

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHESTER )  
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 STATE OF SOUTH CAROLINA )  
 )  
 v. )  
 )  
 TONI PRIVETTE, )  
 )  
 DEFENDANT. )

IN THE COURT OF GENERAL SESSIONS  
 OF THE SIXTH JUDICIAL CIRCUIT

ORDER

INDICTMENT NOS.: 2012GS12115, 116  
 CHARGES: DUI 2<sup>ND</sup>, DUS 1<sup>ST</sup>

FILED  
 APR 17 11:49  
 CLERK OF COURT  
 CHESTER CO S.C.

This matter comes before the court by way of Defendant's Second Motion to Dismiss, which was heard on Wednesday, April 10, 2013 at the Fairfield County General Sessions Court. Attorney Bobby G. Frederick was present for the Defendant and Deputy Solicitor Christopher Taylor was present for the State. The Court finds that there has been a violation of Defendant's right to a speedy trial and dismisses both of the above captioned charges with prejudice. The court makes the following findings of fact and conclusions of law:

FACTS

Defendant was charged with Driving Under the Influence Second Offense and Driving Under Suspension on July 26, 2009. Both charges were subsequently remanded to the Chester County Magistrate Court for trial as Driving Under the Influence First Offense and Driving Under Suspension. On July 8, 2011, Defendant filed and served a Motion for Discovery and Inspection as well as Brady and Kyles v. Whitley Materials in the Chester County Magistrate Court, which included a request for a speedy trial. On September 8, 2011, Defendant filed and served a Motion to Dismiss which was based in part on the denial of Defendant's right to a speedy trial in the Chester County Magistrate Court. The Chester County Magistrate Court did not docket Defendant's case for trial or

schedule a hearing on Defendant's Motion to Dismiss. On February 21, 2012, Defendant was indicted by the Chester County Grand Jury for Driving Under the Influence Second Offense and for Driving Under Suspension.

### ANALYSIS

The right to a speedy trial is "fundamental" and is imposed by the Due Process Clause of the Fourteenth Amendment on the States, Klopfer v. North Carolina, 386 U.S. 213 (1967), and was recognized by the South Carolina Supreme Court in Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966). The controlling considerations when dealing with a Defendant's right to a speedy trial are outlined in Barker v. Wingo, 407 U.S. 514 (1972). State v. Foster, 260 S.C. 511, 197 S.E.2d 280 (S.C. 1973).

The right to a speedy trial requires a functional analysis in the particular context of each case. Barker, 407 U.S. at 530. In arriving at its decision, the Court has considered: 1) the length of delay; 2) the reason for the delay; 3) the Defendant's assertion of her right; and 4) prejudice to the Defendant. Id.

### LENGTH OF DELAY

The length of delay that can be tolerated depends "upon the peculiar circumstances of the case." Id. at 530-31. "[T]he delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." Id. at 531. The Court finds that this case is not a serious, complex charge and is more akin to an ordinary street crime. Under the peculiar circumstances of this case, three years, eight months, and fifteen days is too long.

### REASON FOR THE DELAY

The Court does not find that there has been "[a] deliberate attempt to delay the

trial in order to hamper the defense.” Barker, 407 U.S. at 531. However, even if there has been no intentional delay on the part of the prosecution, “[a] more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant.” Id. No evidence has been presented that the delay in this case was the product of an unavoidably crowded court docket, nor has any evidence been presented that the delay could be attributed in any way to the Defendant.

#### DEFENDANT’S ASSERTION OF HER RIGHT

“Presuming waiver from a silent record is impermissible.” Barker, 407 U.S. at 526. “A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.” Barker, 407 U.S. at 527. The Court finds, however, that the Defendant has asserted her right to a speedy trial on at least two occasions in writing, and no evidence was presented that Defendant at any time consented to any continuances or delay of her trial.

#### PREJUDICE TO THE DEFENDANT

Prejudice to the Defendant “should be assessed in light of the interests of defendants which the speedy trial right was designed to protect.” Barker, 407 U.S. at 532. These interests, identified by the Court in Barker, are: “(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.” Id. The Defendant has not been incarcerated pre-trial, and the prosecution asserts that all witnesses are available for trial. However, this Court takes into consideration the “anxiety and concern of the accused”



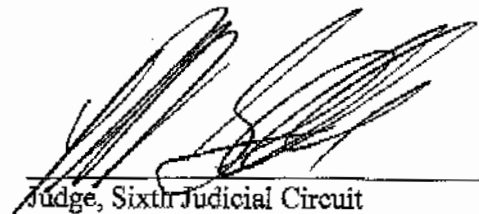
when their case has been pending for a period of almost four years. Further, the Court notes that, as of the date of this hearing, complete discovery has not been provided to the Defendant, which has prejudiced the Defendant's ability to investigate, locate witnesses, and prepare her case for trial.

### CONCLUSION

After considering the relevant factors, and in light of the peculiar circumstances of this case, this Court finds that three years, eight months, and fifteen days is too long. The Court finds that there has been a violation of Defendant's right to a speedy trial and dismisses both of the above captioned charges with prejudice.

**IT IS SO ORDERED**

April 17, 2013  
Winnsboro, S.C.  
*Chastar*

  
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Judge, Sixth Judicial Circuit