

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

2009-0584

The State Of New Hampshire

v.

John Babiarz

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APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE  
FRANKLIN DISTRICT COURT

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BRIEF FOR THE STATE OF NEW HAMPSHIRE

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THE STATE OF NEW HAMPSHIRE

Michael A. Delaney  
Attorney General

Janice K. Rundles N.H. Bar No. 2218  
Senior Assistant Attorney General  
Criminal Justice Bureau  
33 Capitol Street  
Concord, N.H. 03301-6397  
(603) 271-3671

(15 minutes)

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

ISSUES PRESENTED ..... 1

STATEMENT OF THE CASE ..... 2

STATEMENT OF FACTS..... 4

SUMMARY OF THE ARGUMENT..... 9

ARGUMENT ..... 11

    I.    THE TRIAL COURT CORRECTLY DENIED THE MOTION TO  
          DISMISS BASED UPON THE RULE 2.5A REQUIREMENT  
          THAT COMPLAINTS BE FILED NO LATER THAN FIFTEEN  
          DAYS AFTER ISSUANCE OF THE SUMMONS. .... 11

        A.    District Court Rule 2.5A And The Statutory Procedure For  
              Plea By Mail Cases Outlined in RSA 262:44 Are Not In  
              Conflict..... 11

        B.    Even If There Is A Conflict Between The Court Rule And  
              The Statute, The Trial Court Correctly Found “Good Cause”  
              For The Late Filing Of This Complaint..... 18

    II.   THE TRIAL COURT CORRECTLY DENIED THE  
          DEFENDANT’S MOTION TO DISMISS BASED UPON THE  
          ALLEGED VIOLATION OF HIS RIGHT TO SPEEDY TRIAL.. 20

        A.    As This Traffic Violation Case Is Civil In Nature, The Sixth  
              Amendment Right To A Speedy Trial Is Inapplicable. .... 20

        B.    Even If The Barker v. Wingo Speedy Trial Analysis Applies  
              To This Case, The Defendant’s Motion To Dismiss Was  
              Properly Denied. .... 25

