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Note

GLOVER v. STATE: A MISINTERPRETATION AND MISAPPLICATION OF THE BARKER SPEEDY TRIAL BALANCING TEST RESULTS IN THE WEAKENING OF A CRIMINAL DEFENDANT'S RIGHT TO A PROMPT TRIAL

In *Glover v. State*,¹ the Court of Appeals of Maryland considered whether the State of Maryland violated Robert Matthew Glover's right to a speedy trial under both the Sixth Amendment to the United States Constitution² and Article 21 of the Maryland Declaration of Rights.³ In a 4-3 decision, the court held that Glover's right to a speedy trial was not violated because the reasons for the post-arrest trial delay of fourteen months were mostly neutral and, therefore, were not unduly prejudicial.⁴ In reaching its decision, the majority misapplied the speedy trial analytical framework established by the United States Supreme Court in *Barker v. Wingo*.⁵ The court improperly determined that the unavailability of the State's DNA evidence was both a valid justification for the first delay and a neutral reason for the third delay.⁶ In so doing, the court failed to acknowledge that the State, by failing to comply with section 10-915 of the Maryland Courts and Judicial Proceedings Article,⁷ created an inherently unfair situa-

1. 368 Md. 211, 792 A.2d 1160 (2002).

2. The Sixth Amendment states in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . ." U.S. CONST. amend. VI. The Fourteenth Amendment to the United States Constitution extended the Sixth Amendment's protections of the accused to the judicial proceedings of the states. *Pointer v. Texas*, 380 U.S. 400, 406 (1965).

3. *Glover*, 368 Md. at 214-15, 792 A.2d at 1162. Article 21 of the Maryland Declaration of Rights states:

[t]hat in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge, in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

MD. CONST. DECL. OF RTS. art. 21.

4. *Glover*, 368 Md. at 228, 232, 792 A.2d at 1170, 1172.

5. 407 U.S. 514 (1972); see *infra* notes 86-96 and accompanying text (discussing the Supreme Court's decision in *Barker*).

6. *Glover*, 368 Md. at 226-28, 792 A.2d at 1169-70.

7. MD. CODE ANN., CTS. & JUD. PROC. § 10-915 (2001). Section 10-915 prescribes the rules for a party seeking to introduce a DNA profile into evidence in a criminal proceeding. *Id.* Section 10-915(c)(2) requires a party to provide the opposing party with a first

tion for Glover, forcing him to choose between going to trial without adequate preparation or remaining in jail while he reviewed the DNA discovery materials.⁸ Moreover, the court failed to accord the proper weight to the delays caused by the unavailability of judges under the *Barker* analysis, which ultimately tipped the scales in the State's favor.⁹ As a result, the court's decision creates a loophole by which the State can shirk its duty to provide a criminal defendant with a prompt trial.

I. THE CASE

In February 1998, the body of Charles Scherer was discovered in a vacant lot in Aberdeen, Maryland.¹⁰ After conducting an autopsy, a medical examiner determined the cause of death to be homicide resulting from strangulation and blunt force trauma to the head.¹¹ More than a year later, in February 1999, Robert Matthew Glover was arrested and charged with the murder.¹² The State of Maryland indicted Glover in March 1999 for first-degree murder.¹³ Glover was subsequently denied bail and, as a result, remained incarcerated for the entire pretrial process.¹⁴

In late April or early May 1999, blood samples taken from both Glover and the victim's clothes were sent to the Maryland State Police Crime Laboratory for a comparative DNA analysis.¹⁵ On June 29, 1999, the police sent the samples to the Federal Bureau of Investigation's crime laboratory in order to obtain a more detailed analysis.¹⁶ The laboratory eventually provided the Harford County Sheriff's Office with two reports of the DNA test results dated July 7, 1999 and August 27, 1999.¹⁷

The circuit court for Harford County initially scheduled Glover's trial for July 19, 1999.¹⁸ However, five days prior to the scheduled start of the trial, the prosecution requested a postponement because

generation copy of results, copies of laboratory notes, and laboratory protocols and procedures utilized in the analysis at least thirty days before a criminal proceeding. § 10-915(c)(2).

8. *Glover*, 368 Md. at 216-19, 792 A.2d at 1163-64.

9. *Id.* at 225-28, 792 A.2d at 1168-70.

10. *Id.* at 215, 792 A.2d at 1162.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.* at 215-16 n.1, 792 A.2d at 1162 n.1.

16. *Id.*

17. *Id.* The reports indicated that tests could not exclude Glover as a possible source of the DNA found on the victim's clothes. *Id.*

18. *Id.* at 215, 792 A.2d at 1162.

they had not yet received the DNA reports from the crime labs.¹⁹ The trial judge granted the prosecution's request, finding the absence of the DNA evidence sufficient cause for postponement.²⁰ The judge added that postponement was of no real consequence as no judge would be available for the trial on July 19.²¹

The circuit court rescheduled Glover's trial for November 1, 1999.²² However, on that date, the court postponed the trial yet again because of the unavailability of both a judge and jurors.²³ The court then rescheduled Glover's trial for January 13, 2000.²⁴ The court did not hold either party responsible for the delay because the delay was for an administrative reason. Although unable to object to the additional delay, Glover did openly express that he was not happy with the postponement.²⁵

On December 23, 1999, the State finally provided the defense with a complete copy of the DNA discovery materials.²⁶ Glover moved to suppress the DNA evidence on January 6, 2000, alleging that the State failed to comply with section 10-915(c)(2).²⁷ Glover argued that the DNA evidence should be suppressed because the State failed to provide the defense with complete DNA discovery materials at least thirty days prior to trial.²⁸ The trial judge stated that suppressing the evidence would be too drastic a remedy.²⁹ Therefore, instead of granting the motion to suppress, the judge again postponed the trial, holding the State responsible for the additional delay.³⁰ The judge then rescheduled the trial for July 17, 2000.³¹

19. *Id.*

20. *Id.* at 215-16, 792 A.2d at 1162-63.

21. The court charged the prosecution for the postponement. *Id.* at 216, 792 A.2d at 1163. To whom a court charges a postponement is relevant under the *Barker* speedy trial analysis as it helps assign responsibility to a party for a particular delay. See *Epps v. State*, 276 Md. 96, 109, 345 A.2d 62, 71 (1975) (noting that the conduct of the parties is relevant under the *Barker* analysis).

22. *Glover*, 368 Md. at 216, 792 A.2d at 1163.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* The DNA test results and serology reports were provided to the defense in October 1999, but were incomplete due to the lack of laboratory notes that typically accompany the test results. *Id.* at 215 n.1, 792 A.2d at 1163 n.1

27. *Id.* at 216-17, 792 A.2d at 1163. For an explanation of the DNA discovery requirements under section 10-915(c)(2), see *supra* note 7.

28. *Id.* at 216, 792 A.2d at 1163.

29. *Id.* at 217, 792 A.2d at 1163-64.

30. *Id.*

31. *Id.* at 218, 792 A.2d at 1164.

