

**The State of Maryland vs (REDACTED)**  
**Case Numbers: (REDACTED), (REDACTED), (REDACTED)**

**ISSUE**

Should the Defendant's charges, scheduled for a trial in District Court over a year after the original citations were filed, be dismissed as a violation of the Defendant's right to a speedy trial under the Sixth Amendment of the United States Constitution and the Maryland Declaration of Rights, Article 21?

**RULE**

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.." U.S. Const. Amend. VI. Similarly, the Maryland Constitution states, "That in all criminal prosecutions, every man hath a right ... to a speedy trial by an impartial jury ..." Md. Decl. of Rts. Art. 21. (see also *Howard v. State*, 440 Md. 427, 447 (2014). In a Maryland District Court, a 'Criminal Case' " ... means a criminal case within the jurisdiction of the District Court and includes a case charging a violation of motor vehicle or traffic laws and a case charging a violation of a law, rule, or regulation if a fine or imprisonment may be imposed." Md. CRIMINAL PROCEDURE Code Ann. § 4-101(b).

"In determining whether a defendant's constitutional right to a speedy trial was violated, a court considers the '[l]ength of [the] delay, the reason for the delay, the defendant's assertion of his [or her] right, and prejudice to the defendant.'" (*Vermont v. Brillon*, 556 U.S. 81, 90 (quoting *Barker v. Wingo*, 407 U.S. 514, 530 (1972); see also *Divver v. State*, 356 Md. 379 at 389 (1999))." "When the [pre-trial] delay is of a sufficient length, it becomes" presumptively prejudicial," thereby triggering a "balancing test [which] necessarily compels courts to approach speedy trial cases on an ad hoc basis." (*Divver*, 356 Md. at 389 citing *Brady v. State*, 288 Md. 61, 65 (1980) quoting *Barker*, 407 U.S. at 530). '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.'" (*Barker*, 407 U.S. at 530) "None of these four factors alone establishes a violation of the right to a speedy trial; thus, a court considers the four factors "together[.]" (*Howard*, 440 Md. at 427 citing *Barker*, 407 U.S. at 533). But, the Supreme Court has also regarded "...none of the four factors ... as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." (*Barker*, 407 U.S. at 533).

If a Court does the balancing test required by *Barker* and finds that the Defendant was denied his speedy trial under the Sixth Amendment of the United States Constitution or the Maryland Declaration of Rights, Article 21, the only available remedy for such a violation would be dismissal of the charges or indictments. (*Strunk v. United States*, 412 U.S. 434, 440 (1973); *Divver*, 356 Md, at 394).

### Length of Delay

“For speedy trial purposes the length of delay is measured from the date of arrest or filing of indictment, information, or other formal charges to the date of trial.” (*Divver*, 356 Md. at 389 citing *State v. Gee*, 298 Md. 565, 569 (1984)). The Maryland Court of Appeals has ruled that a “... delay between arrest and trial was one year and fourteen days ... was sufficiently inordinate to constitute a ‘triggering mechanism’” for the balancing test under *Barker*. (*Epps v. State*, 276 Md. 96, 111 (1975)). For District Court cases, the Maryland Court of Appeals ruled in *Divver* that a “... delay of one year and sixteen days raises a presumption of prejudice and triggers the balancing test.” (*Divver*, 356 Md. at 389). The Maryland Court of Appeals further stated in *Divver* that such a delay “... is of uniquely inordinate length for a relatively run-of-the-mill District Court case” (*Id.*).

### Reason For Delay

The Supreme Court in *Barker* stated that “Closely related to length of delay is the reason the government assigns to justify the delay ... different weights should be assigned to different reasons” (*Barker*, 407 U.S. at 531). “A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. 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. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.” (*Id.*) “Whether that is the cause of the failure timely to assign this case for trial is immaterial. Assigning cases for trial is the obligation of the State. If the failure to assign the case was due to congestion or understaffing of State offices, the delay is chargeable to the State.” (*Divver*, 356 Md. at 391).

### Defendant’s Assertion of the Right

A defendant’s “repeated demands must be weighed as supportive of the petitioner’s position that he was denied a speedy trial.” (*Smith v. State*, 276 Md. 521, 532 (1976)). “The defendant’s assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right.” (*Barker*, 407 U.S. at 531-532).

### Showing of Actual Prejudice

“Although a presumption of prejudice is created from the length of the delay, actual prejudice may result from any of three factors: (1) oppressive pretrial incarceration; (2) anxiety and concern; and (3) impairment of the defense.” (*Divver*, Md. 356 at 392 citing *State v. Bailey*, 319 Md. 392 (1990)). “Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect.” (*Barker*, 407 U.S. at 532.) The Supreme Court “... has identified three such interests: (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.*) Finally, ‘a defendant’s speedy trial rights could be violated where there was no showing of any actual prejudice.’ (*Divver*, Md. 356 at 392 citing *Brady*, Md. 288 at 62.)

