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Speedy Trial

Stephanie Beige

RIGHT TO A SPEEDY TRIAL

U.S. Const. amend. VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . .

COURT OF APPEALS

In the Matter of Benjamin L.[1]
(decided February 11,1999)

Defendant, Benjamin L. was adjudicated a juvenile delinquent and placed on probation for 1 year by Family Court after being arrested for acts, which if committed by an adult, would constitute attempted robbery in the second degree and menacing in the third degree.[2] Defendant appealed claiming that the delay in filing the presentment agency petition was an infringement on his right to a speedy trial in violation of both the Federal[3] and New York State[4] Constitutional right to due process.[5] The Appellate Division affirmed the decision of the Family Court and held that the delay did not "rise to the level of a speedy trial violation."[6] The Court of Appeals reversed the decision of the Appellate Division, holding that juveniles have a right to speedy adjudication and remitted the matter to Family Court for further proceedings to determine the reason for the delay.[7]

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[1] 92 N.Y.2d 660, 708 N.E.2d 156, 685 N.Y.S.2d 400 (1999).

[2] *Id.* at 663, 664, 708 N.E.2d at 157, 158, 685 N.Y.S.2d at 401.

[3] U.S. CONST. amend. VI. The Sixth Amendment provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ." *Id.*

[4] N.Y. CONST. art. 1 § 6. This section provides in pertinent part: "No person shall be deprived of life, liberty or property without due process of law." *Id.*

[5] *Benjamin,* 92 N.Y.2d at 664, 708 N.E.2d at 157, 685 N.Y.S.2d at 401.

[6] *Id.* at 664, 708 N.E.2d at 158, 685 N.Y.S.2d at 401, 402.

[7] *Id.* at 670, 708 N.E.2d at 161, 162, 685 N.Y.S.2d at 406.

Defendant Benjamin L. had been arrested for allegedly menacing a delivery person and attempting to steal the delivery person's Chinese food, resulting in defendant's detainment in police custody overnight.[8] Family Court held a hearing the following day wherein it denied the Woodfield Detention Cottage's pre-petition detention application and returned the defendant to his mother's custody, as well as ordering the defendant to comply with a 10:00 p.m. curfew.[9] The Westchester County Attorney's Office filed a petition in connection with this incident on August 2, 1995, over one year after the initial hearing.[10] An initial appearance was scheduled for August 8, 1995 wherein defendant entered a denial and subsequently moved to dismiss the petition alleging the delay of over one year in filing the petition violated his statutory right to a speedy hearing pursuant to the Family Court Act[11] as well as violating his right to due process of law.[12]

The Court of Appeals began its analysis by quickly dispensing with the defendant's initial claim that the delay between the pre-petition detention application and the fact-finding hearing violated his right to a speedy trial pursuant to the Family Court Act.[13] The Court noted that amendments to the Family Court Act were ratified to include more procedural rights for juveniles.[14] Specifically, the Family Court Act establishes specific time limitations which govern every stage of the juvenile proceeding, from the arrest through final disposition, to assure swift adjudication of these

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[8] *Id.* at 663, 708 N.E.2d at 157, 685 N.Y.S.2d at 401.

[9] *Id.*, 708 N.E.2d at 157, 685 N.Y.S.2d at 401.

[10] *Id.*

[11] *Id. See* N.Y. FAM. CT. ACT §310.2 (McKinney 1999). The statute provides in pertinent part: "After a petition has been filed, or upon the signing of an order of removal pursuant to section 725.05 of the criminal procedure law, the respondent is entitled to a speedy fact-finding hearing." *Id.*

[12] N.Y. CONST. art. 1 § 6.

[13] *Benjamin*, 92 N.Y.2d at 665, 708 N.E.2d at 158, 685 N.Y.S.2d at 402, 403.