On March 23, 2000, during a hearing to suppress statements made by Glover to police officers, Glover's attorney reiterated concern over the length of the delay between the trial dates.³² Both the prosecution and the defense agreed that the July 17 trial date presented an unreasonable delay in the proceedings.³³ In response to the arguments from both sides, the court moved the trial date forward to May 1, 2000.³⁴

On April 19, 2000, Glover filed a motion to dismiss his case, asserting that his right to a speedy trial under both the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights had been violated.³⁵ On May 1, 2000, the circuit court granted the motion to dismiss.³⁶ The court determined the length of the delay to be presumptively prejudicial, thus warranting further constitutional scrutiny under the test articulated by the United States Supreme Court in *Barker v. Wingo*.³⁷ The court found that the State ultimately was responsible for the delays because it failed to adhere to its obligations during the discovery process, specifically its obligation to provide the defense with the complete DNA results at least thirty days before trial.³⁸ Furthermore, the court found that Glover had been prejudiced by the oppressive nature of his pretrial confinement.³⁹ Consequently, the trial court dismissed the indictment.⁴⁰

The State appealed the decision to the Court of Special Appeals of Maryland, which reversed the trial court's decision.⁴¹ The Court of Special Appeals found that Glover failed to sufficiently assert his right to a speedy trial at an earlier time in the pretrial process.⁴² The court noted that the first time Glover raised the speedy trial concern was April 19, 2000, ten months from the date on which his trial was initially scheduled.⁴³ The court stated that Glover could have obtained an earlier trial date by complaining about the date on which the trial was rescheduled.⁴⁴ The Court of Special Appeals also stressed that Glover did not object when the court initially rescheduled the trial

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.* at 218-19, 792 A.2d at 1164.

37. *Id.* at 219, 792 A.2d at 1164.

38. *Id.*, 792 A.2d at 1165.

39. *Id.*

40. *Id.*

41. *Id.* at 220, 792 A.2d at 1165.

42. *Id.*

43. *Id.*

44. *Id.*

from January 13, 2000 to July 17, 2000.⁴⁵ It was not until the March 23, 2000 suppression hearing that Glover complained about the delay.⁴⁶ For these reasons, the Court of Special Appeals found that Glover's right to a speedy trial had not been violated.⁴⁷

Glover subsequently appealed to the Court of Appeals of Maryland.⁴⁸ The Court of Appeals granted certiorari to consider whether the Court of Special Appeals had erred in determining that the State did not violate Glover's right to a speedy trial.⁴⁹

II. LEGAL BACKGROUND

In Maryland, both the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee the right to a speedy trial.⁵⁰ The Supreme Court has held that the historical basis for the right to a speedy trial establishes it as one of the most fundamental rights preserved by the Constitution.⁵¹ The Court has also recognized that the right to a speedy trial is inherently different from all other constitutional rights designed to protect the accused.⁵² In addition to protecting against oppressive and unwarranted pretrial incarceration of the accused, the guarantee of a speedy trial protects societal interests.⁵³ The Court has sought to shield persons accused of crimes from "penalties and disabilities [that are] incompatible with the presumption of innocence," while at the same time ensuring effective prosecution of criminal cases.⁵⁴ However, the vague and amorphous qualities of the right to a speedy trial have hindered courts in their determinations of precisely when a defendant has been denied this right.⁵⁵ As a result, the Supreme Court has rejected rigid tests in favor of a balancing test based on flexible

45. *Id.*

46. *Id.*

47. *Id.* The Court of Special Appeals noted that "[t]he request, 'Try me today!' is a far cry from that other request, 'Try me never, because you did not try me yesterday!'" *Id.* (quoting RICHARD P. GILBERT & CHARLES E. MOYLAN, JR., MARYLAND CRIMINAL LAW: PRACTICE AND PROCEDURE § 42.3, at 527 (Michie 1983)).

48. *Id.*

49. *Id.*

50. *See supra* notes 2-3 (providing the relevant portions of the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights).

51. *Klopfer v. North Carolina*, 386 U.S. 213, 223 (1967).

52. *Barker v. Wingo*, 407 U.S. 514, 519 (1972).

53. *Dickey v. Florida*, 398 U.S. 30, 41-42 (1970) (Brennan, J., concurring) (explaining the purposes of the Speedy Trial Clause).

54. *Id.*

55. *See Barker*, 407 U.S. at 520 (stating that it is difficult to "say how long is too long in a system where justice is supposed to be swift but deliberate").

criteria for determining whether the right to a speedy trial has been denied.⁵⁶

A. *Supreme Court Case Law Examining the Right to a Speedy Trial*

In *Klopfer v. North Carolina*,⁵⁷ the Court considered whether the indefinite postponement of prosecution over the objections of the defendant was constitutional.⁵⁸ The State of North Carolina entered a *nolle prosequi* with leave after the jury failed to reach a verdict at the defendant's trial for a misdemeanor criminal trespass charge.⁵⁹ The State failed to offer a justification for the indefinite postponement, despite several objections by the defendant.⁶⁰ The North Carolina Supreme Court allowed the indefinite postponement, concluding that the right to a speedy trial did not protect the defendant from an unjustified postponement of trial if he was no longer in the custody of the state.⁶¹

The United States Supreme Court, however, rejected the state supreme court's conclusion, holding instead that the unjustified postponement of a trial denied the defendant his Sixth Amendment right to a speedy trial.⁶² The Court reasoned that the indefinite postponement of the trial had the effect of "indefinitely prolonging [the] oppression" the defendant faced in the community as a result of his pending indictment.⁶³ Moreover, the Court reaffirmed the Sixth Amendment's application to the states through the Fourteenth Amendment to the Constitution.⁶⁴ The Court carefully examined the

56. *See id.* at 529-30 (rejecting the inflexible approaches of establishing a fixed-time period in which the defendant must be brought to trial and the demand-waiver rule, requiring the defendant to demand a speedy trial in order to preserve his Sixth Amendment right).

57. 386 U.S. 213 (1967).

58. *Id.* at 214.

59. *Id.* at 217. A *nolle prosequi* "with leave" is a criminal procedure device unique to North Carolina. *Id.* at 214. This device is essentially a statement by the prosecuting attorney informing that he does not intend to proceed further with prosecution. *Id.* Taking a *nolle prosequi* discharges the accused from the custody of the state, but does not end the proceedings against the accused. *Id.* The prosecuting attorney can petition for *nolle prosequi* "with leave," thereby implying that the proceedings may be continued at a future date. *Id.* A *nolle prosequi* does not dismiss the case; therefore, the statute of limitations remains tolled. *Id.*

60. *Id.* at 217-18. The accused even attempted to ascertain the status of his case by filing a motion with the court requesting to have the charges pending against him permanently concluded "as soon as [was] reasonably possible." *Id.* at 218 (internal quotation marks omitted).

61. *Id.* at 219.

62. *Id.* at 221-22.

63. *Id.* at 222.

64. *Id.* The Fourteenth Amendment states:

historical roots of the right to a speedy trial and its implementation throughout the United States.⁶⁵ The Court determined the right to a speedy trial to be one of the most basic rights secured by the Constitution, and uniformly recognized as such at the time the Constitution was adopted.⁶⁶ Thus, the Court justified its applicability to both the federal government and the states.⁶⁷

The Court reaffirmed its holding in *Klopfer* in *Smith v. Hooy*.⁶⁸ In *Hooy*, the Court addressed the issue of whether the State of Texas denied a federal prisoner his Sixth Amendment right to a speedy trial when it failed to provide a prompt trial upon the request of the defendant.⁶⁹ After receiving an indictment in the mail, the defendant requested that Texas provide him with a speedy trial.⁷⁰ The State responded with a letter indicating that the defendant could receive a trial within two weeks of any date on which he could be present for trial.⁷¹ Over the course of the next six years, the defendant continually requested a trial, but the State made no effort to obtain the defendant's appearance.⁷²

The Supreme Court held that the six-year delay was unreasonable and violated the defendant's right to a speedy trial because the accused specifically requested a prompt trial.⁷³ The Court reasoned that even though the defendant was already incarcerated, the delay was prejudicial because the defendant may lose the opportunity to serve concurrent sentences, his ability to defend himself may be impaired, and the presence of an outstanding charge may have a "depressive" effect.⁷⁴ Therefore, the Court held that the State had an obligation to

All persons born or naturalized in the United States and are subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

65. *Klopfer*, 386 U.S. at 223-26.

