NOTE

A Shooting Suspect’s Release Revives the Right to a Speedy Trial in Missouri


CLAYTON THOMPSON*

I. INTRODUCTION

David Garcia was indicted for shooting a man in St. Louis.1 Twelve years later he was arrested in Chicago and brought back to St. Louis County to stand trial for assault.2 He invoked his Sixth Amendment right to a speedy trial under the United States Constitution.3 The Supreme Court of Missouri agreed that his right had been violated and dismissed his indictment.4

The outcome of State ex rel. Garcia v. Goldman signals that the Supreme Court of Missouri will not take lightly government delay in bringing the criminally accused to trial. As discussed below, the decision demonstrates the necessity of placing a burden on the state to ensure that the rights of criminal defendants are respected and that the Sixth Amendment remains an effective deterrent of government laxity.

This Note will examine the history of the Sixth Amendment’s speedy trial clause, highlighting its development within the last twenty years. It will attempt to explain the rationale behind the court’s decision to dismiss the indictment of a possibly violent criminal. It will take the position that in future cases where the government is to blame for an unusually slow prosecution, the outcome of this case must be repeated to maintain the integrity of the right to a speedy trial and our criminal justice system.

* B.A., University of Missouri, 2009; J.D. Candidate, University of Missouri School of Law, 2012; Note and Comment Editor, Missouri Law Review, 2011-12. My gratitude goes to Professor Frank Bowman for his feedback and insight throughout the writing process. I owe an enormous thank you to my family for doing everything they can to help me reach my goals.

1. 316 S.W.3d 907, 909 (Mo. 2010) (en banc), cert. denied, 131 S. Ct. 1603 (2011).
2. Id.
3. Id. at 910.
4. Id. at 909, 914.
II. FACTS AND HOLDING

The events involving David Garcia that are the subject of this constitutional inquiry happened more than thirteen years ago. In April of 1998, the owner of the Sunny China Buffet in Kirkwood, Missouri, heard a knock at the kitchen door. As he opened it, a man entered, briefly spoke with a restaurant employee, and left. Within roughly a minute, the same man returned — this time with a shotgun. He shot employee Rigoberto Dominguez in the stomach. The assailant then fled the Chinese restaurant.

As the shooter left the restaurant, Meltion Gonzalez, a Sunny China employee, followed the assailant out the door and witnessed him jump into a brown car. Another employee, Manuel Castro, also caught a glimpse of the shooter. Dominguez, the victim, was also able to identify his assailant. All three men agreed that David Garcia was the shooter.

When the police arrived at the restaurant, they found a Mossburg 12-gauge shotgun hidden in the bushes near the kitchen door where the shooter had entered. The police interviewed Dominguez at the hospital. He claimed that Garcia shot him because Dominguez had made comments about Garcia’s girlfriend a few days earlier. The police later questioned Nabor Garcia, David Garcia’s cousin and roommate, as well as two other men about the incident. The police videotaped the interrogations of Nabor Garcia and Meltion Gonzalez, a Sunny China employee. The police lost these videotapes.

5. Id. at 909.
6. Id.
7. Id.
8. Id.
9. Id.
10. Id.
11. Id. Meltion Gonzalez had known Garcia for six years before the shooting.
13. Id.
14. Id. The owner of the Sunny China Buffet, Kwan Tung Tse was not able to identify Garcia by name, but his description of the shooter was consistent with the other eyewitnesses. Brief of Respondent, supra note 11, at 6-7.
15. State ex rel. Garcia, 316 S.W.3d at 909. The Kirkwood police took crime scene photographs and diagrammed the area for future reference. Id.
16. Id.
17. Id.
18. Id. According to Nabor, Garcia told him he planned to confront Dominguez.
20. Id.
The Kirkwood Police Department investigated the crime scene and took witness statements, garnering Garcia’s personal information, including his date of birth, driver’s license number, Social Security number, and home address. The police sought to use these particulars to locate Garcia. But when the authorities went to the apartment Garcia shared with his cousin Nabor, he was not there. Neither Nabor nor any other family members knew where Garcia had gone. Individuals told the police that if Garcia were to leave Kirkwood, he would travel to California or Illinois.

Three years after the Sunny China shooting, the St. Louis County Prosecuting Attorney’s office urged the Kirkwood Police to speed up the investigation. The urgency stemmed from the imminent running of the statute of limitations for the assault charge. Following a tip, Kirkwood Police Sgt. Steven Guyer spent four days searching for Garcia in north St. Louis County; his efforts bore no fruit. Neither Guyer nor any other Kirkwood Police officer documented any of their efforts to locate Garcia during this time.

In February 2002, before the running of the statute of limitations, the prosecutor’s office indicted Garcia – who was still missing – for first-degree assault. Garcia’s case went cold after his indictment. For the next seven years the Kirkwood Police Department made no further efforts to bring Garcia into custody.

Sometime in early 2009, Kirkwood police officer Steve Urbeck learned Garcia had yet to be apprehended, so he entered Garcia’s Social Security number into the department’s Accurint system. That search produced a Chicago address for Garcia. Although Garcia’s whereabouts between 1998 and 2000 are unknown, Garcia had been living openly in Chicago since 2000.
2002.\textsuperscript{35} He had been using his real name and Social Security number, obtained steady employment, and had filed tax returns using that information from 2000 to 2008.\textsuperscript{36} The Kirkwood Police contacted the Chicago Police Department, who promptly arrested Garcia while at work at a hotel.\textsuperscript{37} The trial court later determined that the Kirkwood Police could have located Garcia as early as 2002 if it had searched with his Social Security number.\textsuperscript{38}

When Garcia was brought to trial, he promptly moved to dismiss the first-degree assault indictment, alleging a violation of his right to a speedy trial under the United States Constitution.\textsuperscript{39} The Honorable Steven Goldman of the St. Louis County Circuit Court denied Garcia's motion to dismiss.\textsuperscript{40} Balancing the factors set forth by the U.S. Supreme Court in \textit{Barker v. Wingo},\textsuperscript{41} Judge Goldman concluded that Garcia fled Kirkwood after the shooting, knew that there were witnesses of the shooting at Sunny China, and knew that the police were searching for him.\textsuperscript{42} However, Judge Goldman also found that Garcia did not know of the indictment against him and that the Kirkwood Police Department did not use reasonable diligence in its pursuit of Garcia.\textsuperscript{43}

Garcia then filed a writ of mandamus with the Supreme Court of Missouri to compel Judge Goldman to grant the motion to dismiss.\textsuperscript{44} The court issued a preliminary writ of mandamus and heard oral arguments.\textsuperscript{45} In a 4-3 decision, the court held that Judge Goldman erred in denying Garcia's motion to dismiss and issued a permanent writ of mandamus.\textsuperscript{46} It held that the seven-year delay between the indictment and the arrest was caused by the government's negligence and presumptively compromised Garcia’s ability to defend himself at trial.\textsuperscript{47} Because the government was unable to rebut this presump-