[14] *Id.* (citing Matter of Frank C., 70 N.Y.2d at 413, 516 N.E.2d at 1205-6, 522 N.Y.S.2d at 91, wherein the Court of Appeals discussed the purpose of the Family Court Act. The court noted that the "speedy hearing" provision for juveniles was enacted in 1982 as "a part of a sweeping overhaul of the procedures governing juvenile delinquentcy proceedings.).

proceedings.[15] Defendant's claim rests on the interpretation of Family Court Act Section 310.2,[16] in that he claims the pre-petition detention application filed by the Woodfield Detention Cottage on July 8, 1994 constituted a petition as defined by the statute.[17] Accordingly, the defendant argues, the fact-finding hearing must have been commenced no later than sixty days after the initial appearance of July 8, 1995 pursuant to Family Court Act Section 340.1.[18] Reasoning that the two petitions are different in substance, form and purpose, the court rejected defendant's interpretation, finding that the pre-petition detention application cannot be equated with a petition pursuant to Family Court Act Section 310.2.[19] Accordingly, the court held that there is no statutory time limitation for the period between the filing of a pre-petition detention application and the filing of the petition, when the juvenile is not at a detention facility.[20]

The court then addressed the defendant's due process claims by noting that although the New York State Constitution does not contain a speedy trial provision, the court has long held that an unreasonable delay in prosecuting a defendant following an arrest can constitute a violation of the State Constitution.[21] Historically,

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[15] *Id.* at 665, 708 N.E.2d at 158, 685 N.Y.S.2d at 402 (*citing* Bill Jacket, L 1982, ch 920, Mem in support of A 7974-A, as cited in Matter of Frank C., 70 N.Y.2d 408, 413, 516 N.E.2d 1203, 522 N.Y.S.2d 89 (1987)).

[16] N.Y. FAM. CT. ACT §310.2 (McKinney 1999).

[17] *Benjamin*, 92 N.Y.2d at 665, 708 N.E.2d at 158, 685 N.Y.S.2d at 402.

[18] *Id. See* N.Y. FAM. CT. ACT §340.1(2) (McKinney 1999). The statute provides in pertinent part: "If the respondent is not in detention the fact-finding hearing shall commence not more than sixty days after the conclusion of the initial appearance except as provided in subdivision four." *Id.*

[19] *Benjamin*, 92 N.Y.2d at 665, 708 N.E.2d at 158, 159, 685 N.Y.S.2d at 403 (reasoning that a pre-petition detention application is filed by the detention facility whereas a petition is filed by the presentment agency. The purpose of the pre-petition detention application is to determine if the minor should be detained prior to the filing of a petition. The petition itself is a written accusation by the presentment agency which formally commences the juvenile proceedings).

[20] *Id.* at 667-68, 708 N.E.2d at 159, 685 N.Y.S.2d at 403 (noting the statute does not provide a remedy for this type of delay).

[21] *Id.* at 667, 708 N.E.2d at 159, 685 N.Y.S.2d at 403 (citing People v. Staley, 41 N.Y.2d 789, 791, 364 N.E.2d 1111, 396 N.Y.S.2d 339 (1977)). In Staley, the

juveniles had not been afforded the same constitutional protections as adult criminal defendants because juvenile proceedings had been viewed as rehabilitative and informal in nature, whereas the adult criminal proceedings were viewed as adversarial and punitive.[22] It was not until 1967 in the landmark decision of *In Re Gault* that the Supreme Court altered the parameters of juvenile proceedings to afford certain fundamental procedural rights to juveniles.[23]

The case of *In Re Gault* involved a juvenile who had been committed as a juvenile delinquent to the Arizona State Industrial Schools after being taken into police custody without notice being given to his parents.[24] The Supreme Court reversed the conviction due to the failure of the Juvenile Court to issue written notice of the specific charge or allegations,[25] notify the juvenile of his right to counsel,[26] and its failure to adhere to the constitutional privilege against self-incrimination.[27] Aware of the differences between the juvenile system and the adult criminal proceeding, the Court, although affording certain due process rights to juveniles, did not find them entitled to all the rights of their adult counterparts.[28] The

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defendant was arrested for criminal possession of stolen property and reckless endangerment. *Id.* at 790. The prosecutor subsequently dismissed the charges without prejudice to presentation to the Grand Jury. *Id.* Thirty-one months later, an indictment was returned, without any reason for the delay. *Id.* at 791. The Court of Appeals reversed the order of the Appellate Division and dismissed the indicment stating "[t]he guarantee of prompt prosecution is derived in part from the constitutional right to a speedy trial, but in more encompassing terms, from the constitutional mandate of Due Process of law." *Id.* at 790.