66. *Id.* at 225-26.

67. *Id.* The Court noted that, at the time of the Union's formation, several state constitutions guaranteed the right to a speedy trial, thus, evincing the fundamental nature of the right. *Id.* at 225. As an example, the Court cited to the guarantee in the Maryland Declaration of Rights. *Id.* at 225 n.21.

68. 393 U.S. 374 (1969).

69. *Id.* at 375.

70. *Id.* The defendant was indicted for theft in Texas, while he was a prisoner at Ft. Leavenworth, Kansas. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 383.

74. *Id.* at 378-79.

make a "diligent, good-faith effort" to bring an accused to trial upon request.⁷⁵ Dismissing the State's argument that it lacked the power to bring an out-of-state prisoner to trial, the Court declared that the right to a speedy trial guaranteed by the Sixth Amendment "may not be dispensed with so lightly."⁷⁶

Similarly, in *Dickey v. Florida*,⁷⁷ the Supreme Court considered whether the State of Florida denied an accused his right to a speedy trial when he was tried and convicted eight years after the alleged crime occurred.⁷⁸ A few days after June 28, 1960, when the defendant allegedly robbed a motel, he was arrested on separate federal bank robbery charges.⁷⁹ The defendant was then removed from Florida and placed in the federal prison system.⁸⁰ Over the next seven years, he attempted to secure a prompt trial in Florida on the state robbery charge, but the State failed to schedule his trial until January 31, 1968.⁸¹

In analyzing the speedy trial claim, the Court determined that the defendant was available to the prosecution during the seven-year period before the trial took place and that the defendant made repeated motions requesting to be tried promptly.⁸² In addition, the Court observed that the right to a speedy trial is not an abstract notion, but is instead founded on the genuine necessity that criminal charges promptly be examined.⁸³ Therefore, the Court reaffirmed the State's duty to provide an accused with a prompt trial when requested.⁸⁴ Because the State of Florida ignored the accused's repeated requests and failed to offer valid justification, the Court found that his right to a speedy trial had been violated.⁸⁵

In *Barker*, the Supreme Court created a constitutional framework for analyzing whether an individual has been denied his Sixth Amend-

75. *Id.* at 383.

76. *Id.*

77. 398 U.S. 30 (1970).

78. *Id.* at 30.

79. *Id.* at 31. While the defendant was detained in the Jackson County jail, a county sheriff's deputy secured an arrest warrant charging him with armed robbery. *Id.* at 32.

80. *Id.* at 32. After the defendant was removed from the Florida criminal justice system, the local sheriff's office made no effort to serve the warrant or gain custody of the accused for trial. *Id.*

81. *Id.* at 32-35.

82. *Id.* at 36.

83. *Id.* at 37.

84. *Id.* at 38.

85. *Id.* at 37-38. The Court did point out that crowded dockets, unavailability of judges and lawyers, and other factors may cause "inevitable" delays. *Id.* at 38.

ment right to a speedy trial.⁸⁶ Finding an ad hoc balancing test to be the proper analytical approach, the Court identified four factors appropriate in considering speedy trial claims: (1) the length of the delay, (2) the reasons for the delay, (3) whether the defendant has asserted his speedy trial right, and (4) the prejudice to the defendant.⁸⁷ Among these factors, the Court established the length of the delay as the triggering mechanism for a speedy trial claim.⁸⁸ The Court noted that the “imprecision of the right to a speedy trial” precludes establishing a bright-line rule for when a delay becomes presumptively prejudicial.⁸⁹ Instead, the Court reasoned that the inquiry into the length of a delay depends upon “the peculiar circumstances of the case.”⁹⁰

In discussing the reasons the Government may offer to justify a delay, the Court determined that different weights should be accorded to different reasons.⁹¹ The Court indicated that a deliberate attempt to delay proceedings should weigh more heavily against the prosecution than a “more neutral” reason such as an overcrowded docket.⁹² In addition, the Court emphasized that the accused has no duty to bring himself to trial—that responsibility rests entirely with the prosecution.⁹³ However, the Court noted that a defendant’s assertion of his right to a speedy trial is entitled to strong evidentiary weight, and conversely, the failure to assert the right may render it difficult to prove the right was violated.⁹⁴ Moreover, a court must take into consideration the defendant’s interests that the right to a speedy trial is designed to protect.⁹⁵ The Court ultimately explained that courts

86. *Barker v. Wingo*, 407 U.S. 514, 530-34 (1972).

87. *Id.* at 530. The Court noted, however, that these four factors are not exclusive and that other courts are free to consider additional factors. *Id.*

88. *Id.* The length of the delay constitutes both the triggering mechanism and a factor in the balancing test. Unless a court finds a delay to be presumptively prejudicial, it is unnecessary to address the other factors in the balancing test. *Id.*

89. *Id.*

90. *Id.* at 530-31.

91. *Id.* at 531.

92. *Id.* Specifically, the Court stated:

A deliberate attempt to delay a 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 rests with the government A valid reason, such as a missing witness, should serve to justify appropriate delay.

Id. (emphasis added).

93. *Id.*

94. *Id.* at 531-32.

95. *Id.* at 532. The Court stated that those interests are “to prevent oppressive pretrial incarceration . . . to minimize anxiety and concern of the accused . . . [and] to limit the possibility that the defense will be impaired.” *Id.*

must balance these four factors while keeping in mind that a defendant's right to a speedy trial is "specially affirmed in the Constitution."⁹⁶

In *Doggett v. United States*,⁹⁷ the Court further stated that official negligence on the part of the Government in bringing a defendant to trial compounds over time.⁹⁸ In *Doggett*, the defendant was indicted on federal drug charges, but fled the country before he could be arrested.⁹⁹ The defendant subsequently re-entered the country, and was arrested, nearly eight-and-a-half years after the indictment against him was filed.¹⁰⁰ The Supreme Court found that the delay was a result of the Government's negligence and, therefore, violated the defendant's right to a speedy trial.¹⁰¹ The Court reasoned that even though negligence is weighted less than deliberate attempts to delay a trial, it nonetheless constitutes an unacceptable reason for delaying a criminal prosecution that is underway.¹⁰² In addition, the Court explained that tolerance for official negligence under the *Barker* balancing test ultimately depends on the length of the delay and its subsequent effect on the fairness of the trial.¹⁰³

In *Strunk v. United States*,¹⁰⁴ the Supreme Court considered the remedy to be applied to deprivations of the right to a speedy trial.¹⁰⁵ Prior to his trial in a United States district court, the defendant's motion to dismiss for lack of a speedy trial was denied.¹⁰⁶ At trial, the defendant was found guilty of transporting a stolen automobile across state lines.¹⁰⁷ On appeal, the United States Court of Appeals for the Seventh Circuit found that the defendant's right to a speedy trial had been denied, but held that dismissal of the charges would be too extreme a remedy in this case.¹⁰⁸ Instead, the court remanded the case with instructions to reduce the defendant's sentence "in order to compensate for the unnecessary delay."¹⁰⁹

96. *Id.* at 533.

97. 505 U.S. 647 (1992).

98. *Id.* at 657.

99. *Id.* After two years had passed, no effort was made to locate the defendant. *Id.* at 649-50.

100. *Id.* at 650.

101. *Id.* at 657-58.

102. *Id.* at 657.

103. *Id.*

104. 412 U.S. 434 (1973).

105. *Id.* at 435.

106. *Id.*

107. *Id.* at 434-35.