CONCLUSION ..... 28

**TABLE OF AUTHORITIES**

**CASES**

Associated Press v. State of New Hampshire, 153 N.H. 120 (2005)..... 15

Barker v. Wingo, 407 U.S. 514 (1972) ..... passim

In re Maynard, 155 N.H. 630 (2007) ..... 15

Keshishian v. CMC Radiologists, 142 N.H. 168 (1997)..... 19

McPherson v. Weiner, 158 N.H. 6 (2008) ..... 20

Opinion of the Justices, 141 N.H. 562 (1997)..... 18

Petition of Mone, 143 N.H. 128 (1998) ..... 17

Riendeau v. Municipal Court of Milford, 104 N.H. 33 (1962)..... 24

Sherryland, Inc. v. Snuffer, 150 N.H. 262 (2003)..... 23, 24, 25

State ex.rel. McLellan v. Cavanaugh, 127 N.H. 33 (1985)..... 22

State v. Allen, 150 N.H. 290 (2003) ..... 23

State v. Basinow, 117 N.H. 176 (1977) ..... 24

State v. Beede, 156 N.H. 102 (2007) ..... 25

State v. Colbath, 130 N.H. 316 (1988)..... 25

State v. Farrow, 140 N.H. 473 (1995)..... 15

State v. Ferguson, 141 N.H. 438 (1996) ..... 15

State v. Fitzgerald, 137 N.H. 23 (1993) ..... 20, 21

State v. Gubitosi, 157 N.H. 720 (2008)..... 14

State v. Jeleniewski, 147 N.H. 462 (2002)..... 22

State v. LaFrance, 124 N.H. 171 (1983) ..... 17, 18

State v. Lake Winnepesaukee Resort, 159 N.H. 42 (2009) ..... 21, 22

State v. Wamala, 158 N.H. 583 (2009) ..... 14

**CONSTITUTIONAL PROVISIONS**

N.H. CONST., pt. 2, art. 73-a..... 15

N.H. CONST., pt. 1, art. 14..... passim

U.S. CONST., amend. VI..... 6, 9, 20, 22, 25

**RULES**

Dist. Ct. R. 2.5A..... passim

Saf-C 3802.03(b)..... 12, 13, 14

Superior Court Rule 185 ..... 15

Superior Court Rule 197 ..... 15

**STATUTES**

RSA 262:44 (Supp. 2008).....passim

RSA 265:31, IV (Supp. 2009) .....4

RSA 458:15-b (Supp. 2004) ..... 15

RSA 458:19 (Supp. 2004) (amended 2005) ..... 15

RSA 502-A:19-B (Supp. 2009) ..... 11

**MISCELLANEOUS**

Laws 1992, 257:23.....12

**ISSUES PRESENTED**

1. Whether the District Court correctly refused to dismiss the traffic violation complaint issued against the defendant where the complaint was not filed in the District Court within 15 days as required by District Court Rule 2.5A, but was instead returned to the Division of Motor Vehicles in accordance with the mail-in procedure outlined in RSA 262:44.

2. Whether the District Court correctly refused to dismiss the traffic violation brought against the defendant on speedy trial grounds where the defendant failed to assert his right to speedy trial until just before his scheduled trial date, even though he had known about the trial date for more than two months.

**STATEMENT OF THE CASE**

On December 20, 2008, Trooper Michael Fienauer issued a summons to the defendant, John Babiarz, charging him with the traffic violation of failing to stop for a stop sign, contrary to RSA 265:31 (Supp. 2009). D.App. 1-2.<sup>1</sup> The summons notified the defendant that he was required to answer the complaint “to the Department of Safety” within thirty days. *Id.* Instead of contacting the Department of Safety, the defendant went to the Franklin District Court to enter a plea on January 16, 2009. D.App. 3. After being told that he needed to enter his plea at the Department of Safety, the defendant went there and entered a plea of not guilty. *Id.*

Thereafter, in accordance with the procedure set forth in RSA 262:44, II (Supp. 2008), the complaint was forwarded to the Franklin District Court, which scheduled the matter for trial. The defendant received a notice on May 9, 2009, informing him that the trial date had been set for July 14, 2009. D.App. 3, 6, 11.

On or about July 2, 2009 the defendant, appearing *pro se*, filed a motion to dismiss the complaint pursuant to District Court Rule 2.5A, which requires that, in plea by mail cases, the complaint be filed in the appropriate court no later than fifteen days after issuance of the summons. D.App. 3-4. On July 14, 2009, the

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<sup>1</sup> References to the record are as follows:

Notice of appeal: NOA, followed by page number;

Defendant’s brief: D.Br., followed by page number;

Appendix to defendant’s brief: D.App., followed by page number.

day of the scheduled trial, the defendant filed a motion to dismiss on the grounds that his right to a speedy trial had been violated. D.App. 5-6.

The defendant's motion to dismiss based upon Rule 2.5A was denied by a written order dated July 14, 2009. Id. at 14-15.<sup>2</sup> The district court (Gordon, J.) heard argument on the speedy trial motion on July 14, 2009, before the trial commenced. D.App. 11. The speedy trial motion was denied by a written order issued on July 17, 2009. This order also contained the court's guilty finding based upon the evidence at trial, and the penalty imposed, a \$100 fine. Id. at 11-13. This appeal followed.

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<sup>2</sup> It is unclear from the record whether the court at some point heard argument on the Rule 2.5A motion or decided the issue without argument.

