did not seek warrants but rather proceeded upon summons to both Defendants.

May 24, 2002, July 12, 2002, and August 9, 2002 A second preliminary hearing was conducted before Debra Heise, Magistrate Judge, over the course of three days. On June 27, 2002, the State filed amended criminal complaints charging the crime of assault with the intent to commit murder rather than attempted second-degree murder. Judge Heise concluded that the State did not submit sufficient evidence to support the charges sought but found probable cause for aggravated assault. The Defendants were bound over to district court and the cases were assigned to Judge Luster.

August 13, 2002 Informations charging aggravated assault in Cases No. 02-7143 and 02-7144 were filed. The district court scheduled a trial for Earney to commence on December 2, 2002 and a trial for Hendrickson to commence on December 9, 2002. On September 20, 2002, Earney filed his motion to dismiss based upon lack of speedy trial. On November 14, 2002, Hendrickson filed his motion to dismiss. A hearing on the motions to dismiss was set for November 27, 2002. At that hearing, the State sought a continuance based upon recent submission of authority by the defense. The court agreed to delay the hearing but declined to reschedule the trial. The court determined that

both cases would proceed to trial as scheduled and the defense motions would be preserved and considered subsequent to trial if necessary.

December 5, 2002 The jury trial in *State v. Earney* resulted in a mistrial after the jury was unable to reach a unanimous verdict. The State subsequently elected to pursue a second trial pursuant to a timely notice to the court and the case is currently set to proceed to trial on March 17, 2003.

December 12, 2002 The jury trial in *State v. Hendrickson* resulted in a jury verdict finding the defendant guilty of aggravated assault. Hendrickson is currently set for sentencing on March 5, 2003.

The court proceeded to hearing on the defendants' motions on January 10, 2003. Evidence was presented to the court on behalf of both defendants. Earney's mother, Vicki Coontz, testified to the financial as well as emotional impact that the trial had on her son and their family. She told the court that they have spent \$31,000 in legal fees so far on his defense. She said that Earney was forced to sell his 1999 Honda automobile and that her older son contributed by selling his classic 1963 Chevrolet Impala. Ms. Coontz indicated that she had exhausted her savings and is running out of funds. She further indicated that a substantial part of the financial impact is attributed to the additional preliminary hearing.

Ms. Coontz also described the emotional toil upon her son. She told the court that Earney has lost weight under the emotional strain of

the case, has been forced to put his life on hold, and is unable to make plans until the case is resolved.

Hendrickson's father, David W. Hendrickson, also testified about the financial impact on the family in assisting with his son's defense. He stated that the legal cost for the first preliminary hearing was about \$17,000, for the second preliminary hearing was about \$15,000, and for the trial was another \$15,000. He said that it was necessary to sell their stocks and spend their savings; he claimed that the re-filing of charges had a major financial impact. He testified to the emotional impact upon the family and stated that David's mother had a heart attack because of this.

DISCUSSION

A. Statutory Speedy Trial Rights

The first issue to be addressed is whether the statutory speedy trial rights of the Defendants have been violated. Both Defendants have filed motions to dismiss for speedy trial violations pursuant to ***Idaho Code § 19-3501(2)***. They contend that the State violated their statutory right to a speedy trial. ***Idaho Code § 19-3501(2)*** addresses when a criminal action may be dismissed as follows:

The court, unless good cause to the contrary is shown, must order the prosecution or indictment to be dismissed, in the following cases:

. . .

2. If a defendant, whose trial has not been postponed upon his application, is not brought to trial within six (6) months from the date that the indictment or information is filed with the court.

Thus, pursuant to the statute, the Defendants had to be brought to trial within six (6) months from the date that the informations were filed in their cases.

The defendants argue that, with regard to the charges arising from this incident, the informations were first filed in September of 2001 but they did not actually proceed to trial until December of 2002. They claim that this length of time between the filing of the informations and the trials violated their statutory speedy trial rights.

The clear language of **Idaho Code § 19-3501(2)** provides that the trial must be brought within six (6) months of the date of that the information is filed with the court. According to **State v. Horsley**, 117 Idaho 920, 792 P.2d 945 (1990), the six (6) month requirement of **I.C. § 19-3501** is renewed upon the re-filing of the charge. **See also State v. McKeeth**, 136 Idaho 619, 38 P.3d 1275 (Ct.App. 2001), **rev. denied** (2002). In the instant cases, the informations were filed on August 13, 2002 and the trials were held in December of 2002. The Defendants were brought to trial within six (6) months from the date that the informations were filed. Therefore, there is no violation of statutory speedy trial rights.