108. *Id.*

109. *Id.* The reduction in sentence ordered by the court was 259 days, the length of delay between the defendant's indictment and arraignment. *Id.*

The Supreme Court reversed, reasoning that the right to a speedy trial is unlike the other guarantees in the Sixth Amendment because it is not as easily remedied once it is violated.¹¹⁰ The Court explained that the right to an impartial trial, notice of charges, and compulsory service, for example, “can ordinarily be cured by providing those guaranteed rights in a new trial.”¹¹¹ The constitutional guarantee of a speedy trial, however, acknowledges that an extended delay subjects the defendant to emotional stress resulting from the uncertainties of a trial.¹¹² The Court concluded that the only remedy for this particular kind of harm, as noted in *Barker*, is the dismissal of the charges.¹¹³ Although the Court felt dismissal was an “unsatisfactorily severe remedy,” it held that it was “the only possible remedy” for deprivations of the right to a speedy trial.¹¹⁴

B. Court of Appeals of Maryland Case Law Examining the Right to a Speedy Trial

The Court of Appeals of Maryland has decided several cases addressing an individual’s right to a speedy trial under both the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights. In *Erbe v. State*,¹¹⁵ the defendant asserted that a five-year delay between his conviction and his sentencing violated his right to a speedy trial.¹¹⁶ The court assumed *arguendo* that sentencing is part of the trial for analyzing violations of the Sixth Amendment and Article 21 of the Declaration of Rights.¹¹⁷ The court stated that the language guaranteeing the right to a speedy trial in the Maryland Declaration of Rights is “virtually identical” to that in the Sixth Amendment and, therefore, the court’s “discussion of the Sixth Amendment right to a speedy trial [was] equally applicable to the right provided in the Declaration of Rights, Art. 21.”¹¹⁸ The court applied the *Barker* balancing test to the delay in this case.¹¹⁹ The court noted that the delay between the defendant’s conviction and sentencing was unintentional.¹²⁰ In addition, the court found that the defen-

110. *Id.* at 438-39.

111. *Id.* at 439.

112. *Id.*

113. *Id.* at 440.

114. *Id.* at 439-40 (quoting *Barker v. Wingo*, 407 U.S. 514, 522 (1972)).

115. 276 Md. 541, 350 A.2d 640 (1976).

116. *Id.* at 543, 350 A.2d at 642.

117. *Id.* at 544, 350 A.2d at 642.

118. *Id.* at 545-46, 350 A.2d at 643.

119. *Id.* at 560, 350 A.2d at 651.

120. *Id.* at 549, 350 A.2d at 646.

dant suffered no prejudice as a result of the delay.¹²¹ Accordingly, the court held that the defendant's right to a speedy trial under both the Sixth Amendment and Article 21 had not been denied.¹²²

In *Epps v. State*,¹²³ the court again considered whether the State denied a defendant his right to a speedy trial when the case was postponed to accommodate a tactical decision by the prosecution.¹²⁴ The trial court allowed for postponement of the trial, over the defendant's objections.¹²⁵ The State eventually tried and convicted the defendant one year and fourteen days after his arrest.¹²⁶ In analyzing the speedy trial claim, the court found that a delay of one year and fourteen days from the date of arrest to the date of trial is presumptively prejudicial, requiring the application of the *Barker* balancing test.¹²⁷ The court also reasoned that the Supreme Court's decision in *Barker* did not intend to classify overcrowded dockets as simply a "neutral reason" for excusing a delay.¹²⁸ Stating that it is the responsibility of the State to bring a defendant to trial, the *Epps* court determined that trial courts, along with prosecutors, are obligated to provide defendants with speedy trials.¹²⁹ The court found that delays caused by scheduling problems cannot be classified as "wholly neutral" reasons and thus, are to be held against the State.¹³⁰ As a result, the court held that the defendant's right to speedy trial had been denied.¹³¹

Similarly, in *Jones v. State*,¹³² the court addressed whether a defendant's right to a speedy trial was denied when he was not tried until twenty-nine months after his arrest, despite repeated requests for a trial.¹³³ The court found that the State was responsible for an eleven-month delay, which occurred between two other delays of one year

121. *Id.* at 560, 350 A.2d at 651.

122. *Id.*

123. 276 Md. 96, 345 A.2d 62 (1975).

124. *Id.* at 99-100, 345 A.2d at 66. The prosecution requested a postponement of the trial in order to try the defendant jointly with a co-defendant. *Id.* at 99, 117.

125. *Id.*

126. *Id.* at 111, 345 A.2d at 72.

127. *Id.*

128. *Id.* at 112, 345 A.2d at 73. The court explained that the *Barker* decision only suggested that such a cause is a "more neutral reason than a deliberate attempt to delay the trial in order to hamper the defense." *Id.* (quoting *Barker v. Wingo*, 407 U.S. 514, 531 (1972)).

129. *Id.* at 114-15, 345 A.2d at 74.

130. *Id.* In addition, the court noted that the trial court's passive cooperation with the prosecution contributed to the delays. *Id.* at 121, 345 A.2d at 78.

131. *Id.* at 121, 345 A.2d at 78.

132. 279 Md. 1, 367 A.2d 1 (1976).

133. *Id.* at 3-6, 367 A.2d at 3-5.

and of nearly six months, respectively.¹³⁴ Part of the eleven-month delay resulted from the Circuit Court for Baltimore County's inability to produce a judge for the trial.¹³⁵ The court determined that the failure to dispose of the case in a prompt manner caused the defendant actual harm as he may have "suffered needlessly for eleven months."¹³⁶ Thus, the court held that the State denied the defendant his right to a speedy trial.¹³⁷

In *Brady v. State*,¹³⁸ the court considered whether a pretrial delay of fourteen months resulting from neglect by the State deprived the defendant of his right to a speedy trial.¹³⁹ The court found the State to be negligent in attempting to locate the defendant in order to serve the indictment.¹⁴⁰ At the time, the defendant was incarcerated in a neighboring municipality's jail.¹⁴¹ In reaching its conclusion, the court explained that the State was ultimately responsible for the coordination of its criminal divisions in its attempt to locate a defendant for trial.¹⁴² The court found the apparent "prosecutorial indifference" to be the determinative factor in the case, tipping the scales of the balancing test in favor of the defendant.¹⁴³ After failing to identify a justification favoring the State, the court held that the defendant's right to a speedy trial was violated.¹⁴⁴

Once more, the court, in *Divver v. State*,¹⁴⁵ considered whether a delay of one year and sixteen days resulting from the trial court's failure to schedule the case violated the defendant's right to a speedy trial.¹⁴⁶ The court found the trial court's lack of activity in the case for nearly nine months after the defendant's arrest to be the sole reason for the delay, and thus prejudicial to the defendant.¹⁴⁷ The court re-

134. *Id.* at 13, 367 A.2d at 9. The court determined the reasons for the other two delays were either neutral or the fault of the defendant. *Id.*

135. *Id.* at 12, 367 A.2d at 9-10.

136. *Id.* at 18, 367 A.2d at 12.

137. *Id.*

138. 291 Md. 261, 434 A.2d 574 (1981).

139. *Id.* at 269-70, 434 A.2d 578-79.

140. *Id.* at 267, 434 A.2d at 577.

141. *Id.* at 263-64, 434 A.2d at 575-76. The defendant was incarcerated in the Baltimore County jail when the Anne Arundel County State's Attorney's Office indicted him on August 22, 1977. *Id.* Brady did not learn of the indictment until June 9, 1978, after his release from the Baltimore County jail. *Id.*

142. *Id.* at 267, 434 A.2d at 577.

143. *Id.*

144. *Id.* at 270, 434 A.2d at 578-79.

145. 356 Md. 379, 739 A.2d 71 (1999).

146. *Id.* at 381-82, 739 A.2d at 73.