**STATEMENT OF FACTS**

On the evening of December 20, 2008, Trooper Michael Fienauer was parked next to the Danbury Fire Department, observing traffic at the intersection of Route 104 and Route 4 in Danbury. D.App. 12. He saw the defendant driving west on Route 104, coming from the direction of Bristol. Id. at 13. Trooper Fienauer saw the defendant turn left onto Route 4, heading towards Grafton, without coming to a complete stop at the stop sign located at the intersection of routes 104 and 4. Id. The trooper stopped the defendant and issued him a complaint and summons for failure to stop at a stop sign. Id. at 1, 13. Failure to stop at a stop sign is a traffic violation punishable by a fine of \$100. RSA 265:31, IV (Supp. 2009).

The complaint issued to the defendant contained three possible options as to the required response. The first option instructed the recipient to answer the complaint at the Department of Safety within 30 days; the second instructed the recipient to answer the complaint at the designated court within 30 days; and the third option instructed that the recipient must appear in court on a specified date to answer the complaint. D.App. 1. On the face of the complaint issued to the defendant, Trooper Fienauer checked the first box, instructing the defendant to answer the complaint at the Department of Safety. Id.

Despite this clear directive, the defendant went to the Franklin District Court on January 16, 2009, to answer the complaint. Id. at 3. There, he was instructed that he was to answer it at the Department of Motor Vehicles (DMV) in Concord. Id. On a date that is not specified in the record, the defendant went to the DMV and entered a plea of not guilty to the complaint. Id.

Sometime thereafter, in accordance with the procedure set forth in RSA 262:44, II (Supp. 2008), the DMV forwarded the complaint to the Franklin District Court. The date on which the complaint was filed in the district court is not clear from the record. However, on May 9, 2009, the defendant received a notice from the court that the case had been scheduled for trial on July 14, 2009. Id. at 3, 5-6.

On or about July 2, 2009, the defendant filed a motion to dismiss the complaint, arguing that dismissal was mandated by District Court Rule 2.5A, which requires complaints in plea by mail cases to be filed in the designated court no later than fifteen days from the date of issuance. Id. at 3-4.

By an order dated July 14, 2009, the defendant's motion to dismiss pursuant to Rule 2.5A was denied. Id. at 14-15. The court (Gordon, J.) found that the Rule and the statutory procedure outlined in RSA 262:44 were in conflict because the statute provides that the DMV holds complaints for thirty days to allow the recipient to respond by mail, phone, or in person, and only forwards the contested complaints to the court. Id. The court went on to find, however, that Rule 2.5A did not require dismissal of the complaint because "good cause" had

been shown for the failure to file it within fifteen days. See Dist. Ct. R. 2.5A (“any complaint filed with the court after the filing date has passed shall be summarily dismissed . . . unless good cause is shown”). The court found that, as the rule was designed to ensure timely filing of complaints so that defendants could enter pleas, and since that had been accomplished by the filing of the complaint with the DMV for the same purpose, there was “good cause” to excuse the late filing in this case. Id.

On the day of trial, July 14, 2009, the defendant filed a motion to dismiss the complaint for violation of his right to a speedy trial pursuant to part 1, article 14 of the New Hampshire Constitution, and the Sixth Amendment to the United States Constitution. Id. at 5-6. The defendant had not previously asserted his right to speedy trial or requested an earlier trial date. Id. at 12.

The court heard argument on the speedy trial motion on the day of trial and then proceeded to conduct the trial. Trooper Fienauer testified as set forth above, and the defendant called one witness, Robert Hull. Id. Hull testified that he had taken pictures of the intersection where the alleged stop sign violation occurred, apparently on the day before the trial. Id. at 13. These photographs showed that there were bushes that could potentially have interfered with the trooper’s line of sight, and that the white stop line was largely obscured. Id. Hull, however, was not with the defendant on the night the summons was issued. Id. Trooper Fienauer testified that his line of sight was unobstructed that night. Id.

On July 17, 2009, the court issued an order denying the defendant's speedy trial motion and finding him guilty of the stop sign violation. Id. at 11-13. The court imposed the statutorily required \$100 fine on the violation. Id. at 13. With respect to the speedy trial issue, the court, without saying whether it was deciding the issue pursuant to the New Hampshire or United States constitution, and without specific case citation, applied the familiar four-factor speedy trial test of Barker v. Wingo, 407 U.S. 514 (1972).