## **ANALYSIS**

**FACTS:** (REDACTED) (“Defendant”) was driving a vehicle in (REDACTED), Maryland on (REDACTED) when (REDACTED) (“Deputy”) of the (REDACTED) County Sheriff’s Department pulled him over. After a brief traffic stop, the Deputy issued three separate citations to Defendant alleging (REDACTED). The violations were filed by the State’s Attorney for (REDACTED) County (“State”) in the District Court For (REDACTED) County (“Court”) on (REDACTED). (REDACTED), Esq. (“Attorney”) made an appearance on behalf of the Defendant on (REDACTED). Although Defendant’s trial on these charges was originally set for (REDACTED), the Court rescheduled the trial for (REDACTED).

## **DISCUSSION:**

The interval of time from filing of charges to trial date was one year and thirty-nine (39) days. Under *Divver*, this would raise the “presumption of prejudice and triggers the balancing test.” (*Divver*, 356 Md. at 389).

1) Regarding “Length of Delay,” the Defendant contends that the Court of Appeals analysis of the facts in *Divver* are very similar to the discussion here. In *Divver*, the Court of Appeals found that the delay was one year and sixteen days. (*Divver*, 356 Md. at 389). The Court of Appeals stated that, “... the delay is of uniquely inordinate length for a relatively run-of-the-mill District Court case. Trial of the case to verdict on guilt or innocence presented little, if any, complexity. There was one witness for the State, a police officer whose appearance was subject to the control of the State, and the only witness for the defense was the accused himself. Given these circumstances, the length of the delay in the instant matter operates more heavily in *Divver*’s favor ...” (*Divver*, 356 Md. at 390-391).

2) Regarding “Reason For Delay”, in the case before the Court the only witness for the State is the arresting Deputy. There has been no requests for postponement from the State due to lack of courtroom, conflict in schedule of state’s attorney, need for extra time to gather additional evidence, or lack of availability of a sitting judge. As in *Divver*, Defendant contends that the delay is “ ... attributable to the failure of the District Court earlier to assign the case for trial and, hence, to an earlier trial date.” (*Divver*, 356 Md. at 391). The *Divver* Court stated that, “Whether that is the cause of the failure timely to assign this case for trial is immaterial. Assigning cases for trial is the obligation of the State. If the failure to assign the case was due to congestion or understaffing of State offices, the delay is chargeable to the State.” (*Id.*)

3) Regarding “Defendant’s Assertion of the Right”, the Attorney asserts here and now that Defendant’s right to a speedy trial has been violated. In addition, neither Attorney nor Defendant explicitly granted a waiver to the constitutional right to a speedy trial.

4) Regarding “Showing of Actual Prejudice”, Defendant driving privileges remain suspended pending the outcome of these proceedings. This forces Defendant to spend extra time and resources to find transportation to and from his employment. Conviction of (REDACTED) may

be subject to “(1) For a first offense, a fine of not more than (REDACTED), or imprisonment for not more than (REDACTED), or both; and (2) For any subsequent offense, a fine of not more than (REDACTED), or imprisonment for not more than (REDACTED), or both.” (Md. CRIMINAL PROCEDURE Code Ann. § (REDACTED); Md. CRIMINAL PROCEDURE Code Ann. (REDACTED). Defendant not unreasonably has anxiety and concern over the uncertainty of what financial and detention based sanctions he may face. Even if the District Court would consider these reasons “personal in nature”, The concurring opinion of Justice White in *Barker* can offer guidance. “But, for those who desire an early trial, these personal factors should prevail if the only countervailing considerations offered by the State are those connected with crowded dockets and prosecutorial caseloads. A defendant desiring a speedy trial, therefore, should have it within some reasonable time; and only special circumstances presenting a more pressing public need with respect to the case itself should suffice to justify delay.” (*Barker*, 407 U.S. at 537 (White, J., concurring); see also *Divver*, 356 Md. at 392).

#### *Balancing under Barker*

Conducting the *Barker* balancing test, Defendant would instruct the Court to look at the analysis done in *Divver*, since the fact patterns are very similar. In *Divver*, the Court of Appeals stated, “Although we do not intend to suggest that the four factors are to be accorded equal weight on whichever side of the balance any one may fall, in this case three of the four factors, particularly the length of and reason for the delay, weigh in favor of *Divver*. Weighing in favor of the State is the absence of any actual prejudice to the presentation of a defense and that *Divver* was not in jail. The prejudice element of the evaluation, however, includes personal factors as well as a presumption of prejudice derived from the length of the delay, which favor *Divver*. Weighing all of the circumstances reviewed ..., we conclude, on balance, that *Divver*'s right to a speedy trial as guaranteed by article 21 of the Maryland Declaration of Rights has been violated. The remedy is dismissal.” (*Divver*, 356 Md. at 392).

#### **CONCLUSION**

For the reasons stated above, under the *Barker* balancing test the four factors weigh in the favor of the Defendant. Thus the Defendant's constitutional rights to a speedy trial under the Sixth Amendment of the United States Constitution and the Maryland Declaration of Rights, Article 21 were violated. Defendant's charges should be dismissed with prejudice.