[22] *Benjamin* at 664, 708 N.E.2d at 158, 685 N.Y.S.2d at 402 (discussing the differences between the juvenile and adult criminal proceedings).

[23] 387 U.S. 1 (1967).

[24] *Id.* at 5.

[25] *Id.* at 33.

[26] *Id.* at 16.

[27] *Id.*

[28] *In Re Gault*, 387 U.S. at 16. The court discussed the history of the juvenile system and the philosophy that society was there to help the child who was essentially good, the child was not to feel under arrest or on trial and therefore the rules of criminal procedure were not applicable. *Id.* at 15. The court applied its prior holding in *Kent v. United States*, 383 U.S. 541 (1966), stating that the juvenile court adjudication of "delinquency" although not required to

Court held that "the observance of due process standards, intelligently and not ruthlessly administered, will not compel the States to abandon, or displace any of the substantive benefits of the juvenile proceedings."[29]

The right to a speedy trial is quite different from other constitutional rights, in that the guarantee cannot be quantified into a precise number of days or months, but rather must be subjected to the analysis set forth by the Supreme Court in *Barker v. Wingo*.[30] In *Barker v. Wingo*, although the defendant was arrested for murder but was not brought to trial until over five years later,[31] the Supreme Court found no violation of the defendant's right to a speedy trial.[32] In analyzing the detrimental effects on both the defendant and society by not affording the accused with a speedy trial, the Court rejected two possible approaches to eliminate some of the uncertainty inherent in the guarantee itself.[33] The first suggested approach was to enunciate a specific time period in which a criminal defendant must be tried.[34] The second proffered alternative is known as the "demand rule," in which the right to speedy trial would be available to only those defendants who have

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conform with all of the requirements of a criminal trial, must measure up to the essentials of due process and fair treatment. *In Re Gault*, 387 U.S. at 30. The decision was limited to the right to written notice of the specific charges in advance of a hearing; notification of the right to counsel; the privilege against self-incrimination; and the right to a hearing based on sworn testimony, with the corresponding right to cross-examination. *Id.* at 10.

[29] *Id.* at 21.

[30] Barker v. Wingo, 407 U.S. 514, 519 (1972).

[31] *Id.* at 516, 517. The delay was due to the Commonwealth's belief that it had a stronger case against another suspect, Silas Manning. The Commonwealth had hoped to secure a conviction against Manning and in turn have him testify against Willie Barker without fear of self-incrimination. The Commonwealth, however, was not successful in obtaining a conviction against Manning until December 1962. *Id.* at 516-17.

[32] *Id.* at 536. The Court made note that Barker was not represented by competent counsel which would explain why he failed to object to the Commonwealth's requests for continuances. Rather, the record indicated that Barker did not want a speedy trial. *Id.* at 536.

[33] *Id.* at 522-23.

[34] *Id.* The Court rejected the specific time period approach, reasoning that this is a state legislative function and not within their judicial powers. *Id.* at 523.

demanded the same.[35] The Court then set forth a balancing test in which the conduct of both the prosecution and the defendant are weighed.[36] Though the Supreme Court did not find a constitutional violation in *Barker,* it laid the foundation on which federal courts should determine future alleged violations of the right to a speedy trial.[37] All such claims were to be determined by the balancing of the following factors: length of the delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.[38]

Twenty years following the decision, the Supreme Court was called upon to clarify further the *Barker* analysis in *Doggett v. United States.*[39] The *Doggett* case involved a defendant who had been indicted for conspiring to import and distribute cocaine in February 1980, but who was not actually arrested until September 1988.[40] The Federal Magistrate assigned to the case applied the *Barker* factors and recommended that the district court deny the defendant's motion for dismissal based on an alleged violation of his right to a speedy trial.[41] The Magistrate's recommendation was

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[35] *Id.* at 524. The Court rejected the "demand rule" approach, reasoning that the burden of protecting the Constitutional right to a speedy trial must not rest solely on defendants. *Id* at 524. The Court did hold that some of the responsibility shall rest with defendants, in that their objection to any delay is a factor to be considered. *Id.* at 528.