\textsuperscript{35} State ex rel. Garcia, 316 S.W.3d at 910. On appeal the state sought to bolster its claim that Garcia fled the jurisdiction after the shooting by pointing to the fact that no one knew of Garcia’s whereabouts for the two and a half years after Dominguez was wounded. \textit{See} Brief of Respondent, \textit{supra} note 11, at 18-19.
\textsuperscript{36} State ex rel. Garcia, 316 S.W.3d at 910.
\textsuperscript{37} Id. The state argued on appeal that Garcia lied on his job application about his previous work experience for the Chicago hotel proved he was attempting to conceal his identity. \textit{See} Brief of Respondent, \textit{supra} note 11, at 18 n.4.
\textsuperscript{38} State ex rel. Garcia, 316 S.W.3d at 910.
\textsuperscript{39} Id.
\textsuperscript{40} Id.
\textsuperscript{41} 407 U.S. 514, 530 (1972). The \textit{Barker} factors are discussed \textit{infra} Parts III-IV.
\textsuperscript{42} State ex rel. Garcia, 316 S.W.3d at 910.
\textsuperscript{43} Id.
\textsuperscript{44} Id.
\textsuperscript{45} Id.
\textsuperscript{46} Id. at 914.
\textsuperscript{47} Id.
tion, the court concluded that Garcia’s Sixth Amendment right to a speedy trial had been violated.48

III. LEGAL BACKGROUND

A. Pre-Barker v. Wingo

The Sixth Amendment of the United States Constitution mandates that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.”49 Similarly, the Missouri Constitution guarantees that “the accused shall have the right to . . . a speedy public trial by an impartial jury of the county.”50 The meaning of the speedy trial right has been expounded by the U.S. Supreme Court,51 federal circuit courts,52 and state courts.53 Since it was first recognized in England,54 the right to a speedy trial has been an important procedural safeguard for defendants and society alike.55

The right to a speedy trial first appeared in Anglo-American law in the Magna Carta, which stated: “We will sell to no man, we will not deny or defer to any man either justice or right.”56 The idea of a right to a speedy trial again appeared some five centuries later in the commentary of Sir Edward Coke. Coke wrote that England sought to ensure that prisoners would not “be long detained, but at their next coming have given the prisoner full and speedy justice.”57

The British sentiment that the criminally accused should enjoy a right to a speedy trial accompanied the American colonists when they settled here. In early America, the right to a speedy trial was explicitly mentioned in early

48. Id.
49. U.S. CONST. amend. VI.
50. MO. CONST. art. 1, § 18(a).
52. See RaShad v. Walsh, 300 F.3d 27, 33-34 (1st Cir. 2002); Wilson v. Mitchell, 250 F.3d 388, 394 (6th Cir. 2001).
55. See Barker, 407 U.S. at 519 (“In addition to the general concern[s] . . . [of the] accused . . . there is a societal interest in providing [a right to] a speedy trial . . . ’.”).
56. Klopfer, 386 U.S. at 223 (quoting the Magna Carta) (emphasis added). This phrase illuminates the idea that the sovereign cannot “defer” or postpone a trial for the accused.
57. Id. at 224 (quoting SIR EDWARD COKE, THE SECOND PART OF THE INSTITUTES OF THE LAWS OF ENGLAND 45 (London, 5th Ed. 1797)).
colonial constitutions. In 1791, Congress ratified the Sixth Amendment, and the right to a speedy trial became a safeguard for citizens against the powers of the U.S. government. Today, the constitutions of all fifty states have speedy trial protections.

In 1905, the U.S. Supreme Court made clear that an inquiry into an alleged speedy trial violation is fact-specific. In Beavers v. Haubert, the defendant was first indicted in New York and was subsequently indicted for additional crimes in Washington, D.C. The defendant was transferred to Washington, D.C. to face trial, and as a result, his indictments in New York were continued for three years. He claimed the Washington, D.C., indictments violated his right to a speedy trial in New York.

The Supreme Court disagreed. It explained that the right to a speedy trial is “consistent with delays and depends upon circumstances,” meaning that the right is not absolute and cannot be invoked by a defendant every time his trial suffers postponement. Instead, the Court held that the right to a speedy trial is “necessarily relative,” and a judge must take into account “other considerations” than simply the long lapse of time in determining whether or not a right to speedy trial has been violated.

Nearly sixty years passed before the Supreme Court had another chance to expand upon the case-by-case test for determining a violation of the right to a speedy trial. In United States v. Ewell, the U.S. Supreme Court held that the nineteen-month interval between the indictment and the trial of two defendants was not “in itself [a violation of] the speedy trial provision.” The defendants had been indicted for selling narcotics. But after successfully getting their indictments dismissed for technical defects, the defendants were re-indicted for the same offense and again brought to trial. The defendants sought to dismiss their case for a violation of their right to a speedy trial.

58. See id. at 225 (noting the inclusion of a speedy trial provision in the early colonial bill of rights and the Virginia Declaration of Rights of 1776).
59. U.S. CONST. amend. VI.
60. See, e.g., GA. CONST. art. I, § 1; IDAHO CONST. art. I, § 13; N.J. CONST. art. I, § 10; OKLA. CONST. art. II, § 20.
62. Id. at 77-78.
63. Id. at 78.
64. Id. at 85.
65. Id. at 86.
66. Id. at 87.
67. Id. at 86-87.
69. Id. at 121.
70. Id. at 118.
71. Id. at 118-19.
72. Id. at 119.
The U.S. Supreme Court explained that the right to a speedy trial seeks to protect the accused from "oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibilities that long delay will impair the ability of an accused to defend himself." However, the Court acknowledged the reality that the judicial process is designed to move at a "deliberate pace." In fact, the Supreme Court posited that if it were to hold that the speedy trial guarantee imposed a requirement that the prosecution move too swiftly, then other procedural protections afforded to the defendant would suffer. The Court reaffirmed that the right to a speedy trial is largely a fact-specific inquiry and requires of the state only an "orderly expedition" in bringing the accused to trial.

In *Klopfer v. North Carolina*, the Supreme Court determined that the Sixth Amendment right to a speedy trial applies to the states through the Fourteenth Amendment. To bolster its assertion that the right to a speedy trial is as "fundamental as any of the rights secured by the Sixth Amendment," the Court noted the inclusion of the right to a speedy trial found in the Magna Carta. It also pointed out that every state has a speedy trial provision in its own constitution. The Court held that the individual’s speedy trial guarantee would apply to the states “according to the same standards that protect those personal rights against federal encroachment.”

The Supreme Court in *United States v. Marion* seemed to take a step backward from its conclusion in *Ewell* that the Sixth Amendment steadfastly ensures the criminally accused’s defense will not be impaired by delay. The Court explained that though the protection of the accused’s defense is a key concern of the Sixth Amendment, potential harm to his case due to delay is not the be-all end-all to a speedy trial analysis:

Passage of time, whether before or after arrest, may impair memories, cause evidence to be lost, deprive the defendant of witnesses, and otherwise interfere with his ability to defend himself. But this possibility of prejudice at trial is not itself sufficient reason to

73. *Id.* at 120.
74. *Id.*
75. *Id.*
76. *Id.* (quoting *Smith v. United States*, 360 U.S. 1, 10 (1959)).
77. 386 U.S. 213 (1967).
78. *Id.* at 222-23.
79. *Id.* at 223-24.
80. *Id.* at 225-26.
81. *Id.* at 222-23.
83. *Ewell*, 383 U.S. at 120.
84. *Marion*, 404 U.S. at 321. The defendants argued that the three-year delay in bringing their case to trial left their defense “seriously prejudiced by the delay.” *Id.* at 310.
wrench the Sixth Amendment from its proper context. Possible prejudice is inherent in any delay, however short; it may also weaken the Government's case.\footnote{Id. at 321-22.}

\section*{B. Barker v. Wingo}

The seminal case in this nation’s modern speedy trial jurisprudence is the 1972 U.S. Supreme Court case of \textit{Barker v. Wingo}.\footnote{407 U.S. 514 (1972).} In \textit{Barker}, the Supreme Court created a four-factor test – weighing the conduct of both the prosecution and the defendant – to guide courts in analyzing whether a speedy trial violation has occurred.\footnote{Id. at 530.}