147. *Id.* at 391, 739 A.2d at 78.

affirmed that it is the State's obligation to schedule cases for trial.¹⁴⁸ Balancing all the factors of the case, the court concluded that the defendant's right to a speedy trial was violated.¹⁴⁹

III. THE COURT'S REASONING

In *Glover*, the Court of Appeals of Maryland affirmed the Court of Special Appeals's decision that the State did not violate Glover's right to a speedy trial.¹⁵⁰ Judge Battaglia, writing for the majority,¹⁵¹ determined that Glover's post-arrest, pretrial delay was presumptively prejudicial, thus, triggering further inquiry under the constitutional analysis articulated by the United States Supreme Court in *Barker*.¹⁵² Applying the *Barker* test to the facts of the case, the court explained that although not determinative, the four factors enunciated in *Barker* help to guide the court in its consideration of an "amorphous, fluid, and unquantifiable" right.¹⁵³

Examining the first factor of the *Barker* test, the court stated that while the fourteen-month delay was presumptively prejudicial, it was not inordinate considering the circumstances of the case.¹⁵⁴ Reasoning that the delay caused by the State was not excessive given the complexities of DNA evidence in a murder case,¹⁵⁵ the majority found that society has a strong interest in rendering just verdicts in cases where a potential penalty of death or life imprisonment exists.¹⁵⁶ Therefore, the court determined that exactness of DNA evidence outweighs the need for expedient murder trials without such evidence.¹⁵⁷

Analyzing the second prong of the *Barker* test, the court determined that the delays in the case arose as a result of mostly neutral

148. *Id.*

149. *Id.* at 395, 739 A.2d at 80.

150. *Glover*, 368 Md. 211, 232, 792 A.2d 1160, 1172 (2002).

151. Judge Battaglia's opinion was joined by Judges Raker, Wilner, and Cathell. *Id.* at 214, 796 A.2d at 1162.

152. *Id.* at 222, 792 A.2d at 1166-67.

153. *Id.* at 223, 792 A.2d at 1167; *see supra* notes 86-96 and accompanying text (discussing the test articulated by the Supreme Court in *Barker*).

154. *Glover*, 368 Md. at 223-24, 792 A.2d at 1167.

155. DNA evidence is obtained by using either the polymerase chain reaction test (PCR) or the restriction fragment length polymorphism test (RFLP). *Williams v. State*, 342 Md. 724, 744, 679 A.2d 1106, 1117 (1996). RFLP testing is capable of providing a "very specific match between two samples," while PCR testing can only "narrow down a potential number of donors in a certain group." *Id.* (internal quotation marks omitted). Both tests are designed to identify the type of a specific gene in a given sample. *Id.* at 744 n.6, 679 A.2d at 1117 n.6.

156. *Glover*, 368 Md. at 224, 792 A.2d at 1168.

157. *Id.*

reasons.¹⁵⁸ Examining the causes of the first postponement, the unavailability of a judge for trial, and the unavailability of the prosecution's DNA evidence, the court first noted that the unavailability of a judge was a neutral reason to which it accorded little weight.¹⁵⁹ Moreover, the court concluded that the highly technical nature of DNA evidence might require more time to process and review than other types of evidence.¹⁶⁰ The court found no evidence to suggest that the State was negligent in coordinating the various criminal divisions, including the Maryland State Police Laboratory, necessary for promptly bringing a defendant to trial.¹⁶¹ Thus, the court concluded that the unavailability of the DNA test results provided a valid justification for the first trial delay.¹⁶²

The court then examined the reason for the second postponement, which occurred when the Circuit Court for Harford County was unable to provide a judge or jury for the trial.¹⁶³ Although noting that this situation was "somewhat disturbing" because Glover's trial had now been delayed on two separate occasions due to the unavailability of judges, the court found the basis for this delay to be neutral as well.¹⁶⁴

For the third postponement, the court explained that this delay was due to the prosecution's failure to adhere to the discovery requirements for the introduction of DNA evidence at trial.¹⁶⁵ By failing to provide the defense with a complete DNA report until twenty days before the third scheduled trial date, the court concluded that the prosecution failed to meet its obligation to monitor the division responsible for processing DNA evidence.¹⁶⁶ Therefore, the court found the prosecution solely responsible for the third postponement.¹⁶⁷ However, the court again concluded that the reason for this delay was largely neutral as there was no indication that the prosecution had acted in bad faith.¹⁶⁸

As to the third factor articulated in *Barker*, the court found that the petitioner sufficiently asserted his right to a speedy trial.¹⁶⁹ The

158. *Id.* at 228, 792 A.2d at 1170.

159. *Id.* at 225-26, 792 A.2d at 1168-69.

160. *Id.* at 226, 792 A.2d at 1169.

161. *Id.*

162. *Id.*

163. *Id.* at 227, 792 A.2d at 1169.

164. *Id.*

165. *Id.*

166. *Id.* at 227-28, 792 A.2d at 1169-70.

167. *Id.* at 228, 792 A.2d at 1170.

168. *Id.*

169. *Id.*

court explained that a defendant's assertion of his right to a speedy trial, depending on its strength and timeliness, often is an indication that he is suffering prejudice from a lengthy delay.¹⁷⁰ In contrast to the Court of Special Appeals's finding, the court noted that Glover twice requested a speedy trial, once in March 1999 and again on April 19, 2000.¹⁷¹ Furthermore, the court stated that the Court of Special Appeals had mistakenly placed too much emphasis on the fact that Glover failed to "aggressively assert" his right to a speedy trial after the third postponement in January 2000, and thus, erroneously assigned him blame for the third delay.¹⁷² Although the court concluded that Glover sufficiently asserted his right, the court reiterated that an aggressive assertion of the right to a speedy trial is not itself a determinative factor under *Barker*.¹⁷³

In analyzing the fourth *Barker* factor, the court found that the delays in the proceedings did not actually prejudice Glover.¹⁷⁴ The court considered the facts of the case in light of the three harms that the right to a speedy trial seeks to protect against: (1) oppressive pre-trial incarceration, (2) the anxiety and concern of the accused, and (3) the impairment of the accused's defense.¹⁷⁵ Regarding the first potential harm, the court stated that Glover's pretrial incarceration was not "inordinate or unduly oppressive" because the trial was delayed as a result of the parties' "quest" to obtain accurate DNA evidence and the unavailability of judges to hear the case.¹⁷⁶

Regarding the second potential harm, the court recognized that a prolonged delay could create anxiety and emotional stress for an accused.¹⁷⁷ However, the court stated that these "intangible personal factors" should only prevail if the sole reason the prosecution proffers for a delay is overcrowded dockets.¹⁷⁸ The court reasoned that because the delay in this case was primarily due to the prosecution's failure to attain the DNA materials before the trial dates, rather than crowded dockets, the fact that Glover may have suffered anxiety and stress was not sufficient to find in his favor.¹⁷⁹

170. *Id.*

171. *Id.*

172. *Id.* at 229, 792 A.2d at 1170.

173. *Id.*; *cf.* *Barker v. Wingo*, 407 U.S. 514, 531-32 (1972) (providing that a defendant's strong assertion of his speedy trial right should be weighted heavily in his favor while the lack of an assertion should not be held against him).

174. *Glover*, 368 Md. at 231, 792 A.2d at 1172.

175. *Id.* at 229, 792 A.2d at 1171 (referencing *Barker*, 407 U.S. at 532).

176. *Id.*

177. *Id.* at 229-30, 792 A.2d at 1171.

178. *Id.* at 230, 792 A.2d at 1171.