[36] *Id.* at 530 (noting that cases involving the right to a speedy trial must be approached on an *ad hoc* basis).

[37] *Id.*

[38] *Id.* The Court concluded that although the length of the delay of five years was extraordinary, the other factors outweighed it. *Id.* at 533-34. Prejudice suffered by the defendant was minimal; there was no claim hat the defendant's witnesses had died or otherwise became unavailable. *Id.* at 534. Lastly, the Court held that the defendant did not want a speedy trial, and that the record strongly suggested that the defendant hoped to take advantage of the delay. *Id.* at 535.

[39] *Doggett v. United States*, 505 U.S. 647 (1992).

[40] *Id.* at 648-49. The Drug Enforcement Agency was unable to apprehend the defendant because he was initially under arrest in Panama but was subsequently able to enter the United States unnoticed due to computer error. The defendant returned to the United States in 1982 and was not searched for by the authorities until September 1988. *Id.* at 649.

[41] *Id.* at 650 (finding that although 1) the delay was long enough to be "presumptively prejudicial;" 2) the delay was caused by the negligence of the

based on the contention that the defendant was required to make an affirmative showing of "actual prejudice."[42] The Supreme Court reversed, holding that a showing of particularized prejudice is not essential in every speedy trial action.[43] The Court noted that excessive delays presumptively call into question the reliability of trials in ways that are very difficult to prove or identify.[44] In concluding that actual prejudice need not be shown in every case, the Court acknowledged that presumptive prejudice is just one of the criteria set forth in *Barker* and the weight afforded to it will increase with the length of the delay.[45]

The New York State courts, relying on *Barker v. Wingo,* have enumerated additional factors to be weighed when determining if a speedy trial violation exists.[46] In the case of *People v. Taranovich,*[47] the New York Court of Appeals announced the factors that should be considered: the extent of the delay; the reason for the delay; the nature of the underlying charge; whether or not there has been an extended period of pretrial incarceration; and whether or not there is any indication that the defense has been impaired by reason of the delay.[48] Considering these factors, the court held that the defendant in *Taranovich,* who was indicted one

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Government; and 3) that the defendant could not be faulted for not asserting his right earlier, the defendant had failed to make a showing of prejudice).

[42] *Id.* at 650-51 (holding the defendant had made no affirmative showing that the delay had impaired his defense or otherwise prejudiced him). The Court of Appeals, Eleventh Circuit, affirmed, ruling that the only way to prevail on a speedy trial claim was by a showing of actual prejudice or by establishing that the first of the three Barker factors weighed heavily in the defendant's favor. *Id.* at 651.

[43] *Id.* at 655.

[44] *Id.* "*Barker* explicitly recognized that impairment of one's own defense is the most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory evidence and testimony can rarely be shown." *Id.* at 655.

[45] *Id.* at 655-56.

[46] *See* People v. Taranovich, 37 N.Y.2d 442, 335 N.E.2d 303, 373 N.Y.S.2d 79 (1975).

[47] *Id.*

[48] *Id.* at 445, 335 N.E.2d at 306, 373 N.Y.S.2d at 81-82.

year after being arrested,[49] was not deprived of his right to a speedy trial.[50]

The *Taranovich* court, like its federal counterpart, addressed the length of the delay as the primary factor, due to the probability that the defendant is more likely to be harmed by the delay than the state.[51] Finding that the delay did not hamper the defendant in the defense of the charges, the court held the reason for the delay was the defendant's strongest assertion.[52] The reason the defendant was not indicted until at least five years after being arrested was due to clerical error by the district attorney's office.[53] Remarkably, the court held this clerical error which resulted in a five-year delay was not sufficient in itself to dismiss the indictment.[54] In contrast, the nature of the underlying charge weighed very heavily against the defendant in light of the seriousness of the allegations against him.[55] Similarly, since there was a minimal length of incarceration, it was unlikely the defense was hampered to an extent warranting dismissal of the charges.[56] The final factor considered by the *Taranovich* court was whether the defendant was

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[49] *Id.* at 444, 335 N.E.2d at 304, 373 N.Y.S.2d at 80-81.