Willie Mae Barker and Silas Manning beat an elderly Kentucky couple to death in 1958.\footnote{Id. at 516.} Shortly after his arrest, Barker was indicted for murder.\footnote{Id. at 516.} However, the Commonwealth of Kentucky believed that its case against Barker’s accomplice was stronger.\footnote{Id.} It embarked on a strategy to try Manning first and use him as a key witness to help convict Barker later.\footnote{Id. at 516-17.} To the Commonwealth’s dismay, obtaining the accomplice’s conviction took longer than anticipated – some four years after his indictment.\footnote{Id.}

Because of the delays in Manning’s trial, the prosecution had to seek sixteen continuances in Barker’s case.\footnote{Id. at 516.} Of the sixteen, Barker objected only to three.\footnote{Id. at 516.} Only after the Commonwealth moved for its final continuance did Barker invoke his right to a speedy trial.\footnote{Id. at 516-17.} The court denied his motion.\footnote{Id.} He was finally convicted of murder more than five years after his indictment and received a life sentence.\footnote{Id.} After appealing his way through the state court

\begin{itemize}
  \item \textbf{85.} \textit{Id.} at 321-22.
  \item \textbf{86.} 407 U.S. 514 (1972).
  \item \textbf{87.} \textit{Id.} at 530.
  \item \textbf{88.} \textit{Id.} at 516.
  \item \textbf{89.} \textit{Id.}
  \item \textbf{90.} \textit{Id.}
  \item \textbf{91.} \textit{Id.} The state knew that after Manning was convicted, he would no longer be fearful of self-incrimination and would testify against Barker. \textit{Id.}
  \item \textbf{92.} \textit{Id.} at 516-17. Manning received six trials because of various reasons. \textit{Id.}
  \item \textbf{93.} \textit{Id.} at 516.
  \item \textbf{94.} \textit{Id.} at 517-18. Barker did not object to the first eleven continuances sought by the prosecution. \textit{Id.} at 517. Barker’s first objection came on the state’s twelfth continuance motion. \textit{Id.} Barker did not object to the state’s thirteenth or fourteenth continuance motion. \textit{Id.} Barker objected to the state’s fifteenth continuance, which was overruled. \textit{Id.} at 517-18. Barker objected to the state’s sixteenth and final continuance motion unsuccessfully. \textit{Id.} at 518.
  \item \textbf{95.} \textit{Id.}
  \item \textbf{96.} \textit{Id.} Barker claimed a violation of his right to a speedy trial in a motion to dismiss. \textit{Id.}
  \item \textbf{97.} \textit{Id.}
\end{itemize}
channels, Barker filed a habeas corpus petition in federal district court, and the U.S. Supreme Court eventually granted his petition for certiorari.98

In analyzing Barker’s claim that his Sixth Amendment right to a speedy trial had been violated, the Supreme Court adopted a four-part balancing test.99 The four factors were: (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of his right to a speedy trial; and (4) prejudice to the defendant resulting from the delay.100 The Court noted that none of the four factors alone was “necessary or sufficient” to find a speedy trial violation and concluded that none had “talismanic qualities.”101 Rather, the Court recommended a “difficult and sensitive balancing process” to determine whether the accused’s rights had been infringed.102

The Court labeled the first factor, the length of the delay, as a “triggering mechanism.”103 It instructed that without a lengthy delay that qualifies as “presumptively prejudicial,” a court need not inquire into the other factors.104 The Court did not set a bright line for what qualifies as a “presumptively prejudicial delay” but did note that the inquiry must be fact specific.105 The Supreme Court clarified that delay in trials for simple crimes would be less tolerable than delays in cases like those involving “complex conspiracies.”106

In explaining the second factor, the Barker Court looked to the reason given by the government for its delay in bringing the accused to trial.107 The Court explained that different reasons proffered by the government for its delay would receive different “weights” in the balancing process.108 An intentional delay designed to exhaust the defense would weigh “heavily” against the government.109 A more excusable reason for delay, such as official negligence by the state in bringing the defendant’s case to trial, would be weighed less heavily but still against the government since it is “ultimately[ly] responsible” for bringing the accused to trial.110 Finally, the Supreme Court concluded that a “valid reason, such as a missing witness,” would serve to justify a reasonable delay.111

98. Id. at 518-19.
99. Id. at 530.
100. Id.
101. Id. at 533.
102. Id.
103. Id. at 530.
104. Id.
105. Id. at 530-31.
106. Id. at 531.
107. Id.
108. Id.
109. Id.
110. Id.
111. Id.
The third factor laid out by the Supreme Court is the defendant’s “responsibility to assert his right.” Although the Court concluded that a defendant could never waive his right to a speedy trial by failing to assert it, the existence or absence of the accused’s assertion of the right would nevertheless be given “strong evidentiary weight” in determining whether the defendant had been deprived of a speedy trial.

The final Barker factor expounded by the Supreme Court was prejudice to the defendant caused by the delay. The Court discussed Ewell, which outlined the dangers against which the right to a speedy trial is supposed to protect. The Court determined the “most serious” prejudice a defendant could suffer from delay is the possibility of impairment to his defense. The Court reasoned that the defendant’s inability to prepare his case “skews the fairness of the entire system.” As an example, the Court noted that a loss of witness availability for trial makes prejudice to the defendant clear. However, the Court also stated that delay will not always prejudice a defendant and could actually work to his advantage in some cases.

The Supreme Court applied its four-factor test to Barker and determined that the government had not infringed upon his right to a speedy trial. Although the length of delay in bringing Barker to trial was “extraordinary,” the Court found that he had suffered “minimal” prejudice and noted that he had not claimed violation of his right until four years after his indictment. The Court stated it would be “reluctant” to rule that Barker was denied a constitutional right when it was evident from the record that he “did not want a speedy trial.”

C. Post-Barker v. Wingo

The U.S. Supreme Court in United States v. MacDonald established that although one purpose of the speedy trial clause is to protect the defendant’s ability to defend himself, its main purposes are to limit “lengthy incarceration prior to trial,” to reduce “impairment of liberty imposed on an accused,” and

112. Id.
113. Id. at 528.
114. Id. at 531-32.
115. Id. at 532.
118. Id.
119. Id. The Supreme Court noted that a loss of witness memory is also prejudicial. Id.
120. Id. at 526.
121. Id. at 533-36.
122. Id. at 533-34; see supra note 94.
123. Barker, 407 U.S. at 536.
“to shorten the disruption of life caused by arrest.” Chief Justice Burger noted that the prevention of impairment to the accused’s defense was secured by the “Due Process Clause and by statutes of limitations.”

A Missouri Court of Appeals for the Eastern District case reflects the notion that the defendant should be held to a high standard when seeking dismissal of his case for a speedy trial violation when he is partially to blame for the delay. In State v. Black, the court concluded that the thirty-seven-and-a-half-month delay the defendant faced from his initial arrest to trial was “presumptively prejudicial.” Nevertheless, the court found that Black’s actions, including his motion for a continuance of the hearing for his original motion to dismiss, made him at least partially complicit in the delay of his trial. The court reasoned that if Black’s motion for continuance had not been made, the disposition of his case could have come earlier.

The court was “disturbed” by the sixteen-month interval between the original dismissal of charges for nolle prosequi to Black’s re-arrest for the same charge. However, its concerns were outweighed by “the complete absence of actual prejudice” to Black resulting from the long delay. It was on this factor that the court hung its hat and held that Black’s right to a speedy trial had not been denied. The court found that “no significant witnesses” were missing, and no witnesses had “noticeable difficulty in remembering the events in question.” The court did so even after stating the delay in Black’s case was “not a model of prosecutorial initiative or concern.”