Pursuant to that test, the court found that the reason for delay in scheduling the trial was attributable to the time the complaint was held at the DMV to allow the defendant to enter a plea, and then, after the complaint was forwarded to it by the DMV, to the court's own docket. Thus, the court held that the State was not responsible for any delay. D.App. at 11-12. The court also found that the length of time it took for a trial date to be scheduled was "customary" and "not inordinate" for this type of case. Id.

As for the defendant's assertion of his speedy trial rights, the court found that he had not done so until the day of trial, and further, that if he had requested an earlier trial date, "the [c]ourt would have made an effort to accommodate him . . ." Id. at 12. Finally, the court found that the defendant had suffered "little prejudice" due to the delay, primarily the result of any anxiety the unresolved complaint may have caused him. The court noted that the defendant was not

subject to any bail conditions or other restriction of his freedom while awaiting his trial. Id.

In the same July 17, 2009 order, the court reviewed the evidence it had heard during the defendant's trial, and concluded that the State had proved his stop sign violation beyond a reasonable doubt. Id. at 13. The court imposed a fine of \$100, payable in thirty days. Id.

### SUMMARY OF THE ARGUMENT

1. The trial court correctly denied the defendant's motion to dismiss based upon the alleged violation of District Court Rule 2.5A. The 1992 amendment to RSA 262:44 changed the procedure applicable to some traffic violation cases by providing that a plea can be entered and the fine paid at the DMV instead of the court. This change created an apparent conflict with the already existing court rule, which requires that complaints in plea by mail cases be filed within fifteen days of issuance. However, the court rule and statute can be construed as being consistent with each other, as, under the new statutory procedure, a plea by mail summons can still be made returnable to the court instead of the DMV. Thus, in this class of cases, Rule 2.5A still has full force and effect.

However, assuming that this Court agrees with the trial court that the new statutory procedure is in conflict with the court rule, the trial court correctly found that the required "good cause" for the failure to file the complaint within fifteen days was shown because the trooper who issued the complaint followed the statutory procedure and filed the complaint with the DMV, and the defendant was notified of this and had the opportunity to timely file his plea with the DMV, thus effectuating the purpose of the court rule.

2. The defendant was charged with a traffic violation of the sort that this Court has characterized as civil in nature. Thus, the Sixth Amendment right to a speedy trial is not applicable to this case. The New Hampshire Constitution's part

1, article 14 guarantee of the right “to obtain . . . justice . . . promptly, and without delay; conformably to the laws” applies to both civil and criminal cases.

However, in applying this provision to civil cases, the proper inquiry is limited to a determination of whether any delay was arbitrary or oppressive or imposed on a person or class of persons on an unreasonable basis. In this case, any delay was for the purpose of allowing persons such as the defendant to resolve a traffic matter without going to court, and any further delay was simply due to the court’s docket and was not unreasonable in length.

If the Court should find that the Barker v. Wingo four-factor speedy trial test is applicable to this case, there was still no denial of speedy trial. Because adversarial proceedings were not pending against the defendant until the complaint was filed in the district court, the period of delay must be measured from that date and not from the date the summons was first issued to him. Thus, any delay was less than six months and no presumption of prejudice attached. The entire delay was attributable to court scheduling issues and therefore did not weigh heavily against the State. The defendant failed to assert the right to speedy trial until the very day of his trial, and thus cannot claim the benefit of that factor. Finally, the defendant failed to demonstrate that he suffered any actual prejudice attributable to the delay in scheduling his trial, as he has demonstrated no connection between this delay and his failure to document the appearance of the scene closer to the time the summons was issued.