B. Dismissal and Re-filing of Charges

The second issue to be addressed is whether the State could dismiss the original cases and re-file charges against the Defendants. The Defendants contend that the dismissal of the 2001 cases and the

subsequent re-filing of the cases in 2002 was an abuse of due process because the dismissal and re-filing were actions taken by the prosecuting attorney for purposes of harassment, delay, and/or forum shopping. The Defendants point out that no new substantive evidence was presented in the second preliminary hearing.²

Idaho law recognizes that a prosecutor, in order to circumvent a ruling reducing the charge against a defendant, may move to dismiss the original action and then subsequently file a second complaint without violating a defendant's speedy trial rights. Such a re-filing after a dismissal is not prohibited unless done without good cause or in bad faith. **See Idaho Code §§ 19-1717 and 19-3506; Rules 48(a) and (b), Idaho Criminal Rules; State v. Diaz**, 117 Idaho 392, 788 P.2d 207 (1990); **State v. Ruiz**, 106 Idaho 336, 678 P.2d 1109 (1984); **Stockwell v. State**, 98 Idaho 797, 573 P.2d 116 (1977); **Rufener v. Shaud**, 98 Idaho 823, 573 P.2d 142 (1977). In **Stockwell v. State**, 98 Idaho at 803, the Idaho Supreme Court held that the "statutes specifically contemplate that a second criminal complaint may be filed in a felony case following dismissal of the first criminal action."

The Idaho Supreme Court has also addressed the issue of whether the dismissal and re-filing violates a defendant's rights under the due

² The defendants request that the court take judicial notice of the files and records contained in Cases No. CR-01-12557 and CR-01-12558. Pursuant to Idaho statutes, rules, and cases, judicial notice may be taken of other cases in the district court. **See I.C. § 9-101; Rule 44(d), Idaho Rules of Civil Procedure; Rule 201, Idaho Rules of Evidence; State v. Morris**, 81 Idaho 267, 340 P.2d 447 (1959). Based on that authority, judicial notice is taken of Cases No. CR-01-012557 and CR-01-12558.

process clause of the state or federal Constitutions. **Stockwell v. State, supra.** According to **Stockwell**, the dismissal and re-filing of criminal charges do not violate a defendant's rights under the due process clauses of the state or federal Constitution unless done for the purpose of harassment, delay, or forum shopping. In **Stockwell**, the prosecutor had cause to dismiss the first action and bring a second criminal complaint against the defendant based upon the prosecutor's good faith belief that the magistrate erred in the preliminary hearing. The record did not indicate that the prosecuting attorney in **Stockwell** was "judge shopping."

The Order of Dismissal signed by Judge Hosack in **State v. James A. Earney**, Kootenai County Case No. CR-01-12557 states that the "State moved to dismiss this matter for purposes of re-filing." The minutes of the hearing reflect that the prosecuting attorney intended to re-file based upon the prosecuting attorney's belief that the magistrate who bound over the Defendant had applied an incorrect standard of law at the preliminary hearing.³ When the magistrate denied the State's motion for reconsideration,⁴ the State decided that the best course was to dismiss the original case and re-file the charges. Judge Hosack denied Mr. Earney's request for a dismissal with prejudice.

³ The hearing was actually a pre-trial conference. There was a motion to continue the jury trial in the court file. It does not appear that the State filed a written motion to dismiss prior to the hearing but instead orally moved to dismiss at the hearing.

⁴ The State's motion was denied on grounds that the magistrate judge no longer had jurisdiction in the matter.

The order of dismissal signed by Judge Hosack in ***State v. David Dennis Hendrickson***, Kootenai County Case No. CR-01-12558, contained the same language as that in ***Earney***. Although the cases were separate, the hearings were held at the same time and it appears that the same issues were addressed.

Pursuant to ***Idaho Code § 19-3506*** and the relevant case law, the prosecuting attorney could move to dismiss the original actions and then re-file the complaints. At the time of the dismissal, the State clearly expressed an intention to re-file the charges and gave its reason for the dismissal. Simply put, the State disagreed with the magistrate's finding at the preliminary hearing; in such cases, the prosecutor's remedy under Idaho law is to dismiss and re-file. Thereafter, the original cases were dismissed and the instant cases were filed. Upon reviewing the records in the original cases along with the re-filings in the instant cases, it cannot be found that the dismissals and re-filings were done without good cause or in bad faith. The record does not indicate that the prosecutor dismissed the original cases for the purpose of harassing the defendants, delaying the proceedings, or forum shopping. Therefore, under the Idaho law, the prosecuting attorney was entitled to dismiss the original actions and re-file the instant cases.

