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arrest the defendant for four years and nine months is so fundamentally unfair as to have deprived him of due process of the law. The defendant concedes that neither the statute of limitations nor the speedy trial statute had expired. However, the defense argues that the pre-arrest delay is without good cause and the defendant is entitled to dismissal, without a showing of prejudice to the defense.

The People contend that the facts and circumstances set forth during the hearing show the police made reasonable and diligent efforts to locate and apprehend the defendant. The People argue that the pre-arrest delay was reasonable and there was good cause for the delay.

The Supreme Court has drawn a distinction between delays occurring prior to arrest or formal accusation and other occurring afterward. Post-indictment delays have been measured against the sixth amendment speedy trial requirement. Note: Barker v Wingo, 407 U.S. 514, 92 S Ct 2182, 33L.Ed. 2d 101. Whereas, pre-indictment delay is governed by the due process clause which generally requires a showing of actual prejudice before dismissal would be warranted. Note: U.S. v Marion, 404 U.S. 307, 92 St. 455, 306 Ed.2d 468.

In People v Singer, 44 NY2d 2521, 253-4 (1978), the Court of Appeals stated "[i]n this State, we have never drawn a fine distinction between due process and speedy trial standards. We have long held that "unreasonable delay in prosecuting a defendant constitutes a denial of due process of law" (People v

Staley, 41 NY2d 789, 791, 396 N.Y.S. 2d 339, 341,...; see also N.Y. Court, Art. I §6). An untimely prosecution may be subject to dismissal even though, in the interim, the defendant was not formally accused, restrained or incarcerated for the offense (see, e.g., People v Winfrey, 20 NY2d 138...; People v Wilson, 8 NY2d 391,...; People v Staley, supra)...[A] lengthy and unjustifiable delay in commencing the prosecution may require dismissal even though no actual prejudice to the defendant is shown. (People v Staley, supra; People v Winfrey, supra.)"

The Court of Appeals has held that when there has been a protracted delay, certainly over a period of years, the burden is on the prosecution to establish good cause, see People v Prosser, 309 NY2d 353, 128 NE2d 808; see also, People v Winfrey, supra; People v Staley, supra. The Court has also ordered that a hearing be conducted to determine whether pre-indictment delay was reasonable. See People v Townsend, 38 Ad2d 569; 328 NYS2d 333 (1971).

In People v Taranovich, 37 NY2d 442, 445, 373 NYS2d 79, 82 (1975), the court set forth the factors which should be examined in balancing merits of assertion that there has been denial of defendant's right to speedy trial. The factors are:
"(1) extent of the delay; (2) the reason for the delay; (3) the nature of the underlying charge; (4) whether or not there has been an extended period of pre-trial incarceration; and (5) whether or not there is any indication that the defense has been

impaired by reason of the delay."

The Court noted that the factors are to be used in a balancing process and no one factor or combination of factors is determinative, See People v Taranovich, supra, at 445. These factors have been applied in assessment of due process claims based upon pre-indictment delay and the constitutional speedy trial standard applicable to post indictment delay. See People v Rosado, 166 Ad2d 544, 560 NYS2d 825 (2nd Dept. 1990).

In analyzing the Taranovich factors with respect to the facts set forth during the Townsend hearing held, the Court has made the determinations set forth hereafter:

(1) The Extent of the Delay

The alleged crime of Criminal Sale of a Controlled Substance in the Second Degree occurred on January 21, 1995. The defendant was arrested approximately four years and nine months later, on October 29, 1999.

(2) The Reason for the Delay

Det. Delaney testified that he and the undercover, Det. Francis, anticipated making further buys of this suspect and later placed calls to defendants pager but received no responses. The Detective also did a plate check with Department of Motor Vehicles and from the printout (People's Exh.#1) learned the name and address of the suspect to be Jude Asheigbu of 247 West 139 Street, New York, N.Y. Further law enforcement data-base computer (NITRO,BADS,WARQ) searches were made on January 22, 1995 with negative results.

The Detective testified that several months later, on May 5, 1995, he went to the suspect's address, conducted surveillance, made inquiries of residents in the building and checked the mail boxes. He also stated that they did a printout (People's Exh #2) from NYNEX on April 18, 1995 and learned the address where suspect had a business suite was Chaes International Inc. at 165 Madison Avenue, New York, NY, Suite 501. On May 5, 1995, the detectives went to the suite but found no one present. On July 15, 1996, the Detective got a Department of Motor Vehicles list of suspensions (People's Exh. #3) for Jude Ashiegbu.