179. *Id.*

As to the last potential harm, the court analyzed the effect that the pretrial delay had on Glover's defense.¹⁸⁰ The court found that the delay did not impair Glover's ability to present an adequate defense.¹⁸¹ The court noted that the passage of time has the potential to weaken both parties' cases.¹⁸² Nevertheless, the court could not find any evidence indicating that the delay unduly prejudiced the defense, and was unwilling to presume prejudice because "the delay was not excessive or inordinate."¹⁸³

After balancing the four *Barker* factors, the court held that the petitioner's right to a speedy trial had not been violated.¹⁸⁴ Reasoning that delays are often the result of the State's efforts to ensure a fair trial, and that accurate DNA evidence is critical in murder cases where fairness is of utmost importance, the court was unwilling to penalize the State for the delays resulting from the preparation of DNA evidence.¹⁸⁵ The court asserted that even though the State was "not as aggressive" as it could have been in its attempt to prepare the DNA evidence and bring the case to trial, the delay did not "unduly prejudice" Glover.¹⁸⁶ The court concluded that the unique circumstances of the case, along with the lack of evidence establishing prejudice, demonstrated that the State did not violate Glover's right to a speedy trial.¹⁸⁷

In his dissent, Judge Harrell argued that the record did not support the majority's conclusion that the delays in the DNA discovery process were due to the "inherent complexities of DNA testing."¹⁸⁸ He concluded, rather, that the delays in this case were a result of "benign neglect" on the part of the State and its various criminal divisions in complying with the discovery process.¹⁸⁹ Therefore, Judge Harrell believed that the State was responsible for every postponement in the case.¹⁹⁰ Judge Harrell disagreed with the majority's conclusion that the reasons for the postponements were both "neutral and justified" because he disagreed with the majority's finding that the State acted

180. *Id.* at 231, 792 A.2d at 1172.

181. *Id.*

182. *Id.* The court explained that both prosecution and defense witnesses' memories may fade over time. *Id.*

183. *Id.*

184. *Id.* at 232, 792 A.2d at 1172.

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.* at 232-33, 792 A.2d at 1173 (Harrell, J., dissenting). Judge Harrell's dissenting opinion was joined by Chief Judge Bell and Judge Eldridge. *Id.* at 232, 792 A.2d at 1172.

189. *Id.* at 233, 792 A.2d at 1173.

190. *Id.* at 236, 792 A.2d at 1175.

in a "diligent manner" in producing the DNA evidence.¹⁹¹ Accordingly, he concluded that the State denied Glover his right to a speedy trial and, therefore, the trial judge was correct in dismissing the murder charges.¹⁹²

IV. ANALYSIS

In *Glover*, the Court of Appeals of Maryland held that notwithstanding a fourteen-month pretrial delay, the State did not deny Glover his right to a speedy trial.¹⁹³ In reaching this conclusion, the court misinterpreted and misapplied two of the four factors of the *Barker* balancing test.¹⁹⁴ In analyzing whether Glover was deprived of his right to a speedy trial, the court failed to accurately characterize the reasons for the delay and consider whether the delay prejudiced the defendant. Specifically, the court misinterpreted the meaning of the term "neutral" as originally defined in *Barker*, and as applied in later Supreme Court and Court of Appeals of Maryland cases.¹⁹⁵ The court characterized the unavailability of judges as a neutral reason for the delay and thus, failed to afford due weight to this factor. In addition, the court determined that the delays resulting from the unavailability of the prosecution's DNA evidence were justifiable and did not prejudice Glover.¹⁹⁶ As a result, the court's misinterpretation and misapplication of the *Barker* analysis resulted in a decision that significantly weakens a person's right to a speedy trial in Maryland.

A. *The Court's Misinterpretation and Misapplication of the Term "Neutral" Weakens the Right to a Speedy Trial in Maryland*

The court in *Glover* misinterpreted the meaning of the term "neutral" in its allocation of the blame assigned to each party for delays resulting from the unavailability of judges for trial. In the majority's

191. *Id.* at 236-37, 792 A.2d at 1175.

192. *Id.* at 237, 792 A.2d at 1175.

193. *Glover*, 368 Md. at 215, 792 A.2d at 1162.

194. *Barker v. Wingo*, 407 U.S. 514, 530 (1972).

195. *Id.* at 531. The Supreme Court in *Barker* explained that delays resulting from overcrowded dockets or negligence on the part of the State are "more neutral reason[s]" than delays that result from deliberate acts. *Id.* These neutral reasons are not weighted as heavily as intentional delays; however, they should be considered because the State is ultimately responsible for placing the defendant on trial. *Id.*; *Epps v. State*, 276 Md. 96, 112, 345 A.2d 62, 73 (1975). The *Epps* court also recognized that in *Barker*, the Supreme Court chose not to classify over-crowded dockets as "neutral reasons" in its examination of the prosecution's justifications for a delay. *Id.* The *Epps* court found that the *Barker* Court merely suggested the bases for such delays were "more neutral" when compared to intentional delays, noting that it is the Government's responsibility to bring the defendant to trial. *Id.*

196. *Glover*, 368 Md. at 232, 792 A.2d at 1172.

analysis, the court cited to its decision in *Bailey v. State*,¹⁹⁷ which adopted the continuum of assigned weights enunciated in *Barker*.¹⁹⁸ In *Barker*, the Supreme Court recognized that delays resulting from overcrowded dockets or negligence were “more neutral reason[s]” than intentional delays.¹⁹⁹ The *Barker* Court reasoned that even though such delays should be weighted less heavily than their intentional counterparts, courts should nevertheless hold such delays against the Government, who is ultimately responsible for trying a defendant.²⁰⁰ Similarly, in *Epps v. State*, the Court of Appeals found that a delay resulting from “over-crowded [sic] dockets and scheduling problems” is not an entirely neutral reason because it is the responsibility of both the prosecutors and the courts to protect a defendant’s right to a speedy trial.²⁰¹ Despite this established precedent, the *Glover* court found that the two delays resulting from the unavailability of judges were “clearly” neutral reasons that “will not weigh” heavily against the State, in effect, ignoring the distinction between “neutral reasons” and “a more neutral reason.”²⁰²

This misinterpretation of the term “neutral” significantly weakens the constitutional protection of the right to a speedy trial in Maryland. The *Glover* court’s interpretation of “neutral” yields a dismissive treatment of delays that result from the administrative inability of the State to bring an individual to trial.²⁰³ In *Barker*, the Court used the term “neutral” in a comparative sense to the word intentional, not limiting its potential application to its literal meaning.²⁰⁴ By focusing on the literal meaning of “neutral” without considering the context in which it was used, the *Glover* court failed to apply the proper weight that a “more neutral” reason for a delay carries in the balancing process of the *Barker* analysis.²⁰⁵ Giving insufficient weight to a delay for which the state is negligent, but ultimately responsible, has the effect of ex-

197. 319 Md. 392, 372 A.2d 544 (1990).

198. *Glover*, 368 Md. at 225, 792 A.2d at 1168.

199. *Barker*, 407 U.S. at 531.

200. *Id.*

201. *Epps v. State*, 276 Md. 96, 114-15, 345 A.2d 62, 74 (1975).

202. *Glover*, 368 Md. at 226, 792 A.2d at 1168-69.

203. See Brook Dooley, *Speedy Trial*, 90 GEO. L.J. 1454, 1459 n.1179 (2002) (noting that the Supreme Court has acknowledged that more neutral reasons for delays should still be weighted against the Government as it is their responsibility to try the defendant).

204. *Barker v. Wingo*, 407 U.S. 514, 531 (1972); see Dooley, *supra* note 203, at 1459 n.1179 (citing cases that have interpreted the Court’s meaning of the terms “intentional” and “neutral”).

