

IN THE CRIMINAL COURT OF DAVIDSON COUNTY, TENNESSEE
DIVISION III

STATE OF TENNESSEE

v.



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FILED
JUN 18 2007
BY DAVID G. TORRENCE
CLERK
Case No. 2002-D-2343 *Exhibit* D.C.

ORDER

I. Introduction

This matter comes before the Court on Defendant's "Motion to Dismiss Due to State's Violation of Defendant's Federal and State Constitutional Right to a Speedy Trial", filed with the Davidson County Criminal Court Clerk's Office on March 6, 2007. This motion was continued several times for hearing and was heard on May 29, 2007, where the Court heard the testimony of Captain Karl Roller of the Metropolitan Police Department Warrants Division and Defendant. After reviewing the motion, the testimony, counsels' arguments, the exhibit,¹ and the law, the Court finds that Defendant's motion shall be GRANTED for the reasons set forth below.

II. Factual & Procedural Background

Defendant is charged with food stamp fraud (Count 1) and AFDC fraud (Count 2). The charges contained in the indictment stem from incidents occurring in 2001 (between January 1, 2001-February 28, 2001; between May 1, 2001-October 31, 2001; and between May 1, 2001-November 28, 2001).

¹ A copy of the sealed capias dated December 6, 2002 was admitted as Exhibit 1.

The case was initially presented to a grand jury on December 3, 2002, and a sealed capias then issued. Defendant, however, was not served with the capias until December 21, 2006, four years after presentment to the grand jury.

Captain Karl Roller of the Metropolitan Police Department Criminal Warrants Division testified at the hearing. Although he was not employed by this division when the capias was issued, he reviewed the records and was able to inform the Court that since the capias was a sealed capias issued by an outside agency—the Office of the Inspector General—it was placed under seal and was simply housed at the Warrant Division. Captain Roller testified that the MPD assumes the outside agency will serve the warrant and MPD only keeps it on file in case they make an arrest of the named individual on the capias for some other violation. In this case, Defendant came into contact with the police department for citations in 2003 and 2004; however, since Defendant's driver's license was issued under her married name of [REDACTED] Captain Roller explained that it would not have alerted the officers that there was an outstanding capias under her alias [REDACTED]. Captain Roller noted that due to a change in policy that an alias would only show in the system if law enforcement also had fingerprints in the system.

Defendant [REDACTED] testified that her maiden name is [REDACTED]. She stated that [REDACTED] is her married name, which she has used since October 1999. She testified that she attempted to change her public assistance benefits to her married name but a representative from social services told her she could not do so; thus, her name remained as [REDACTED] in the benefits system.

The capias for the instant case was issued to Defendant's 530 Joseph Avenue address. Defendant stated she remained at the address until 2003, and then she moved to another, larger apartment within the same complex. Defendant did not relocate from the apartment complex until August 2007.

Defendant stated she was arrested on the current charges shortly after she called TennCare to check on the status of coverage for her sons. As of September 2004, Defendant testified that she was still receiving benefits.

III. Legal Analysis

By federal and state constitutional guarantees and by Tennessee statute, an accused has the right to a speedy trial. U.S CONST. amend. VI; TENN. CONST. art. 1, § 9; TENN. CODE ANN. § 40-14-101. The right to a speedy trial protects the accused from oppressive pretrial incarceration, anxiety and concern arising from unresolved criminal charges, and the possibility that the accused's defense will be impaired by fading memories and the loss of exculpatory evidence. Doggett v. United States, 505 U.S. 647, 654 (1992); State v. Simmons, 54 S.W.2d 755, 758 (Tenn. 2001). "The right to a speedy trial attaches at the time of arrest or indictment, whichever comes first, and continues until the date of the trial." State v. Vickers, 985 S.W.2d 1, 5 (Tenn. Crim. App. 1997).

In determining whether the defendant's right to a speedy trial has been compromised, four factors must be weighed: the length of the delay, the reason for the delay, the defendant's assertion of his right to a speedy trial, and any prejudice to the defendant caused by the delay. Barker v. Wingo, 407 U.S. 514, 530 (1972); State v. Bishop, 493 S.W.2d 81, 83-85 (Tenn. 1973); State v. Jefferson, 938 S.W.2d 1, 14

(Tenn. Crim. App. 1996). Of these factors, the most important is prejudice, and the critical inquiry concerning prejudice "is the impairment of the ability to prepare a defense." State v. Vance, 888 S.W.2d 776, 778 (Tenn. Crim. App. 1994); State v. Baker, 614 S.W.2d 352, 356 (Tenn. 1981).

To activate the four-part inquiry, the interval between accusation and trial must be "presumptively prejudicial." Doggett v. United States, 505 U.S. 647, 651-52 (1992). A delay approaching one year usually activates the inquiry. Vickers, 985 S.W.2d at 5.

Since the right to a speedy trial attaches at the time of arrest or indictment, whichever comes first, (Vickers, 985 S.W.2d at 5), Defendant's right to a speedy trial in this matter attached on December 6, 2002.² Defendant was not notified of the charges against her until the *capias* was served over four years later on December 21, 2006.

The Court was presented with evidence that Defendant was readily available should law enforcement had wished to locate her during this time; for example, Defendant remained at the same address until 2003 and at that time she simply moved to another apartment within the same complex; Defendant did not move from the complex until August 2007, after the *capias* had been served. Captain Roller explained that it is not the practice of the Metro Police Department to actively serve warrants from outside agencies and given that Defendant's name on the warrant did not match her driver's license, it is understandable that the police department did not make the connection between the warrant and Defendant during her two traffic stops. However, what is alarming to the Court is that while the warrant was pending, Defendant was still receiving benefits from AFDC and she was never alerted to the pending charges.

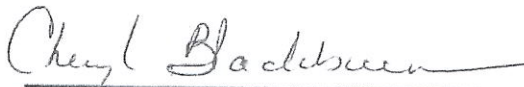
² At this point, no trial date has been set.

The Office of Human Service's failure to notify Defendant of the charges pending against her for food stamp fraud and AFDC fraud while she was still receiving public assistance benefits from same agency she is accused of defrauding is a result of extreme bureaucratic indifference. Accordingly, the Court GRANTS Defendant's motion to dismiss.

IV. Conclusion

For the reasons set forth above, Defendant's "Motion to Dismiss Due to State's Violation of Defendant's Federal and State Constitutional Right to a Speedy Trial" is hereby GRANTED. This matter is set back on the docket for Thursday, July 5, 2007, at 9:00 a.m.

ENTERED this 18 day of June, 2007.


Cheryl Blackburn
Judge

cc:

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