**ARGUMENT**

**I. THE TRIAL COURT CORRECTLY DENIED THE MOTION TO DISMISS BASED UPON THE RULE 2.5A REQUIREMENT THAT COMPLAINTS BE FILED NO LATER THAN FIFTEEN DAYS AFTER ISSUANCE OF THE SUMMONS.**

**A. District Court Rule 2.5A And The Statutory Procedure For Plea By Mail Cases Outlined in RSA 262:44 Are Not In Conflict.**

District Court Rule 2.5A requires that, in plea by mail cases where a summons has been issued to the defendant, the complaint be filed with the appropriate court no later than fifteen days after the date of issuance. The rule goes on to say that “[a]ny complaint filed with the court after the filing date has passed shall be summarily dismissed unless good cause is shown.” As a defendant served with a traffic violation summons is given thirty days to enter a plea, the apparent purpose of this court rule must be, as found by the trial judge in this case, “to ensure that [c]omplaints [are] filed in a timely manner so that [d]efendants [can] enter their pleas.” D.App. at 14.

RSA 262:44 (Supp. 2008) (amended 2009) provides that pleas of guilty or nolo contendere can be entered, and fines paid, by mail for certain traffic offenses.<sup>3</sup> This statute was amended in 1992, after the enactment of District Court Rule 2.5A, to provide an option for plea by mail offenses to be returnable to the

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<sup>3</sup> RSA 502-A:19-b (Supp. 2009) also addresses the plea by mail procedure, and is consistent with RSA 262:44.

DMV rather than the court, thus allowing the recipient of such a summons to avoid contact with the court system entirely unless he or she wished to contest the matter at trial. Laws 1992, 257:23. The summons form used in this case, known as DSMV 428, reflects this change. D.App. at 1. The summons provides the officer issuing it with three options: (1) notifying the recipient to answer the complaint at the DMV within 30 days; (2) notifying the recipient to answer the complaint at the designated court within 30 days; or (3) notifying the recipient that he must appear in the designated court on a particular date to answer the complaint. Id. In this case, the defendant was notified that he had thirty days to answer the complaint at the DMV.

The Department of Safety, pursuant to RSA 262:44, VII, has adopted forms (including DSMV 428) and rules to implement this statute. One of those rules, Saf-C 3802.03(b) provides:

If the law enforcement officer does not indicate on form DSMV 428 that the defendant is required to appear in person at the stated court, the law enforcement officer shall distribute form DSMV 428 by:

- (1) Providing one copy to the defendant;
- (2) Retaining 2 copies for the law enforcement officer's agency; and
- (3) Providing the remaining copies to the division.

Pursuant to this rule, the trooper in this case, having notified the defendant that he was not required to appear in court, provided "the remaining copies" of the

complaint and summons to the DMV. Thereafter, when the defendant entered his plea of not guilty at the DMV, that agency, in accordance with RSA 262:44, II, “transmit[ted] the plea to the appropriate court [so that] the court [could] schedule a trial.”

The defendant’s brief takes the position that there is no conflict between Rule 2.5A and the procedure outlined by RSA 262:44 and the rules of the Department of Safety, because, according to the defendant, the statute and administrative rule do not address the filing of the complaint in court; only Rule 2.5A does this. D.Br. at 12-13. The defendant arrives at this argument by a hyper-technical reading of the statute and Department of Safety rule.

As is clear from the language of Saf-C 3802.03(b) set forth above, that rule directs the officer issuing the summons and complaint to “provide the remaining copies [of form DSMV 428] to the division.” RSA 262:44, II provides that “[i]f the defendant wishes to enter a not guilty plea, *he shall enter such plea on the summons* and return it to the division of motor vehicles . . . .” Thereafter, the statute instructs that [t]he division *shall transmit the plea* to the appropriate court and the court shall schedule a trial.” (Emphasis added.)