In United States v. Loud Hawk, the U.S. Supreme Court required a defendant to prove with specificity the impairment of his defense under the fourth Barker factor. The defendants in Loud Hawk were indicted for pos-
sessing firearms and explosives. After they were indicted, the defendants successfully filed a motion to suppress the explosives evidence. The district court not only granted their motion but dismissed the indictment altogether. After several appeals and remands, the Ninth Circuit affirmed the dismissal of the indictment seven years after the original dismissal.

The U.S. Supreme Court reversed and held that the defendants had not been deprived of their right to a speedy trial. The Court noted that after the district court suppressed the explosives evidence and dismissed their indictment, the defendants – who had been released from custody – were “neither under indictment nor subject to bail.” The Court reasoned that the purpose of the speedy trial clause is to prevent impairment of liberty; “it does not shield a suspect or a defendant from every expense or inconvenience associated with criminal defense.”

The Court found Loud Hawk’s assertion – that his ability to defend his case would be impaired by the delay – was a mere claim of a “possibility of prejudice” to his defense. The Court concluded that this possibility was not enough to satisfy Barker’s fourth factor. It reasoned that in every speedy trial case, “delay is a two-edged sword” that could potentially harm the government’s case as much as the defendant’s.

A few years later, in Doggett v. United States, the Supreme Court drastically changed speedy trial jurisprudence and granted a defendant’s motion to dismiss due to a violation of his right to a speedy trial. Doggett was indicted for conspiracy to import and distribute cocaine in February of 1980. Before police could apprehend him, he fled the country to Colombia.
and finally ended up in Panama. The DEA pursued Doggett to Panama, where Panamanian authorities had arrested him on drug charges. The United States failed to formally extradite Doggett, and Panamanian authorities inexplicably released him from custody. Until 1985, when the DEA agent in charge of Doggett’s case was transferred to Panama, the government had assumed that Doggett was still in prison there.

From Panama, Doggett went to Colombia. Unbeknownst to U.S. authorities, he returned to America from Colombia in 1982. A few years earlier, the DEA had passed along Doggett’s information to the U.S. Customs Department, but through error Doggett got lost in the Customs Service system. Consequently, authorities were not alerted when Doggett reentered the country.

In 1988, the U.S. Marshal’s service ran a credit check on thousands of people “subject to outstanding arrest warrants” and found Doggett was in the United States working in Virginia. Doggett was arrested six years after he had reentered the United States and eight-and-a-half years after he was indicted.

The U.S. Supreme Court went through the first and third Barker factors and quickly found that they should be balanced in favor of Doggett. According to the Court, the second Barker factor also favored Doggett. The Supreme Court agreed with the district court that the government was negligent in pursuing Doggett because it failed “to test [its] progressively more questionable assumption that Doggett was living abroad, and, had they

151. Id. at 648-49.
152. Id. at 649. The DEA found out Doggett was arrested in Panama but only asked Panama to “expel” him. Id.
153. Id.
154. Id. at 649-50.
155. Id. at 649. Doggett stayed with an aunt in Columbia after being released from custody by Panamanian authorities. Id.
156. Id. The U.S. authorities assumed Doggett was still in a Panamanian prison. Id.
157. Id.
158. Id.
159. Id. at 649-50. Since his re-entry to the United States, Doggett had married, gone to college, and obtained a degree. Id. at 649.
160. Id. at 650.
161. The first Barker factor is the length of delay. Barker v. Wingo, 407 U.S. 514, 530 (1972). The second Barker factor is the defendant’s timely assertion of his right to a speedy trial. Id.
162. Doggett, 505 U.S. at 651-54 (1992). According to the Court, the eight-and-a-half-year delay was long enough to be considered presumptively prejudicial. Id. at 651-52. Doggett had timely raised a violation of his right to a speedy trial. Id. at 653-54.
163. The second Barker factor is the reason for delay. Barker, 407 U.S. at 530.
164. Doggett, 505 U.S. at 652-53.
done so, they could have found him within minutes” living in the United States.165

The Court also clarified how the reason for delay, combined with the length of delay factor affects the defendant’s burden of demonstrating prejudice under the fourth Barker factor.166 Justice Souter, writing for the majority, stated, “[government] negligence [is not] automatically tolerable simply because the accused cannot demonstrate exactly how it has prejudiced him.”167 He reasoned that though government negligence is less reprehensible than an intentional effort to hold back a trial, “it still falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution.”168

Most importantly for the development of the speedy trial doctrine, the Court rebuffed the government’s claim that Doggett was required to prove actual prejudice resulting from the delay when the delay was extraordinary in order to satisfy the fourth Barker factor.169 Justice Souter, relying on Barker, reasoned that the government should not be able to capitalize on Doggett’s inability to prove exactly where his case had been weakened by delay, because “impairment of one’s defense is the most difficult form of speedy trial prejudice to prove.”170 The Court concluded that “affirmative proof of particularized prejudice is not essential to every speedy trial claim.”171 It adopted a new rule: once an excessive delay at the hands of the government is established, there is a presumption that the delay has “compromise[d] the reliability of [the] trial” to the detriment of the defendant.172 Because of this presumption, the government bore the burden of “persuasively rebut[ting]” that its delay had been harmful to Doggett’s case.173

The Supreme Court instructed future judges applying this revised Barker balancing test that “the weight we assign to official negligence compounds over time . . . . Thus, our toleration of such negligence varies inversely with its protractedness.”174 Therefore, the longer the delay the defendant has suffered due to the government’s missteps, the more willing a court should be to recognize and ameliorate the possible damage to the accused’s ability to defend himself at trial.175

165. Id.
166. Id. at 656-58.
167. Id. at 657.
168. Id.
169. Id. at 655.
170. Id. (citing Barker v. Wingo, 407 U.S. 514, 532 (1972)).
171. Id.
172. Id.
173. Id. at 658.
174. Id. at 657.
175. Id.
In *Doggett*, the Court concluded that the delay was excessive, and a presumption of prejudice to Doggett’s defense therefore arose.\(^{176}\) Likewise, the Court concluded that the government was unable to prove that its negligence did not prejudice Doggett.\(^{177}\) Accordingly, the Supreme Court weighed the fourth *Barker* factor\(^{178}\) against the government.\(^{179}\) Doggett’s indictment was dismissed for a violation of his right to a speedy trial.\(^{180}\)

Several cases have emerged from the Missouri Courts of Appeals in the last fifteen years that have seemingly ignored the *Doggett* presumption of prejudice requirement. Shortly after *Doggett* was decided, the Missouri Court of Appeals for the Southern District handed down *State v. Farris*,\(^{181}\) where it concluded a defendant’s right to a speedy trial had not been violated.\(^{182}\) In *Farris*, the defendant had been convicted of involuntary manslaughter.\(^{183}\) Because he had not raised the speedy trial issue on appeal, the court analyzed his claim under the highly deferential standard of plain error review.\(^{184}\)

When it began its analysis, the Southern District reiterated that Missouri courts had for a time “followed and applied” the “*Barker* guidelines” in any speedy trial claim.\(^{185}\) The court concluded that the three years Farris spent incarcerated prior to trial was long enough to be presumptively prejudicial under *Barker*’s first factor.\(^{186}\) But the court also concluded that only six months out of the three-year delay was attributable to the state.\(^{187}\) Likewise the court determined Farris had contradictorily asked for the “trial setting [to be] stricken” after he requested a speedy trial, negating the sincerity of his assertion.\(^{188}\)

