

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

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| STATE OF OHIO, | : | APPEAL NO. C-220592 |
| | : | TRIAL NO. 20CRB-5490 |
| Plaintiff-Appellee, | : | |
| | : | <i>OPINION.</i> |
| vs. | : | |
| REKA JARMON, | : | |
| | : | |
| Defendant-Appellant. | : | |

Criminal Appeal From: Hamilton County Municipal Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: August 2, 2023

Emily Smart Woerner, City Solicitor, *William T. Horsley*, Chief Prosecuting Attorney, and *Chris Powers*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Raymond T. Faller, Hamilton County Public Defender, and *Sarah E. Nelson*, Assistant Public Defender, for Defendant-Appellant.

KINSLEY, Judge.

{¶1} Defendant-appellant Reka Jarmon appeals the trial court’s judgment convicting her, following a bench trial, of theft in violation of R.C. 2913.02. Jarmon asserts two assignments of error. She argues the trial court erred by denying her motion to dismiss for violating her constitutional right to a speedy trial, and she challenges the manifest weight of the evidence supporting her conviction. Following our review of the record, we hold that Jarmon’s right to a speedy trial was not violated, nor was her conviction against the manifest weight of the evidence. Accordingly, we affirm the trial court’s judgment.

Factual and Procedural Background

{¶2} The state charged Jarmon with theft in violation of R.C. 2913.02 for knowingly depriving Malaysia Moore of her property.

{¶3} At trial, Moore testified that, on February 4, 2020, Moore met with Jarmon at an apartment building in Roselawn. Jarmon portrayed that she was the property manager and allowed Moore to tour an apartment unit. Moore expressed an interest in leasing the apartment unit. In response, Jarmon requested a security deposit. Moore paid Jarmon \$550 as a security deposit.

{¶4} Afterwards, Moore contacted Jarmon about a move-in date. When Moore did not hear back from Jarmon, she contacted the landlord. The landlord informed her that Jarmon was not the property manager, but rather a tenant who was being evicted.

{¶5} On February 20, 2020, Moore contacted Jarmon again and demanded Jarmon return the money Moore intended as a security deposit. Jarmon sent \$200

via ApplePay to Moore from an email address that did not appear to be Jarmon's. Jarmon then changed her number, and Moore was no longer able to contact her.

{¶16} In March 2020, Moore went to the police to report Jarmon. Detective Jason Horner was assigned to the case and investigated Moore's claims. At trial, Horner testified as to the details of his investigation.

{¶17} Horner met with Moore and discussed what occurred in February. Moore identified Jarmon by name as the person she met at the Roselawn apartment. Horner then compiled a picture lineup for his partner to blindly administer to Moore. During the lineup, Moore positively identified Jarmon's picture.

{¶18} Horner issued a warrant for Jarmon's arrest on March 17, 2020. The warrant was mistakenly sent to the Roselawn apartment instead of Jarmon's home address, which was listed in the complaint. Following the warrant's issuance, Horner attempted to call Jarmon at least twice and sent a postcard to the apartment in Roselawn.

{¶19} Jarmon did not learn of the warrant until December 5, 2020, when she called the police on an unrelated matter. The police notified her of the outstanding warrant. Jarmon did not appear in court until May 3, 2022. She appeared again on May 31, 2022, and asked to be appointed counsel. On June 17, 2022, Jarmon returned to court, but failed to obtain counsel. Jarmon finally received counsel on June 23, 2022. On July 15, 2022, Jarmon moved to dismiss the case for failure to have a speedy trial. The court denied the motion and proceeded to a bench trial.

{¶10} At trial, Jarmon testified in her own defense. She testified that she never lived at the Roselawn apartment and that she had never seen Moore prior to trial. She further testified that she never met Moore in February 2020. She testified that Moore

had misidentified her. She also testified that the email address linked to the payment sent to Moore via ApplePay was not hers.

{¶11} The trial court found Jarmon guilty of theft. It imposed a suspended sentence of 179 days of imprisonment, a fine, and court costs.