In September 1996, Det. Delaney submitted a "wanted card" for the suspect and renewed the card every six months. In September, 1999, Det. Carbone of the 28th Precinct contacted Det. Delaney regarding Det. Carbone's efforts to locate the complainant on a robbery of a livery driver, that he was investigating. Det. Carbone indicated the complainant was Jade Asiegbu with a birth date of May 25, 1962 and an address of 247 West 139 Street. Det. Delaney went to speak with Det. Carbone at the 28th Precinct and was shown two computer printouts indicating the complainant, Jade Asiegbu, had two aliases and dates of births. The federal interstate identification index indicated that the cross match of fingerprints showed Jude Ashiegbu and Denzel Allen with birth dates of April 21, 1959 and May 25, 1962 and an address at 3519 Tyron Ave in The Bronx. The NCIC and triple A reports were entered into evidence as People's Exh #4 collectively.

(3) The Nature of the Charge

The charge is Criminal Sale of Controlled Substance in the Second Degree, an A-II felony which alleges that defendant sold 28 grams of heroin in exchange for \$5,000.00 U.S. currency.

(4) Whether or not there was been an extended period of pre-trial incarceration

This defendant was incarcerated on June 24, 1999 for his arrest for Bribery and for fraudulent checks in The Bronx. He was arrested on the present charge on October 25, 1999 and had no pre-trial incarceration on the newest matter.

(5) Whether or not the defense has been impaired by reason of the delay

There has been no showing of any impairment of the defense based on the delay in apprehension of the defendant, as the defense motion papers state that the defendant is entitled to relief without a showing of actual prejudice.

Under all the circumstances herein, this Court finds that the facts elicited during the Townsend hearing as applied to the Taranovich factors considered do not demonstrate a violation of the defendant's due process rights that justify dismissal of the indictment herein. The defense relies upon People v Singer, supra, and People v Staley. supra, but those cases are distinguishable from this case. The People have demonstrated that the pre-arrest delay was reasonable and based upon good cause. Accordingly, this Court finds that the 57 month delay was not so fundamentally unfair as to deprive this defendant of due process

of law, especially because of the use of several names and birthdates by the defendant.

Motion to Suppress Arrest for Lack of Probable Cause

The defendant argues that the police did not have probable cause to arrest this defendant since they only had a physical description, a plate number, an inherently unreliable identification, made 57 months after the incident.

The People contend that the arrest was proper and based upon a line-up identification by the undercover police officer.

The law is well established as to what constitutes probable cause for an arrest. The courts have defined common-sense "probable cause" in Brinegar v U.S., 388 U.S. 160, 175-6 (1949) and People v Oden, 36 NY2d 382,384 (1975) as follows:

"Probable cause exists where the facts and circumstances within the officer's knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed."

The courts have used the reasonable grounds test set forth in Draper v U.S., 388 U.S. 307. Note People v Valentine, 17 NY2d 128.

In this matter, this Court finds that on January 21, 1995,

at approximately 9:00, in the vicinity of 171 and Hillside, in Queens County, Det. Dino Delaney was part of a seven member field team making mobile surveillance of an undercover officer, Det. Larry Francis. Det. Delaney observed a four-door grey Saab with New York license plate #B487DR with a driver inside, pull up at the location. Det. Francis had a conversation with the driver and got into the car. The vehicle moved about three blocks and parked on a street off the corner of Highland Avenue and Homeland Street. The surveillance team observed people inside the vehicle. After several minutes the vehicle went back to the original location and Det. Francis exited the vehicle. Det. Francis told Det. Delaney that he had made a positive buy of heroin in that he had given five thousand dollars (\$5,000) to the driver, who called another person, who came to the Homeland and Highland location, and gave Det. Francis a quantity of approximately 33 grams of heroin. The back-up team did not arrest the driver since Det. Delaney hoped to initiate additional narcotic purchases from the subject. The driver gave Det. Francis his beeper number (212-381-1171) and told him to use code 005. The driver told the undercover that his name was Jude. Det. Francis gave Det. Delaney a description of the driver as a male black, dark complexion, approximately five, eight, 155 pounds and wearing glasses with gold rims.

On October 25, 1999, the defendant was identified by Det. Francis from a line-up conducted at 103rd precinct.

Under all the circumstances herein, this Court finds there

was sufficient evidence to justify the arrest herein. This Court finds that there was no violation of the defendant's constitutional due process rights.