In determining whether Farris was prejudiced by the pretrial delay, the court quoted extensively from *Doggett*.\(^{189}\) It acknowledged that the U.S. Supreme Court determined that long delay often hampers the accused’s abil-

---

176. *Id.* at 657-58.
177. *Id.* at 655.
178. The fourth *Barker* factor is prejudice to the defendant. *See* *Barker v. Wingo*, 407 U.S. 514, 530 (1972).
180. *Id.* at 648.
181. 877 S.W.2d 657 (Mo. App. S.D. 1994).
182. *Id.* at 659. The Southern District’s analysis in *Farris* was altered by the fact that the defendant had not raised the speedy trial issue for appeal. *Id.* Therefore the court would find a speedy trial violation only if it found it was “plain error” for the trial court not to do so. *Id.*
183. *Id.* at 658.
184. *Id.* at 659. Plain error occurs when a “manifest injustice or miscarriage of justice” would result if not repaired by the appellate body. *Id.*
185. *Id.* (quoting *State v. Buckles*, 636 S.W.2d 914, 919 (Mo. 1982) (en banc)).
186. *Id.* at 660.
187. *Id.* at 663.
188. *Id.* at 662.
189. *Id.* at 663 (quoting *Doggett v. United States*, 505 U.S. 647, 655-56 (1992)).
ity to defend himself in ways he cannot specifically describe. But in the same breath, the Southern District quoted a Supreme Court of Missouri case which held that “[a]ny prejudice complained of must be actual” for the fourth Barker factor to weigh in favor of the defendant. Because Farris could not carry his burden under plain-error review to prove a manifest injustice would occur if his motion for speedy trial relief was not granted, the Southern District affirmed Farris’ conviction.

The Missouri Court of Appeals for the Southern District held a few years later in State v. Williams that a showing of actual prejudice from a speedy trial violation was required to reverse the defendant’s conviction. Michael Williams was convicted of first-degree robbery. On appeal, he claimed that if the state had brought him to trial more quickly, his accomplice would have been able to remember events that were an essential part of his defense.

Applying the Barker test, the Southern District found that the eleven months between Williams’s arrest and trial was long enough to be presumptively prejudicial. It also found that the state was the reason for delay, but that factor should not weigh heavily against the state because there was no evidence of bad faith on its part. The court also weighed the third Barker factor in favor of Williams because he had twice requested a speedy trial.

Even though the court weighed the first three Barker factors against the state and in Williams’s favor, it nevertheless denied his motion to dismiss for a speedy trial violation. The court did so because Williams could not demonstrate he was actually prejudiced by his accomplice’s alleged memory loss. The Southern District concluded that the fourth Barker factor – prejudice to the defendant – was the “most important . . . in the speedy trial anal-

190. Id. (citing Doggett, 505 U.S. at 655).
191. Id. (quoting State v. Buckles, 636 S.W.2d 914, 920 (Mo. 1982) (en banc)) (internal quotation marks omitted).
192. Id. at 663-64.
194. Id. at 441.
195. Id. at 447. Williams claimed his accomplice originally told him the robbery in question was “an inside job.” Id. The court found this claim to be meritless because even if true, it would have provided no defense to Williams. Id.
196. Id.
197. Id.
199. Williams, 34 S.W.3d at 447.
200. Id.
201. Id.
RIGHT TO SPEEDY TRIAL IN MISSOURI

2011]

ysis.”202 Therefore, a finding that Williams was not actually prejudiced by the delay trumped the weight of the other three Barker factors in his favor.205

In addition to Missouri courts, several federal circuit courts have pushed back against Doggett’s requirement that the state prove that the defendant has not been prejudiced by long delay. Those courts have found that when the defendant was the principal cause of delay, he is responsible for proving he was prejudiced.204

The Eighth Circuit was one of those courts, and it required a defendant to prove actual prejudice in order to prevail on a right to speedy trial claim.205 The defendant in Reynolds v. Leapley committed burglaries in Missouri in 1979 and then fled the jurisdiction for California.206 There, he was incarcerated for committing another crime.207 In 1981, the State of Missouri filed detainers on Donald Craig Reynolds so he could return to face trial.208 He did not formally demand a trial with the St. Louis County Circuit Court until 1989.209 When the court eventually received Reynolds’s request, Missouri authorities quickly returned him to St. Louis where he was convicted on three counts of robbery.210

When Reynolds brought a habeas corpus petition in federal court, the Eighth Circuit quickly concluded that he had not been denied his right to a speedy trial.211 The court adopted the magistrate judge’s findings of fact that Reynolds was the principal cause of delay because he “fled the jurisdiction . .

202. Id. (citing State v. Davis, 903 S.W.2d 930, 937 (Mo. App. W.D. 1995)).
203. Id.
204. See RaShad v. Walsh, 300 F.3d 27, 40 (1st Cir. 2002) (no presumption of prejudice when defendant “bears responsibility for causing periods of delay”); Wilson v. Mitchell, 250 F.3d 388, 396 (6th Cir. 2001) (holding defendant who fled authorities was not entitled to presumption of prejudice and was required to prove actual prejudice); Reynolds v. Leapley, 52 F.3d 762, 763 (8th Cir. 1995) (defendant must show actual prejudice); Robinson v. Whitley, 2 F.3d 562, 570 (5th Cir. 1993) (concluding that the defendant responsible for “lion’s share of delay” was required to prove prejudice with “concrete proof”); United States v. Aguirre, 944 F.2d 1454, 1458 (9th Cir. 1993) (“It’s true that prejudice can arise with time, but it’s equally true in situations like Aguirre’s [where the defendant flees] that the defendant, not the government, is in the best position to stop the clock and avoid the damage.”); Rayborn v. Scully, 858 F.2d 84, 94 (2d Cir. 1988) (defendant must show “genuine prejudice”).
205. Reynolds, 52 F.3d at 764.
206. Id. at 763.
207. Id.
208. Id.
209. Id. Reynolds had twice written to the St. Louis County Prosecutor’s office requesting he be brought to trial. Id. It is unclear whether the prosecutor’s lack of response was due to negligence or if Reynolds had not followed the correct policy in requesting a disposition of his charges. See id.
210. Id.
211. Id. at 764.
When Reynolds claimed that the loss of four witnesses would damage his defense, the Eighth Circuit determined that this was not sufficient to demonstrate prejudice. The court held that it was Reynolds’s duty to establish prejudice with specificity, and because he could not present evidence of the testimony that those lost witnesses would provide, the fourth Barker factor did not weigh in his favor.

The Supreme Court of Missouri recently touched on the right to a speedy trial. In State ex rel. McKee v. Riley, the court did not decide whether an eighteen-month delay in bringing the defendant to trial violated his speedy trial right, but it reiterated in clear and strong language the obligation Missouri courts have to insure the right is protected. McKee was charged with various property crimes, including first-degree tampering with a motor vehicle. After he was indicted, the trial court granted numerous continuances, including four without explanation. According to the court, the trial record was devoid of evidence that McKee had requested any of the continuances.

The court found that the eighteen-month delay was enough to satisfy Barker’s first factor, and McKee’s repeated motions for a speedy trial were enough evidence to weigh Barker’s third factor in his favor. But due to the sparse trial record, the court remanded the case for findings on whether McKee or the state was the reason for the delay and whether McKee had been prejudiced by the delay. In dicta the court cited Doggett’s holding, stating that in some cases, a “lengthy period of pretrial incarceration” like McKee’s would be enough to “provide sufficient prejudice” to find a violation of a defendant’s speedy trial rights.