[50] *Taranovich* at 444, 335 N.E.2d at 304, 373 N.Y.S.2d at 80. Defendant had been arraigned on January 14, 1972 for attempted murder, possession of a dangerous drug in the sixth degree, resisting arrest, leaving the scene of an accident, operating a motor vehicle while impaired and operating a motor vehicle without a license. *Id.* Defendant had been released on bail eight days later, and was held for an action of the Grand Jury which charged him with assault in the first degree and leaving the scene of an accident on February 10, 1972. *Id.* However defendant was not indicted until January 13, 1973. *Id.*, 335 N.E.2d at 304, 373 N.Y.S.2d at 81.

[51] *Id.* at 445, 335 N.E.2d at 306, 373 N.Y.S.2d at 82; *see also* Barker v. Wingo, 407 U.S. at 530.

[52] *Id.* at 446, 335 N.E.2d at 306, 307, 373 N.Y.S.2d at 82.

[53] *Id.*, 335 N.E.2d at 306, 307, 373 N.Y.S.2d at 82.

[54] *Id.*, 335 N.E.2d at 306, 307, 373 N.Y.S.2d at 82 (discussing that although such a clerical error is inexcusable, the only remedy for a speedy trial violation is dismissal of charges, and such an error in this case did not warrant such a drastic remedy).

[55] *Id.*, 335 N.E.2d at 306, 373 N.Y.S.2d at 82. Defendant was arrested for attempted murder and indicted for assault in the first degree. *Id.*

[56] *Id.* (reasoning that defendant's eight day incarceration did not warrant dismissal as defendant was not incarcerated long enough to be at a disadvantage concerning the preparation of his defense).

impaired by the delay.[57] The court reasoned that this was the most critical factor because any period of delay may be unreasonable and is determined by whether the likelihood of the defendant's acquittal has been affected.[58] Since the *Taranovich* case involved the testimony of only two witnesses, i.e., the defendant and the victim, there was little chance that either would have forgotten the facts and circumstances of the incident.[59] Therefore, there was negligible prejudice to the defendant.[60]

In *Benjamin,* the Court of Appeals extended the constitutional right to a speedy trial, as enunciated in *Taranovich,* to juveniles in delinquency proceedings.[61] However, the court strongly warned against blindly applying the analysis used in criminal cases to juvenile proceedings in light of the unique nature of the latter.[62] Specifically, the court noted factors such as extended period of pretrial incarceration, although extremely relevant in criminal cases, are not as important in juvenile proceedings due to the strict time limitations imposed by the Family Court Act.[63] Additionally, prejudice due to length of delay may be much easier to prove in

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[57] *Taranovich.* at 446-47, 335 N.E.2d at 306, 373 N.Y.S.2d at 83 (noting that issue of whether or not the defendant has been impaired by the delay is the most critical in this case).

[58] *Id.* at 447, 335 N.E.2d at 307, 373 N.Y.S.2d at 83 (recognizing that in certain circumstances the delay may be so great that there is no need for proof nor fact of prejudice to the defendant).

[59] *Id.*

[60] *Id.* (acknowledging that delay may result in defendant's being unable to call certain witnesses or the memories of witnesses are likely to fade thereby impairing the defense).

[61] *Benjamin,* 92 N.Y.2d at 667-68, 708 N.E.2d at 160, 685 N.Y.S.2d at 404 (citing *United States v. Furey,* 500 F.2d 338 (2nd Cir. 1974). "The deterence afforded by prompt disposition, the potential prejudice to a defense and the personal disruption created by a criminal charge are present whether the accused is a juvenile or an adult.").