{¶12} Jarmon now appeals.

Speedy Trial

{¶13} In her first assignment of error, Jarmon argues her constitutional right to a speedy trial was violated and the trial court erred in denying her motion to dismiss.

{¶14} The Sixth and Fourteenth Amendments to the United States Constitution and Section 10, Article I of the Ohio Constitution guarantee a criminal defendant the right to a speedy trial by the state. *State v. Sanchez*, 110 Ohio St.3d 274, 2006-Ohio-4478, 853 N.E.2d 283, ¶ 6. A speedy-trial claim involves a mixed question of law and fact. *State v. Muhammadel*, 1st Dist. Hamilton No. C-190683, 2021-Ohio-567, ¶ 12. “Therefore, we defer to the trial court’s factual findings if they are supported by competent, credible evidence, but we review the application of the law to those facts de novo.” *Id.*

{¶15} To determine whether a defendant has been deprived of his or her constitutional right to a speedy trial, a court must balance four factors identified by the United States Supreme Court in *Barker v. Wingo*: 1) length of delay, 2) the reason for the delay, 3) the defendant’s assertion of his or her right, and 4) prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 33 L.E.2d 101 (1972); *State v. Selvage*, 80 Ohio St.3d 465, 467, 687 N.E.2d 433 (1997). We examine each factor in turn.

a. Length of the Delay

{¶16} “The length-of-the-delay inquiry serves as a threshold inquiry that a defendant must satisfy before triggering further analysis under the *Barker* factors.” *Muhammadel* at ¶ 13. Both Jarmon and the state acknowledge the eight-month-and-18-day delay between formal accusation and Jarmon’s knowledge of the warrant is sufficient to trigger a speedy trial analysis. *State v. Mughni*, 2022-Ohio-626, 185 N.E.3d 678, ¶ 8 (1st Dist.) (holding that a delay of eight months or longer is sufficient to trigger the remainder of the analysis).

{¶17} But the first factor weighs only negligibly for Jarmon, because she was not incarcerated or otherwise restrained of her liberty during the delay and did not know of the pending complaint. *See Muhammadel*, 1st Dist. Hamilton No. C-190683, 2021-Ohio-567, at ¶ 14.

b. Reason for the Delay

{¶18} The second *Barker* factor is “the reason the government assigns to justify the delay.” *Barker*, 407 U.S. at 531, 92 S.Ct. 2182, 33 L.E.2d 101. “Deliberate attempts to delay trial must be weighed heavily against the state, while negligence * * * should be weighed less heavily.” *State v. Bush*, 1st Dist. Hamilton No. C-190094, 2020-Ohio-1229, ¶ 16. Further, “failure to conduct even a modest investigation into [the defendant’s] whereabouts raises concern.” *Mughni* at ¶ 11.

{¶19} Here, the state’s negligence caused the delay. Horner sent the postcard to the Roselawn apartment, even though Jarmon’s home address is correctly listed in the complaint. The ultimate responsibility of the delay rests with the state, so this factor weighs in Jarmon’s favor, albeit not heavily. *See Bush* at ¶ 17.

c. Defendant's Assertion of Her Speedy Trial Rights

{¶20} “The third factor addresses the timeliness and frequency of the defendant’s assertions of [the] speedy-trial right.” *See Bush* at ¶ 18. If a defendant sits on her or his speedy-trial rights, this factor weighs against the defendant. *Id.* For example, this court has held that waiting four months to assert the right to a speedy trial weighs in the state’s favor. *Id.*

{¶21} After learning of the warrant, Jarmon waited well over a year to assert her right to a speedy trial. Jarmon contends the year-and-a-half delay should be ignored because she did not have counsel, and once she had counsel, she asserted her speedy-trial right. But Jarmon could have been appointed counsel sooner if she had timely appeared in court. Because Jarmon failed to assert her speedy-trial right in a timely manner, this factor weighs strongly in the state’s favor. *Id.*

d. Resulting Prejudice

{¶22} The last step of the analysis focuses on any resulting prejudice caused by the delay. *Barker*, 407 U.S. at 532, 92 S.Ct. 2182, 33 L.E.2d 101. Three interests include: 1) preventing oppressive pretrial incarceration; 2) minimizing anxiety and concern of the accused; and 3) limiting the possibility that the defense will be impaired. *Id.*