The court suspected the continuances were the result of busy courts, so it made clear that “unreasonable delay in run-of-the-mill criminal cases cannot be justified” for that reason. It warned lower courts that “unreasonable...
delays in criminal cases due to crowded dockets” were not to become the norm in Missouri and reiterated that the right to a speedy trial is “an important right that the courts of this state are duty-bound to honor.”

224 This seed planted in McKee would germinate to full bloom three years later in Garcia.

IV. INSTANT DECISION

A. The Majority Opinion

The Supreme Court of Missouri granted David Garcia’s petition for a writ of mandamus and dismissed his indictment because of the violation of his right to a speedy trial under the Sixth Amendment of the United States Constitution.225 The court analyzed Garcia’s alleged deprivation of his right to a speedy trial by applying the four-factor balancing test set out by the U.S. Supreme Court in Barker v. Wingo.226

The majority – Judges Russell, Stith, Teitelman, and Wolff, the opinion’s author – began its analysis with the first Barker factor – the length of the delay between the indictment and the arrest.227 The court noted that seven years passed between Garcia’s indictment in 2002 and his arrest in 2009,228 and that in Missouri, a delay longer than eight months is presumptively prejudicial to the defendant.229 Therefore, the majority agreed with the trial court that the delay of seven years was prejudicial and that the length-of-delay factor weighed in Garcia’s favor.230

In discussing the second Barker factor – the reason for the delay – the court noted that different reasons for delay are to be assigned different weights.231 The majority agreed with the trial court that the police had been

224. Id. at 731.
226. Id. at 911; see Barker, 407 U.S. at 530.
227. Garcia, 316 S.W.3d at 911; Barker, 407 U.S. at 530. The Barker court noted that demonstrating an excessive length of delay is an initial hurdle any defendant must jump over to command a court’s analysis of the three other speedy trial factors. Id. A court need not proceed to an examination of the other factors until the defendant demonstrates the delay is “presumptively prejudicial.” Id.
228. Garcia, 316 S.W.3d at 911. See Dillingham v. United States, 423 U.S. 64, 65 (1975) (per curiam) (“[E]ither a formal indictment or information or else the actual restraints imposed by arrest and holding . . . engage the particular protections of the speedy trial provision of the Sixth amendment.”).
229. State ex rel. Garcia, 316 S.W.3d at 911 (citing McKee, 240 S.W.3d at 729).
230. Id.
231. Id.; see Barker, 407 U.S. at 531 (explaining a state’s “deliberate attempt” to delay a trial would be “weighted heavily against the government,” whereas a “neutral
impermissibly lax in their effort to pursue Garcia and bring him into custody. The court pointed out that after Garcia’s indictment in 2002, the Kirkwood police had made no effort to locate him until his 2009 arrest. The majority put great emphasis on the fact that Garcia was living “openly and notoriously” in Chicago and that according to the trial court, Garcia could have been located as early as 2002 by simply inserting his Social Security number into the Accurint system. The Accurint system is designed to aid law enforcement officials in compiling various sources information on criminals efficiently. The system was developed for situations like Garcia’s, the majority reasoned, and the Kirkwood Police Department should have utilized it to aid in its pursuit.

Because the state was negligent in its pursuit of Garcia, and there was no evidence that Garcia knew he had been indicted for a crime (evidencing he had not purposefully fled Missouri to avoid prosecution), the Supreme Court of Missouri weighed this factor – the reason for delay – against the state and in favor of Garcia.

In applying the third Barker factor – the defendant’s timely assertion of his right to a speedy trial – the majority was quick to find that the factor weighed in favor of Garcia. The court accepted the trial court’s finding that Garcia’s assertion of his right to a speedy trial, ten months after his arrest, was timely.

The majority began its analysis of the fourth Barker factor – prejudice to the defendant resulting from delay – by concluding that the only prejudice Garcia could have suffered from the delay was the impairment of his defense. Garcia claimed that his defense was weakened by the disappearances of several witnesses, the loss of videotaped interrogations of witnesses, and the demolition of the Chinese restaurant where the crime took place. The state countered that Garcia could not prove he was actually prejudiced by the delay, and his inability to do so should balance the fourth factor in favor of the state.

232. Garcia, 316 S.W.3d at 911.
233. Id.
234. Id. at 912.
235. Accurint Enterprise Solution, supra note 33.
236. See State ex rel. Garcia, 316 S.W.3d at 912.
237. Id.
238. Id.
239. Id. The parties also stipulated that this factor weighs in favor of Garcia. Id.
240. Id. The other forms of prejudice the right to a speedy trial protects against are oppressive pretrial incarceration and anxiety and concern of the accused. See Barker v. Wingo, 407 U.S. 514, 532 (1972).
241. State ex rel. Garcia, 316 S.W.3d at 912.
242. Id.
The court, citing *Doggett v. United States*, found that it was not necessary for Garcia to affirmatively prove the particular prejudice he suffered. The court reasoned that an excessive delay is prejudicial in itself and compromises the “reliability of a trial in ways that neither party can . . . identify.” Applying this logic to Garcia’s case, the majority found that the state, as the reason for the delay, had a burden to prove that its delay was not prejudicial to Garcia.

After examining the facts, the majority determined that the long delay had resulted in the loss of four witnesses to the shooting. The court agreed with the defense that the twelve-year gap between the crime and the trial date would result in lost memories, and the destruction of the scene of the crime could possibly damage Garcia’s case. For these reasons, and the state’s inability to show that Garcia’s defense was not impaired, the majority weighed the fourth *Barker* factor against the state as well.

The majority held that the seven-year delay between Garcia’s indictment and arrest violated his right to a speedy trial under the Sixth Amendment, and the court made Garcia’s writ of mandamus permanent.

**B. The Dissent**

In his dissenting opinion, Chief Justice William Ray Price, Jr., joined by Judges Breckenridge and Fischer, concluded that Garcia was the reason for the delay, and as such, he was prohibited from claiming prejudice unless he could demonstrate specifically how his defense had been compromised.

The dissenting opinion first discussed the second *Barker* factor – the reason for delay. It pointed out that Garcia left the jurisdiction, knew that he was a suspect in a shooting, and knew that there were witnesses who could identify him as the Sunny China assailant. The dissent admitted that the Kirkwood police were negligent in their pursuit of Garcia but maintained that the inaction of the authorities did not reach the level of “bad faith.”

The dissent reasoned that police departments have “limited resources” and urged that the government is not required to make “heroic efforts” in the pursuit of a
fugitive.\textsuperscript{254} Because it found Garcia to be the principal cause of delay, the dissent weighed the second Barker factor against him.\textsuperscript{255}

In its discussion of the fourth Barker factor, the dissent rebutted the majority’s conclusion that a long delay raises a presumption of prejudice to the defendant’s case.\textsuperscript{256} Moreover, as the reason for delay, Garcia could not receive the benefit of a presumption of prejudice.\textsuperscript{257} According to Chief Justice Price, any delay in bringing Garcia to trial might have actually worked to his benefit.\textsuperscript{258} The loss of witnesses and evidence, combined with the fact that the prosecution still carried the burden of proving Garcia’s guilt beyond reasonable doubt, made it likely that delay in this case would be a “two-edged sword” that could just as likely result in the prosecution’s demise.\textsuperscript{259} Because it concluded that Garcia could not demonstrate actual prejudice, the dissent weighed the fourth factor against him.\textsuperscript{260} The dissent concluded that Garcia’s writ should be quashed.\textsuperscript{261}