[62] *Id.,* 708 N.E.2d at 160, 685 N.Y.S.2d at 404, 405 (stressing that courts must remain acutely aware of the goals, character and unique nature of the juvenile proceeding when applying the *Taranovich* test); *see supra* notes 46-60 and accompanying text.

[63] *Id.* at. 669, 708 N.E.2d at 160, 161, 685 N.Y.S.2d at 404, 405; *see also* N.Y. FAM. CT. ACT §340.1(2) (McKinney 1999).

juvenile proceedings than in a criminal case.[64] The court cautioned that the rehabilitative purpose of the juvenile proceeding warrants a speedy trial.[65] In addition, a child who is subjected to a long delay, which results in a dismissal on due process grounds, will not benefit from the rehabilitative system.[66] Summarily, the court held that there is no per se rule regarding speedy trial violations in juvenile proceedings.[67] Rather the factors must be considered as a whole in light of the facts of each case.[68] In so holding, the court reversed the decision of the Appellate Division and remanded the case to Family Court to determine the reason for the delay, and to evaluate the due process claim in light of the all the factors enumerated herein.[69]

In sum, New York case law in connection with speedy trial violations can be distinguished from its federal counterpart. New York case law has applied the additional factor of the nature of the underlying charge in its analysis, while not considering the extent of the defendant's assertion of his right to a speedy trial.[70] That notwithstanding, it seems clear that both New York and federal case law are in agreement that prompt disposition of criminal

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[64] *Benjamin*, 92 N.Y.2d at 669, 708 N.E.2d at 161, 685 N.Y.S.2d at 405. The court noted that the likelihood of prejudice suffered by a juvenile may be greater due to the young age and inexperience of the child. *Id.* The sheer length of the delay is important in criminal proceedings because "all other factors being equal, the greater the delay the more probable it is that the accused will be harmed thereby." *Taranovich*, 37 N.Y.2d at 445, 335 N.E.2d at 306, 373 N.Y.S.2d at 82. The court held that this is more apparent in juvenile proceedings because it is more likely that a child will forget the specifics of an incident, the identity of specific witnesses and other various details. *Benjamin*, 92 N.Y.2d at 669, 708 N.E.2d at 161, 685 N.Y.S.2d at 405.

[65] *Id.* at 670, 708 N.E.2d at 161, 685 N.Y.S.2d at 405.

[66] *Id.* The court stated: "a child in need of rehabilitative efforts should not be denied that ameliorative attention merely because of some delay." *Id.*

[67] *Id.*

[68] *Id.*

[69] *Id.*, 708 N.E.2d at 161, 685 N.Y.S.2d at 406; *see also* People v. Singer, 44 N.Y.2d 241, 255, 376 N.E.2d 179, 187 405 N.Y.S.2d 17. "Although the people have the burden of establishing good cause for the delay, their failure to do so on this record should not be conclusive." *Id.*

[70] *Benjamin*, 92 N.Y.2d at 668, 708 N.E.2d at 160, 685 N.Y.S.2d at 404; *see also* Barker v. Wingo, 407 U.S. at 530.

charges is a right that is to be protected regardless of whether the accused is an adult or a juvenile.[71] The New York Court of Appeals has recognized the importance of establishing such a procedural precedent.[72] Although the juvenile in *Benjamin* is now close to twenty years old, the court has remitted the matter for a hearing to decide the reason for the delay in filing the presentment agency petition.[73] The Family Court is to determine the reason for the delay and apply the enumerated factors of *Taranovich* in order to decide the case correctly and to set the proper standard, which is to be applied by the courts of New York to all future speedy trial claims.[74]

Stephanie Beige

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[71] *See* United States v. Furey, 500 F.2d. 338, 342 (2nd Cir.1974).

[72] *Benjamin*, 92 N.Y.2d at 671, 708 N.E.2d at 162, 685 N.Y.S.2d at 406.

[73] *Id.* at 670, 671, 708 N.E.2d at 162, 685 N.Y.S.2d at 406.

[74] *Id.*