C. Constitutional Speedy Trial Rights

The third issue to be addressed is whether the Defendants' constitutional rights to a speedy trial were violated. If the statutory

provision governing a speedy trial is not implicated in a case, then a determination should be made as to whether state and federal constitutional provisions relating to a speedy trial have been violated.

State v. Dillard, 110 Idaho 834, 718 P.2d 1272 (Ct.App. 1986).

The Idaho Supreme Court recently addressed the constitutional rights to a speedy trial in ***State v. Young***, 136 Idaho 113, 117, 29 P.3d 949 (2001), as follows:

The Sixth Amendment to the Constitution of the United States guarantees to criminal defendants the right to a speedy trial. This right is applicable to the states through the Fourteenth Amendment. In addition, Article 1, § 13, of the Constitution of the State of Idaho also guarantees the accused in a criminal case the right to a speedy trial. In ***Barker v. Wingo***, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972), the United States Supreme Court adopted a four-part balancing test to determine whether a defendant's right to a speedy trial under the Sixth Amendment has been infringed. We have adopted that same test in determining whether the right to a speedy trial under our state constitution has been violated. ***State v. Lindsey***, 96 Idaho 474, 531 P.2d 236 (1975). The four factors to be balanced are (1) the length of the delay, (2) the reason for the delay, (3) the assertion of accused's right to a speedy trial, and (4) the prejudice to the accused.

The first factor, the length of the delay, is a triggering mechanism. Until there is some delay which is presumptively prejudicial, it is unnecessary to inquire into the other three factors. Under the Sixth Amendment, the period of delay is measured from the date there is 'a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge.' Under the Idaho Constitution, the period of delay is measured from the date formal charges are filed or the defendant is arrested, whichever occurs first. . . .

The second factor is the reason for the delay. In this case, the delay was caused by the State attempting to obtain appellate review of an interlocutory order

granting Young's motion in limine. When doing so, the State was not acting in bad faith, nor was it motivated by a dilatory purpose. The State's conduct in seeking appellate review was reasonable. . . .

The third factor is the accused's assertion of his right to a speedy trial. . . .

The fourth factor is prejudice to the accused caused by the delay. Prejudice is to be assessed in light of the interests of defendants which the right to a speedy trial is designed to protect. Those interests are (1) to prevent oppressive pretrial incarceration, (2) to minimize anxiety and concern of the accused, and (3) to limit the possibility that the defense will be impaired.

(Citations omitted in part.)

Thus, to determine whether there has been a violation of the Defendants' constitutional speedy trial rights, the standards set forth in **Young** must be applied to this case.

The first factor to be considered is the length of the delay. The initial question is the date from which the period of delay is measured. The Defendants contend that the period should be started on the date of their arrests, which was on or about July 4, 2001. From that date to the time of their trials in December of 2002, approximately seventeen (17) months elapsed.

The right to a speedy trial does not apply during the time periods when charges have been dismissed, however. **United States v. MacDonald**, 456 U.S. 1, 102 S.Ct. 1497, 71 L.#d.2d 696 (1982); **State v. Fairchild**, 108 Idaho 225, 697 P.2s 1239 (Ct.App. 1985).

The record reflects that Judge Hosack granted the State's motions to dismiss on December 6, 2001 and that he signed orders dismissing the informations in the original cases on February 13, 2002. New

charges were filed on April 19, 2002. Thus, there was a period of approximately two (2) to four (4) months that would not count when determining the length of the delay. The delay was approximately thirteen (13) to fifteen (15) months.

A delay of fourteen (14) months was found to be long enough to trigger a judicial inquiry into whether the accused had been denied a right to a speedy trial. That period was determined to be presumptively prejudicial. ***State v. Lindsay***, 96 Idaho 474, 531 P.2d 236 (1975). A review of the records in the instant cases reveals that there was a delay sufficient to be presumptively prejudicial and trigger a judicial inquiry into the other three factors.

In some circumstances, the dismissal of the original charges and the bringing of new and different charges starts the period running from the time that the new and different charges are brought. ***See Harvey v. Shillinger***, 76 F.3d 1528 (10th Cir. 1996). The complaints in both the original cases and in the instant cases charged the Defendants with attempted murder in the second degree and with use of a deadly weapon. Although the charges were later amended in the instant cases, they were not new and different such that the speedy trial period would commence running from the time that the instant cases were filed.