\section*{V. Comment}

The right to a speedy trial is one of the most curious of our fundamental rights. It is a paradox. For the criminally accused, a speedy trial may simply mean a quicker conviction. In contrast, when properly invoked, the right will set free a defendant who may have committed a serious crime before he ever steps foot in a courtroom.\textsuperscript{262}

The speedy trial clause of the Sixth Amendment is necessary to protect criminal defendants from the grossest excesses of state power. If not for the speedy trial clause, the state could physically restrain the accused in perpetuity, breaking his will in order to obtain confession and conviction. But individual liberty can also be compromised in less obvious ways. The state could move a prosecution along at a snail’s pace, causing the accused to face prolonged stigma from society due to his outstanding charges. And the longer the accused awaits his trial, the more likely evidence will spoil, memories will fade, and witnesses will be lost.\textsuperscript{263}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{254.} Id. (quoting Rayborn v. Scully, 858 F.2d 84, 90 (2d Cir. 1988)) (internal quotation marks omitted).
\item \textsuperscript{255.} Id.
\item \textsuperscript{256.} Id. at 915.
\item \textsuperscript{257.} Id.
\item \textsuperscript{258.} Id.
\item \textsuperscript{259.} Id. (quoting United States v. Loud Hawk, 474 U.S. 302, 315 (1986)) (internal quotation marks omitted). The dissent also noted that the weapon used in the shooting as well as the crime scene photos were still in existence. Id. at 915 n.1.
\item \textsuperscript{260.} Id. at 915.
\item \textsuperscript{261.} Id.
\item \textsuperscript{262.} Barker v. Wingo, 407 U.S. 514, 522 (1972).
\item \textsuperscript{263.} See State ex rel. McKee v. Riley, 240 S.W.3d 720, 731 (Mo. 2007) (en banc).
\end{itemize}
\end{footnotesize}
The state also has an interest in seeing that criminal defendants are swiftly brought to justice. The victims of crime need closure. If the accused does not promptly face trial, court dockets will be backlogged. Defense counsel will be left with more time and wiggle room to negotiate plea bargains.\textsuperscript{264} If the accused is released on bond for lengthy periods before his court date, society is faced with the possibility that more crime will be committed.\textsuperscript{265} And a prisoner who remains in jail for months or years before his trial will become hardened, making it less likely that he will be a positive contributor to civilization upon release or acquittal.\textsuperscript{266}

Because Garcia’s delay was so long, the question presented in his case – whether the State of Missouri violated his right to a speedy trial – essentially came down to a finding of fact: Did Garcia flee Missouri for Chicago to evade authorities? The three dissenting judges agreed with the trial court and answered that question in the affirmative, concluding that they would have allowed the prosecution to take Garcia’s case to trial.\textsuperscript{267} The majority of the court found that Garcia did nothing wrong by leaving, and his “open and notorious” lifestyle in Chicago affirmed his assertion that he did not move to Illinois to “avoid prosecution.”\textsuperscript{268} These four judges eventually held Garcia’s right to a speedy trial had been violated.\textsuperscript{269}

The dissent conceded that the majority “use[d] the correct test” in evaluating Garcia’s speedy trial claim, demonstrating it had no qualms with how it laid out the law.\textsuperscript{270} The bone to pick came with the majority’s finding that Garcia had not fled.\textsuperscript{271}

If the court had instead found that Garcia did flee Missouri for Chicago, as the dissent argued, then Garcia should not have benefitted from a presumption that his defense was impaired under \textit{Barker} and \textit{Doggett}.\textsuperscript{272} Numerous federal circuit courts have reached this result, and for good reason.\textsuperscript{273} The accused who adopts delay as a defense tactic makes a mockery of the Sixth Amendment and should not find refuge under it when he seeks its protective shelter.\textsuperscript{274}

\begin{itemize}
  \item \textsuperscript{264} See \textit{Barker}, 407 U.S. at 519.
  \item \textsuperscript{265} See \textit{id}.
  \item \textsuperscript{266} See \textit{id}. at 520.
  \item \textsuperscript{268} \textit{Id}. at 911-12 (majority opinion).
  \item \textsuperscript{269} \textit{Id}. at 909.
  \item \textsuperscript{270} \textit{Id}. at 914 (Price, C.J., dissenting).
  \item \textsuperscript{271} \textit{Id}.
  \item \textsuperscript{272} \textit{Id}.
  \item \textsuperscript{273} \textit{See cases cited supra note} 204.
  \item \textsuperscript{274} RaShad v. Walsh, 300 F.3d 27, 40-41(2002) (“To the extent that a defendant bears responsibility for causing periods of delay – such as when he goes to ground in an effort to evade prosecution – any prejudice resulting therefrom is his own fault and cannot redound to his benefit.”); \textit{see also} Alan L. Schneider, \textit{Note, The Right to a}
But when the majority established as fact that Garcia had not fled for Chicago, that he “lived openly and notoriously” there, and that he was unaware of his indictment, it was equally correct to conclude that Garcia should benefit from a presumption that his defense would be impaired under Barker’s fourth factor. The finding that Garcia had not fled Kirkwood meant that he was not the reason for the delay; the state’s lax pursuit of him was.

This finding led to a straight-up application of Doggett. It is of no matter that the Kirkwood Police Department in Garcia was only negligent in bringing the defendant to trial. The DEA was “only” negligent in its pursuit of Marc Doggett, but Justice Souter made clear that negligent delay is still culpable delay. Like the U.S. Supreme Court in Doggett, the court found that the negligent pursuit of Garcia posed a “threat to the fairness of [his] trial,” and because Garcia’s delay was so prolonged, it placed a burden on the state to prove that its blunder had not damaged Garcia’s case. The state could not do so, and the court rightfully dismissed Garcia’s indictment.

Before Garcia, there had been little precedent that Missouri courts presumed prejudice to a defendant when the government was to blame for extraordinary delay. Instead, most courts required that the defendant prove actual prejudice to win Barker’s fourth factor, no matter who was at fault.

---

275. State ex rel. Garcia, 316 S.W.3d at 911-12.
276. Id. at 912.
277. Id. at 911.
279. Id.
280. State ex rel. Garcia, 316 S.W.3d at 913. See also Anthony G. Amsterdam, Speedy Criminal Trial: Rights and Remedies, 27 STAN. L. REV. 525, 537 n.90 (1975) (“These decisions [including Barker v. Wingo] make plain that the Supreme Court has now thankfully abandoned the position that delays which may prejudice a defendant’s ability to defend must also be ‘purposeful’ or in any other sense ‘oppressive.’”).
283. See State v. Edwards, 750 S.W.2d 438, 442 (Mo. 1988) (en banc) (defendant required to prove actual prejudice and not speculative or possible prejudice); State v. Buckles, 636 S.W.2d 914, 920 (Mo. 1982) (en banc) (same as Edwards); see also Williams, 34 S.W.3d at 447 (concluding that no showing of actual prejudice by the defendant trumped the three other Barker factors weighing in his favor); Farris, 877 S.W.2d at 663 (defendant required to prove actual prejudice); State v. Nelson, 719 S.W.2d 13, 19 (Mo. App. W.D. 1986) (concluding that “although the state could and should have acted more quickly than it did[,]” defendant’s case was not dismissed because he was unable to demonstrate actual prejudice); State v. Black, 587 S.W.2d...
After Garcia, however, Missouri courts will change their ways. For several reasons, Missouri courts should be confident that it makes sense to place a burden on the government to prove that its delay did not impair the accused’s defense.