205. See *Epps*, 276 Md. at 112, 345 A.2d at 73 (explaining that the Supreme Court suggested that administrative delays were “more neutral reasons” than intentional delays).

cluding nearly all delays that are not intentional.²⁰⁶ Thus, the *Glover* court's interpretation and use of the term "neutral" has the ultimate effect of weakening a defendant's chances of succeeding on a speedy trial claim.²⁰⁷

The court's finding that the unavailability of judges was a "clearly" neutral reason evinces the weakening effect that its misinterpretation of the *Barker* analysis has on the right to a speedy trial in Maryland. In *Divver v. State*, the court recently reaffirmed that it is the obligation of the State to assign cases for trial.²⁰⁸ The *Divver* court reasoned that if the State is unable to assign the case to a judge for trial because the court is understaffed, the State remains ultimately responsible for the delay.²⁰⁹ However, in the *Glover* court's analysis of the delays caused by the unavailability of judges, it decided not to weight these delays heavily against the State.²¹⁰ The court's decision ultimately had the effect of improperly excusing an eleven-month delay, which resulted from the State's inability to find a judge to try *Glover*.²¹¹

Thus, by excusing an unintentional delay caused by the State, the court's decision in *Glover* creates a precedent that weakens an individual's right to a speedy trial in Maryland. Under the *Barker* balancing test, the reasons that a state proffers to justify a delay are critical factors in analyzing whether a defendant's right to a speedy trial has been denied.²¹² Although not dispositive, the reasons for the delay will more often than not determine the outcome of the balancing test, particularly when the defendant is unable to establish how the delay actually prejudiced him.²¹³ The decision in *Glover* has the potential to improperly lessen the weight Maryland courts assign to delays resulting from official negligence, incompetence, or impotence. Consequently, a defendant will be forced to produce more evidence that

206. By excusing all non-intentional delays caused by the State, the court would dilute the State's responsibility in bringing a defendant to trial.

207. Jennifer L. Couture, *Defendant's Federal and State Constitutional Right to a Speedy Criminal Trial*, 24 SUFFOLK U. L. REV. 585, 588-89 (1994) (stating that courts must consider all of the four interrelated factors in making their determinations of whether a defendant's right to a speedy trial has been violated).

208. 356 Md. 379, 391, 739 A.2d 71, 78 (1999).

209. *Id.*

210. *Glover*, 368 Md. at 226, 792 A.2d at 1168-69.

211. *See id.* (finding that the delays in the trial were a result of mostly neutral reasons).

212. *Barker v. Wingo*, 407 U.S. 514, 531 (1972).

213. *Id.* at 533 (noting that all the factors, including the reasons for the delay and actual prejudice, must be considered together); *State v. Bailey*, 319 Md. 392, 415, 572 A.2d 544, 554 (1990) (finding that an affirmative demonstration of prejudice is not required to prevail on a speedy trial right claim).

demonstrates the affirmative prejudice he has suffered due to a delay in order to tip the balancing test in his favor. However, affirmative prejudice is often difficult to demonstrate;²¹⁴ therefore, it will be extremely difficult for a defendant to prove that his right to a speedy trial was denied.²¹⁵

Accordingly, the *Glover* court significantly weakens an individual's right to a speedy trial by failing to accord the proper weight to unintentional delays in the balancing of the *Barker* factors, thereby lessening a defendant's chances of prevailing on a speedy trial claim. Thus, the court's decision significantly dilutes both the Sixth Amendment and Article 21's guarantees designed to protect individuals from unwarranted pretrial incarceration.

*B. The Delays Due to the Unavailability of the DNA Results
Were Not Justifiable*

In *Glover*, the court found that the delays caused by the State's failure to provide the defense with complete DNA discovery materials prior to trial were both justified and neutral.²¹⁶ This conclusion is problematic because it excuses the State's failure to provide Glover with a speedy trial. By failing to adhere to the DNA discovery requirements, the State breached its constitutional duty to bring Glover to trial in a prompt manner. It was this breach that contributed greatly to the fourteen-month delay.²¹⁷ By excusing the State's failure to abide by the discovery requirements, the *Glover* court failed to balance this factor in the petitioner's favor, ultimately finding that his right to a speedy trial had not been violated.

In examining the first delay,²¹⁸ the court improperly found that the highly technical nature of DNA evidence excused the State's constitutional duty to provide Glover with a speedy trial.²¹⁹ In *Smith v. Hooley*, the United States Supreme Court noted that a State has a constitutional duty to make a "diligent, good-faith effort" to bring that person to trial.²²⁰ In addition, the Court of Appeals of Maryland in

214. See *Glover*, 368 Md. at 229-30, 792 A.2d at 1171 (noting that affirmative prejudice is difficult to demonstrate because it often deals with intangible personal factors).

215. *Id.* at 226-28, 792 A.2d at 1169-70.

216. *Id.* at 226, 792 A.2d at 1169 (noting that the lack of evidence of the State's failure to act in a diligent manner led to the conclusion that the postponement was neutral and thus justified).

217. *Id.* at 223-26, 792 A.2d at 1166-69.

218. This delay was caused by the unavailability of both the DNA evidence and a judge to hear the trial. *Id.* at 225-26, 792 A.2d at 1168.

219. *Id.* at 226, 792 A.2d at 1169.

220. *Smith v. Hooley*, 393 U.S. 374, 383 (1969).

Brady v. State found that the State has a duty to coordinate the efforts of its criminal divisions.²²¹ In *Glover*, the State breached both of these duties. At the time of the first trial, the Maryland State Police Laboratory had not completed the DNA test results.²²² Accordingly, it was the State's responsibility to ensure that the police crime lab had processed the DNA evidence sufficiently in advance of trial. If the State had diligently monitored the laboratory, the evidence would have been ready for the first trial date and a postponement would have been unnecessary. Furthermore, the highly technical nature of the DNA evidence does not impact the State's duty to promptly try *Glover*.²²³ Because the first delay resulted from a lack of preparedness on behalf of the State, the court erred in finding a justification for the first postponement.

As for the postponement resulting from the State's failure to provide the defense with the DNA discovery material, the court once again improperly labeled the reason for the delay as neutral.²²⁴ The State's failure to properly disclose the DNA results to the defense was on this occasion a breach of section 10-915 of the Maryland Code, which requires the delivery of the complete DNA results at least thirty days before trial.²²⁵ The State had an additional five months to comply with the discovery requirements after the first postponement in July 1999, but by December 1999 had yet to meet this obligation.²²⁶ This significant breach of duty to comply with the discovery requirements is tantamount to negligence.²²⁷ In *Doggett v. United States*, the Supreme Court stated that even though official negligence is weighted less than a deliberate attempt to harm the defense, "it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution"²²⁸ Moreover, the *Doggett* Court explained that prosecutorial negligence is not "auto-

221. *Brady v. State*, 291 Md. 261, 267, 434 A.2d 574, 577 (1981).

222. *Glover*, 368 Md. at 215, 792 A.2d at 1162.

223. *See Hooye*, 393 U.S. at 383 (stating that a State must make a "diligent, good faith effort" to bring an accused to trial).

224. *Glover*, 368 Md. at 228, 792 A.2d at 1170.

225. *Id.* at 227-28, 792 A.2d at 1169-70; *see supra* note 7 and accompanying text (providing the rules for a party to introduce DNA evidence into a criminal proceeding).

226. *Glover*, 368 Md. at 216, 792 A.2d at 1163.

227. *See id.* at 236, 729 A.2d at 1175, (Harrell, J. dissenting). Judge Harrell quoted the majority's opinion, which explained that the state's duty to bring the defendant to trial includes "ensuring that critical discovery materials, such as DNA evidence, are properly monitored and accounted for" *Id.* He then concluded that because the State was ultimately responsible for the delays in complying with the DNA discovery requirements, the State breached its duty to bring the defendant to trial. *Id.*

228. *Doggett v. United States*, 505 U.S. 647, 657 (1992).

matically tolerable simply because the accused cannot demonstrate exactly how it has prejudiced him.”²²⁹ The State’s official negligence in complying with the DNA discovery requirements, taken with the other delays, should have been viewed cumulatively by the court as unjustifiable.