The second factor to be considered is the reason for the delay. The delays occurred in the original cases.⁵ The delays were caused by the State's motions for reconsideration of the magistrate's orders amending the charges and the appeals of the magistrate's rulings, which were dismissed by the Idaho Supreme Court. The lateness of the State's oral motions to dismiss, which were made at the pre-trial conference approximately four (4) days before the scheduled trial, also contributed to the delay. If the State did not agree with the magistrate's decision to reduce the charges against the Defendants, the appropriate remedy for the State was to move for dismissal and re-file the charges. The State could have moved to dismiss shortly after the preliminary hearing concluded on August 31, 2001. The State's course of action was the reason for the delays in bringing the Defendants to trial.

See State v. Hernandez, 133 Idaho 576, 990 P.2d 742 (Ct.App. 1999), ***rev. denied*** (1999) (it appeared that a significant part of the delay was caused by the State's effort to charge Hernandez with attempted first degree murder, which the magistrate found to be unsupported by probable cause and by the State's initial failure to comply with procedural requirements; holding that prosecutorial actions contributed to the delay).

The third factor to be considered is the accused's assertion of his right to a speedy trial. In the instant cases, the informations were filed

⁵ Once the cases were re-filed, they moved along on a timely basis and in a regular fashion. The trials were held within the six (6) month statutorily required period.

on August 13, 2002. The trials were set to commence in December of 2002. Earney filed his motion to dismiss based on a violation of his speedy trial rights on September 20, 2002; Hendrickson's motion was filed on November 14, 2002. While defendants might have filed their motions earlier, it cannot be said that they did not assert their speedy trial rights.

The fourth factor to be considered is the prejudice to the accused caused by the delay. Among the interests of the Defendants to be assessed is the prevention of "oppressive pretrial incarceration." In the original cases, the Defendants were initially in custody, but they eventually posted bonds, which were exonerated when the cases were dismissed. In the instant cases, the Defendants were served by summons. They were not incarcerated and they did not post bonds. It cannot be found that they were subject to oppressive pretrial incarceration.

Another interest to be assessed is the minimizing of anxiety and concern of the accused. The Defendants have provided evidence that their lives have been on hold since the first day and that this has been difficult for them and their families, even resulting in some health problems. While it is generally recognized that, in criminal matters, persons who are accused and their families often suffer anxiety and concern, it can be found that, in the instant cases, a quicker

determination would have lessened the anxieties and concerns of the Defendants.

The last interest to be assessed is a limitation on the possibility that the defense will be impaired. This is the most serious form of prejudice “because the inability of the defendant adequately to prepare his case skews the fairness of the entire system.” ***State v. Hernandez***, 133 Idaho 576, 583, 990 P.2d 742 (Ct.App. 1999), ***rev. denied*** (1999), quoting from ***Barker v. Wingo***, 407 U.S. 514, 532, 92 S.Ct. 2182, 33 L.2d 101 (1972). In these cases, there was no loss of witnesses or evidence. The Defendants’ defenses were not hindered by delays in the proceedings. There is no showing that, over time, the defense was impaired.

There is another point that must be addressed. The Defendants provided evidence and argument regarding the funds that were spent on their defenses. Indeed, both Defendants and their families expended significant resources in defending these cases. In particular, the Defendants contend that the State’s delay caused the unnecessary expenditure of funds for their defense (1) at the second preliminary hearing, which was conducted over a period of three (3) days, and (2) for refresher preparation before the trial in December of 2002. The State, however, had a right to dismiss the original cases and to re-file these cases. Therefore, those expenditures resulting from the re-filing, such as the second preliminary hearing and the preparation for trial a second

time, were costs that would have been incurred even if the Defendants had been brought to trial at an earlier date. They do not constitute grounds for a violation of their speedy trial rights.

After considering their interests, the Defendants have not shown that they suffered prejudice from the delay.

In conclusion, when all of the factors are weighed, there has not been a violation of the Defendants' constitutional speedy trial rights. Therefore, the Defendants' motions to dismiss for violation of speedy trial rights must be denied.

CONCLUSION AND ORDER

Based on the foregoing discussion, it is hereby ORDERED that the Motion to Dismiss by Defendant James A. Earney and the Motion to Dismiss by Defendant David D. Hendrickson be and the following are denied.

DATED this _____ day of March, 2003.

John Patrick Luster
District Judge

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, sent by interoffice mail, or sent by facsimile transmission, on the ____ day of March, 2003, to the following:

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DANIEL J. ENGLISH
Clerk of the District Court

By: _____
Deputy Clerk