First, requiring the defendant to prove that his case is actually prejudiced by the state’s delay creates an awkward incentive for the prosecution to take its time in bringing the accused to trial. As the U.S. Supreme Court put it, “[c]ondoning prolonged and unjustifiable delays . . . encourage[s] the government to gamble with the interests of criminal suspects assigned a low prosecutorial priority.” An effective deterrent – the burden of proving its delay will not impair the accused’s ability to defend himself – makes certain that the state will either pursue criminal defendants diligently or face an increased likelihood that criminal cases will be dismissed.

Second, by presuming the defendant’s case has been harmed after long delay when the state is at fault, courts correctly focus on who is to blame rather than who can prove what in deciding the outcome of a speedy trial case. Concentrating too closely on whether the defendant can demonstrate with specificity how his case has been hindered often leads courts to dismiss speedy trial claims even after finding that the state is to blame. Placing a burden on the government (who was at fault for the delay) to prove that the defendant’s case is not prejudiced from the gaffe simply makes the state dig itself out of its own hole if it wishes to proceed to trial.

The view that the reason for delay – rather than prejudice suffered from delay – should determine the outcome of a speedy trial case has been espoused by those who say scrutinizing prejudice and fairness in this setting confuses the speedy trial clause with the due process clause.

865, 877 (Mo. App. E.D. 1979) (holding defendant was required to prove actual prejudice even though length of delay was “disturb[ing]”).

284. See Doggett, 505 U.S. at 657. See also Schneider, supra note 274, at 497.


286. See id. (“[T]he more weight the Government attaches to securing a conviction, the harder it will try to get it.”).

287. See Schneider, supra note 274, at 497 (“[J]udicial concentration on proof of actual prejudice detracts from a consideration of the causes of delay in the criminal process.”).

288. See Williams, 34 S.W.3d at 447 (denying defendant’s motion to dismiss because defendant could not demonstrate actual prejudice even when three other Barker factors were weighed against the state); Farris, 877 S.W.2d at 663 (denying defendant’s motion to dismiss because defendant could not prove actual prejudice although state was reason for delay).

289. The same should be true for the defendant who was the reason for delay. As the party at fault, he should have to prove actual impairment of his defense in order to have his case dismissed for a violation of his right to a speedy trial.

Sanjay Chhablani advocates a simpler test to apply in the speedy trial context, where a showing by the accused that the state “failed to prosecute [him] in a speedy fashion” would be prima facie evidence of a speedy trial violation.\textsuperscript{291} If the state could not demonstrate that the violation was “harmless beyond a reasonable doubt” to the defendant, his case would be dismissed.\textsuperscript{292} Though it is not likely that any court will adopt this view, it nevertheless has merit when one considers the difficulty for the state \textit{or} the defendant of proving actual prejudice.

Third, for the accused, proving \textit{actual} prejudice to his case is a Herculean task. As Justice Souter noted in \textit{Doggett}, “impairment of one’s defense” is difficult to demonstrate because “time’s erosion of exculpatory evidence and testimony ‘can rarely be shown.’”\textsuperscript{293} How exactly can one predict with certainty that a missing witness or lost evidence will prove or counter one thing or another at trial? One commentator has noted that the only way a defendant can demonstrate he was actually harmed by delay is to present his side of the story.\textsuperscript{294} According to the commentator, general distrust of the testimony of the accused in these situations—after all, he is trying to have his case dismissed—makes it more likely a court will think the defendant is embellishing or lying in order to prove his case has been impaired.\textsuperscript{295}

Finally, by placing a burden on the government to show its actions have not damaged the accused’s defense after he faced extraordinary delay, the integrity of the right to a speedy trial is upheld. When Justice White said in \textit{Ewell} that the Sixth Amendment speedy trial clause was concerned with “limiting the possibilities that long delay will impair the ability of an accused to defend himself,” he presumably used the word “possibilities” for a reason.\textsuperscript{296} He did not want the bar set so high that criminal defendants were required to prove with certainty how their cases had been damaged from delay. By placing the burden on the government to show no prejudice to the defendant exists before proceeding to trial, true constitutional violations are easier to recognize by the courts.

If one acknowledges that the right to a speedy trial seeks to avoid the \textit{possibility} that a criminal proceeding could go forward when the defendant’s case has been impaired by the government’s delay, one sees the fallacy of requiring the defendant to demonstrate actual prejudice to achieve dismis-

\textsuperscript{291} Chhablani, \textit{supra} note 290, at 537.
\textsuperscript{292} \textit{Id.}
\textsuperscript{293} \textit{Doggett} v. United States, 505 U.S. 647, 655 (1992) (quoting Barker v. Wingo, 407 U.S. 514, 532 (1972)).
\textsuperscript{294} \textit{See} Schneider, \textit{supra} note 274, at 496.
\textsuperscript{295} \textit{Id.}
\textsuperscript{296} \textit{See id.} (emphasis added) (quoting United States v. Ewell, 383 U.S. 116, 120 (1966)) (internal quotation marks omitted).
sal.297 The two are out of balance. Suppose the defense has been damaged but the defendant cannot prove how. If that case goes to trial, the seasoned sportsman is hunting the wounded fawn. If there is a risk that the accused’s defense has been weakened by delay when the state is to blame and the state is incapable of proving otherwise, we cannot take the chance that the defendant will be able to fight off the prosecution’s charges at trial. The case must be dismissed preemptively, lest we turn into those nations whose criminal justice systems are “justice” in name only.

We will never be sure that the unavailability of the four witnesses, the loss of the videotaped interviews, or the destruction of the Sunny China Buffet would have hampered Garcia’s defense in this case, but it is possible.298 Any lack of confidence is comforted by the knowledge that Garcia was not to blame; the Kirkwood Police Department and the state of Missouri did not fulfill their duty in bringing him to trial speedily.299 Cases like this ensure that the problem will not repeat itself. Garcia gives us hope that the Kirkwood Police Departments of the world will now take all criminal cases, however “insignificant,” more seriously.

After all this, perhaps the most important question emanating from this case remains: did David Garcia blast a 12-gauge shot into Rigoberto Dominguez’s side?300 We may never know. This doubt leaves a bitter taste in one’s mouth, but that unpleasantness means our Constitution has done its job. Our most important document was crafted by our Founding Fathers not to protect only the strong, the upright, and the law abiding. More than anything, it was fashioned to guard the meek, the incapable, the hated, and the most vulnerable: those standing accused by the powerful state. David Garcia’s right to a speedy trial trumps our desire for answers.

VI. CONCLUSION

The Supreme Court of Missouri’s decision to dismiss David Garcia’s indictment for a violation of his right to a speedy trial was a victory for the criminally accused in Missouri. But Garcia was also a win for those who value safety on our streets and appreciate efficiency from our officials. The decision ultimately protects law-abiding citizens of this state: It will motivate police departments and prosecutors offices to do their jobs better, keeping

297. See Amsterdam, supra note 280, at 537 (“If such [government] delays impair the defendant’s ability to defend himself in any way, or even if that sort of impairment is a significant possibility, I am quick to agree that the prosecution should be dismissed.” (footnote omitted)).


299. See Barker v. Wingo, 407 U.S. 514, 529 (1972) (“[T]he rule we announce today . . . places the primary burden on the courts and the prosecutors to assure that cases are brought to trial.”).

300. State ex rel. Garcia, 316 S.W.3d at 909.
them cognizant of the consequences that their behavior may have on seemingly unimportant criminal cases. If nothing else, the message our law enforcement officials can draw from the dismissal of David Garcia’s indictment is that from an old Scottish proverb: “What may be done at any time will be done at no time.”  