{¶23} The first and second interests are inapplicable here, because Jarmon was neither incarcerated nor aware of the charges against her initially. But the final interest is relevant. *Muhammadel*, 1st Dist. Hamilton No. C-190683, 2021-Ohio-567, at ¶ 30 (“Prejudice to the defense is the ‘most serious’ interest protected by the speedy-trial right, yet it is often difficult to prove.”).

{¶24} The first question under the prejudice analysis is whether “excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove, or for that matter, identify.” *Id.* If prejudice cannot be assumed, then the next question becomes whether the defendant “made any affirmative showing of prejudice.” *Id.* at ¶ 39.

{¶25} The trial court determined prejudice could not be assumed, and Jarmon did not make an affirmative showing of prejudice. Jarmon argues that because she could not review Moore’s identification of her during the photo lineup, she could not bolster her misidentification theory. She further argues this compromised her ability to scrutinize the police’s compliance with R.C. 2933.83 during a photo lineup. She also asserts there may have been body-worn camera footage of the photo lineup that was destroyed because it went beyond the Cincinnati Police Department’s retention policy.

{¶26} But Horner testified that it was not common practice for officers to turn on their body-worn cameras while inside the Cincinnati Police Department district building. Thus, the state maintains there was no body-worn camera footage to share, and any indication to the contrary in discovery materials was error. Moreover, the trial court determined that Jarmon was not prejudiced by the delay because even if the body-worn camera footage existed, there would likely not be anything in the footage to aid Jarmon’s defense. *Muhammadel* at ¶ 39. We defer to the trial court’s factfinding here and conclude that this delay did not impair any potential defense of Jarmon’s.

{¶27} Because Jarmon did not assert her speedy-trial right in a timely manner and was not prejudiced by the delay, Jarmon’s constitutional right to a speedy trial was not violated. The first assignment of error is accordingly overruled.

Manifest Weight

{¶28} In her second assignment of error, Jarmon argues her conviction for theft was against the manifest weight of the evidence.

{¶29} In reviewing the manifest weight of the evidence, we sit as a “thirteenth juror.” *State v. Thompkins*, 78 Ohio St.3d 380, 388, 678 N.E.2d 541 (1997). This court must independently “review the entire record, weigh the evidence, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.” *State v. Powell*, 1st Dist. Hamilton No. C-190508, 2020-Ohio-4283, ¶ 16, citing *Thompkins* at 397. However, we will reverse the trial court’s decision to convict and grant a new trial only in “exceptional cases in which the evidence weighs heavily against the conviction.” *State v. Sipple*, 1st Dist. Hamilton No. C-190462, 2021-Ohio-1319, ¶ 7.

{¶30} Jarmon argues that Moore’s testimony and identification of Jarmon lacked credibility. “However, it is well settled law that matters as to the credibility of witnesses are for the trier of fact to resolve.” *State v. Johnson*, 1st Dist. Hamilton No. C-170354, 2019-Ohio-3877, ¶ 52. “Because the trier of fact sees and hears the witnesses at trial, we must defer to the factfinder’s decisions whether, and to what extent, to credit the testimony of particular witnesses.” *Id.* The trial court was entitled to believe Moore’s testimony that Jarmon was who she met with at the Roselawn apartment. The trial court’s credibility determination was further supported by

Horner's testimony, which established Moore provided Jarmon's name when she first met with the police.

{¶31} Jarmon emphasizes that the state failed to produce evidence that she lived at the Roselawn apartments or that the ApplePay payment was linked to her. Moore's testimony, however, linked Jarmon to both the apartment in question and the ApplePay account. Therefore, the second assignment of error is overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

CROUSE, P.J., and WINKLER, J., concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.