Moreover, in *Dickey v. Florida*, the Supreme Court stated that “the right to a prompt inquiry into criminal charges is fundamental and the duty of the charging authority is to provide a prompt trial.”²³⁰ In *Brady v. State*, the Court of Appeals of Maryland also reasoned that the prosecutor’s indifference in trying a defendant tipped “the scales most heavily in [the defendant’s] favor.”²³¹ In *Glover*, the State failed to afford a prompt trial because of its own inability to comply with the discovery rules required for the introduction of DNA evidence.²³² The State was solely responsible for the delays, which resulted from its lack of diligence in monitoring the testing of the DNA evidence.²³³ Thus, the *Glover* court’s decision wrongly validated the justification for the delays resulting from unavailability of the DNA evidence. By excusing the State’s prosecutorial indifference, the court further diluted the right to a speedy trial in Maryland.

*C. The Delays Due to the Unavailability of the DNA Evidence
Actually Prejudiced Glover*

The *Glover* court misapplied the *Barker* balancing test with respect to whether Glover suffered actual prejudice from the delays. In its analysis, the court misapplied the circumstances of Glover’s case to the harms against which the speedy trial right is designed to guard.²³⁴ By misconstruing the State’s justifications for the delays, the court erroneously concluded that the record did not support any evidence that the delays actually prejudiced Glover.²³⁵

The majority explained that Glover’s pretrial incarceration was not “inordinate or unduly oppressive” in light of the factual circum-

229. *Id.*

230. *Dickey v. Florida*, 398 U.S. 30, 38 (1970) (discussing a case in which the State failed to bring a defendant to trial for eight years even though the defendant was available to the State for the entire period).

231. *Brady v. State*, 291 Md. 261, 267, 434 A.2d 574, 577 (1981) (discussing a case in which the State failed to prosecute a defendant over a period of fourteen months due to its negligence in locating the defendant).

232. *Glover*, 368 Md. at 226-28, 792 A.2d at 1170-71.

233. *Id.* at 227-28, 792 A.2d at 1170.

234. *Id.* at 229, 792 A.2d at 1171. The right to a speedy trial protects against “oppressive pretrial incarceration, anxiety and concern of the accused, and impairment of the accused’s defense.” *Id.*

235. *Id.* at 231, 792 A.2d at 1172.

stances relating to the unavailability of DNA evidence.²³⁶ The court explained that both parties had an important stake in obtaining complete and accurate DNA test results.²³⁷ The court reasoned that DNA test results could be exculpatory and, therefore, Glover had an equally strong interest in waiting for them.²³⁸

The court's reasoning, however, is flawed because Glover was not on a "quest" to obtain DNA evidence.²³⁹ In fact, Glover spent an additional nine months in jail because of delays resulting from the prosecution's lack of diligence in preparing their DNA evidence for trial.²⁴⁰ During his time in prison, Glover was "very anxious and concerned" as he had lost his home in the intervening months.²⁴¹ The additional time Glover spent in jail as a result of the State's failure to produce the DNA test results rebuts the court's finding that Glover's pretrial incarceration was not unduly oppressive.²⁴²

In addition, the court failed to recognize that the State's failure to turn over the DNA results in a timely manner was prejudicial to Glover's defense.²⁴³ At the December 23 hearing on the prosecution's failure to comply with the DNA discovery requirements, the trial court stated that suppression of the DNA evidence would be too drastic a remedy.²⁴⁴ Consequently, the trial judge postponed the trial until July 17, 2000, nearly a year from the originally scheduled trial date.²⁴⁵ At that time, Glover's counsel expressed that he did not want to postpone the trial a third time.²⁴⁶ As a result, Glover was forced to either acquiesce to the delay in order to confront the prosecution's DNA evidence or proceed to trial without adequately analyzing the DNA test results.²⁴⁷ By forcing Glover to choose between preparing

236. *See id.* at 229, 792 A.2d at 1171 (concluding that Glover did not suffer prejudice as the delay was due to neutral reasons).

237. *Id.*

238. *See id.* (reasoning that Glover had a stake in the outcome of the DNA test results).

239. *See id.* Glover's attorney, in fact, sought to suppress the DNA evidence at a hearing on December 23, 1999, after the State failed to comply with the DNA discovery requirements for the second time. *Id.* at 217, 792 A.2d at 1163-64.

240. *Id.* at 229, 792 A.2d at 1171 (internal quotation marks omitted).

241. *Id.* at 230, 792 A.2d at 1171.

242. *Id.* at 232, 792 A.2d at 1172. The Court of Appeals has previously acknowledged that actual prejudice "may be presumed from the inordinate length of the delay itself." *Epps v. State*, 276 Md. 96, 119, 345 A.2d 62, 77 (1975). Additionally, the Supreme Court in *Barker* recognized that pretrial incarceration has a detrimental impact upon the defendant, which actually prejudices the defendant. *Barker v. Wingo*, 407 U.S. 514, 532-33 (1972).

243. *Glover*, 368 Md. at 218-19, 792 A.2d at 1164.

244. *Id.* at 217, 792 A.2d at 1164.

245. *Id.* at 218, 792 A.2d at 1164.

246. *Id.* at 217, 792 A.2d at 1164.

247. *Id.*

an adequate defense or continuing his pretrial incarceration in order to counter the prosecution's evidence, the State created an inherently unfair situation that ultimately prejudiced Glover.

The *Glover* court's conclusion that "no evidence on the record established prejudice" resulted from its misapplication of the *Barker* test.²⁴⁸ The court incorrectly found that the delays were justified because of the State and Glover's mutual quest for the DNA test results.²⁴⁹ In addition, the court failed to weigh the prejudice factor in Glover's favor during the balancing portion of the *Barker* test.²⁵⁰ As a result, the *Glover* court weakened the right to a speedy trial in Maryland.²⁵¹

V. CONCLUSION

The court in *Glover* failed to successfully interpret and apply the Supreme Court's analysis in *Barker* to the delays caused by the unavailability of both DNA evidence and judges at the time of trial. Specifically, the majority failed to acknowledge the significance of the cumulative delay in its balancing of the four *Barker* factors.²⁵² In determining that the inability to provide a judge for trial was a "neutral" justification, the court's decision diluted the State's duty to promptly try a defendant.²⁵³ In addition, the court failed to acknowledge that the State's failure to provide the defendant with the DNA evidence in a timely manner was sufficiently prejudicial because it required Glover to spend additional time in jail while waiting to prepare an adequate defense.²⁵⁴ The court's opinion excused prosecutorial indifference and neglect for cases involving complex evidence such as DNA. Further, the court departed from precedent by removing any weight accorded to the defendant from unintentional delays caused by the State.²⁵⁵ As a result, barring intentional trial postponement, holding individuals accused of crimes for presumptively prejudicial periods of time is less likely to violate the defendant's right to a speedy trial.

248. *Id.* at 232, 792 A.2d at 1172.

249. *Id.*

250. *Id.*

251. *Id.*

252. *See supra* notes 86-96 and accompanying text (discussing the Supreme Court's decision in *Barker*).

253. *Glover*, 368 Md. at 226-27, 792 A.2d at 1169.

254. *Id.* at 216-17, 792 A.2d at 1163-64.

255. *See Divver v. State*, 356 Md. 379, 391-92, 739 A.2d 71, 78 (1999) (finding that a delay of one year and sixteen days, resulting from the State's negligence in scheduling the defendant's trial, violated the defendant's right to a speedy trial).

Thus, the *Glover* court's failure to properly apply and interpret the *Barker* balancing test resulted in an opinion that weakened the right to a speedy trial in Maryland.

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