Motion to Suppress Identification

The defense moves to suppress the line-up identification herein and contends that the defendant was subjected to an unduly suggestive line-up, which occurred some fifty seven months after the alleged crime. The defense also argues that the identification was tainted by the possibility that Det. Francis may have observed a photo of the defendant prior to that viewing. They claim that the People should have produced detectives at the hearing to clarify and refute that such a viewing occurred.

The People argue that the testimony at the hearing proved that the line-up was prepared and completed in a fair, constitutional way. The People contend that the line-up identification procedures did not violate the defendant's constitutional rights.

The law is well established that the exclusionary rule established in U.S. v Wade, 388 U.S. 218, Gilbert V, California, 388 U.S. 263 and Stovall v Denno, 388 U.S. 293, is applicable to procedures "where the confrontation conducted was so unnecessarily suggestive and conducive to irreparable mistaken identification that (the defendant) was denied due process of law." (Stovall v Denno, Supra). To invoke this remedy, the Courts have required The defense to establish that the pre-trial confrontations were both (1) "impermissibly suggestive" and (2)

"conducive to irreparable mistaken identifications" Neil v Bigger, 409 U.S. 188, U.S. v Evans, 484 F2d 178. In this application of this test, Courts at the state level have determined admissibility by the fairness or procedure criteria, while courts at the federal level have used the criteria of the reliability of the identification and the totality of circumstances.

In this matter, Det. Delaney and Sgt. Modica transported the defendant to the 103 Precinct on October 25, 1999. The field team was informed that the defendant had a light moustache and close cropped beard. Det. Iaquainto used a phonograph of the defendant and acquired five fillers for use in the line-up from the Borden Ave Men's Shelter. The defendant and fillers were assembled in the muster room where they were assigned numbers 1 through 6. The defendant objected to the process as being unfair. The detectives denied his request to change his clothes but did remove his D.O.C. outer garment. He was not permitted to shave. He also refused to select a number and was assigned No. 3. The persons in the line-up had no hats or coats but defendant had a bracelet. Det. Francis viewed the line-up (Peo's Exh #6A&6B) in the presence of Sgt. Modica, Det. Delaney and defense attorney Andrew Yerrakadu, who made no objections to the line-up procedures. Det. Francis viewed the line-up and stated: "yes" in response to "do you recognize anyone"; "number three" in response to "what number?" and "case buy in 1995" in response to "where do you recognize him from?" Following this identification,

the defendant was arrested at 2:40 p.m.

This Court notes that the testimony of Det. Delaney was clear that Det. Francis was not allowed to view the defendant prior to the line-up procedure conducted nor is there any testimony to support the contention that the photograph used by Det. Iaquinto was ever viewed by Det. Francis.

Under all the circumstances here, the People have satisfied their burden of going forward to show the legality and propriety of the line-up herein. While the defense has raised concerns about the appearances of the fillers and the jewelry worn by the defendant, these concerns pertain to the weight, not the admissibility of the identification. The testimony has established that the procedures were neither impermissibly suggestive, unfair nor violative of the defendant's constitutional rights.

Motion to Suppress Statements

The defense has moved to suppress the statements consisting of pedigree information allegedly made by the defendant on the grounds that his constitutional rights were violated since the defense attorney had instructed the Detective not to question his client.

The People argue that the pedigree information was given in response to pedigree questions and that the People are not required to give notice pursuant to CPL §710.30(1)(a) regarding said statements.

The law is clear that a defendant in custody may not be

interrogated unless his attorney is present or he has been advised of his constitutional rights and voluntarily, knowingly and intelligently waived the same. Note: Miranda v Arizona, 384 U.S. 436.

The law also provides that routine administrative questioning falls within the pedigree exception to the notice requirement of CPL §710.30. See Peo. v Rodney, 85 NY2d 289.

In the instant matter, the Detective testified that "once we finished the line-up. [the attorney] was there briefly. [The attorney] explained to me that [the defendant] wasn't going to answer any questions, and I said all I need was pedigree information and that was fine." (T-p.136). This Court finds that the pedigree information provided herein was properly within the exception to CPL §60.45 and §710.30(1)(a). The Court finds no violation of the defendant's constitutional rights and denies the motion to suppress said information.

ACCORDINGLY, for the reasons stated, the defense motion to dismiss the indictment for pre-arrest delay; the motion to dismiss for lack of probable cause; the motion to suppress identification and motion to suppress pedigree statements, are each denied. All other requests for relief are denied.

O R D E R E N T E R E D A C C O R D I N G L Y

The Clerk of the Court is directed to mail a copy of this decision and order to be entered therein to the attorneys for the defendant and the People.

DANIEL LEWIS, JSC