This statutory language clearly indicates that the summons, upon which the defendant has entered his guilty plea, is to be sent to the appropriate court to be filed and docketed for trial in the usual course. Although the defendant argues that neither the statute nor the court rule contain the word “complaint,” clearly that is

what is referred to by use of the language “DSMV form 428” in Saf-C 3802.03, and by use of the word “summons” in RSA 262:44, as DSMV 428 (which is entitled “complaint”) is in fact the summons and complaint in one form.

Thus, contrary to the defendant’s argument, the statute does address the filing of the complaint in court, and provides that, for those complaints initially made returnable to the DMV, the complaint is to be held by the DMV for a period of thirty days following its issuance to allow the recipient to enter a plea. RSA 262:44, I. When a complaint is contested, it is then to be filed, “transmit[ed]” to the appropriate court. RSA 262:44, II.

That procedure was followed here. The question thus presented is whether this statutory procedure is in irreconcilable conflict with the mandate of the district court rule. This is a question involving statutory construction, with respect to which this Court’s review is *de novo*. State v. Wamala, 158 N.H. 583, 592 (2009) (interpretation of statute is question of law, reviewed *de novo*). In matters of statutory construction, this Court will “construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result.” State v. Gubitosi, 157 N.H. 720, 724 (2008). Additionally, this Court does not “consider the words and phrases in isolation, but rather within the context of the statute as a whole.” Id. Moreover, this Court will interpret the meaning of a statute with reference to the overall statutory scheme, and will attempt to construe statutes

dealing with the same subject so that they do not contradict each other. State v. Ferguson, 141 N.H. 438, 439 (1996); State v. Farrow, 140 N.H. 473, 475 (1995).

As court rules “have the force and effect of law,” N.H. Const. pt. 2, art. 73-a, the meaning of the language in RSA 262:44 and District Court Rule 2.5A must be interpreted according to the rules of statutory construction set forth above. In doing so, this Court has directed that “a statute and a court rule should be harmonized whenever possible, and interpreted so as to give effect to both.” In re Maynard, 155 N.H. 630, 635 (2007).

Thus, in In re Maynard, this Court reconciled Superior Court Rule 185, which required the filing of an answer to a petition for divorce in order to be eligible to request alimony, with RSA 458:19 (Supp. 2004) (amended 2005), which allowed a motion for alimony to be filed by any party within five years of the divorce decree. 155 N.H. at 635. Similarly, in Associated Press v. State of New Hampshire, 153 N.H. 120 (2005), this Court reconciled and gave effect to both Superior Court Rule 197, which provided that financial affidavits could be sealed at the request of a party and thereafter made available (except to a limited number of individuals) only by leave of court, and RSA 458:15-b, which made such affidavits automatically confidential upon filing, and nevertheless allowed access to them by a much broader range of individuals without leave of court than permitted under the court rule. Id. at 144.

District Court Rule 2.5A and RSA 262:44 are similarly reconcilable.

Pursuant to RSA 262:44, a summons for a plea by mail eligible traffic offense can be made returnable either to the court with jurisdiction or to the DMV. If the recipient of the summons is notified (on the face of the complaint) that he or she must respond to it at the designated court, the law enforcement officer who issues it must still file the other copies of the complaint with the court. Thus, in such cases, District Court Rule 2.5A would still have full force and effect, requiring that the complaint be on file in the appropriate court within fifteen days or be subject to dismissal. This makes sense, and effectuates the purpose of the rule—to ensure timely filing of complaints so that defendants can enter their pleas thereto within the required thirty days. In contrast, it does not make sense to require complaints that must be answered at the DMV to be filed in the court with jurisdiction, because, if the complaint is not contested, there is no need to for the court to docket it.

The defendant's brief argues that, to the extent that RSA 262:44 is in conflict with District Court Rule 2.5A, separation of powers principles require that the court rule prevail because “[c]ourts have the ultimate authority to control . . . the procedural prerequisites for entering a case into court.” D.Br. at 15.

This Court should not consider this separation of powers argument as it was not raised before the trial court, nor was it raised in the notice of appeal. The motion to dismiss filed by the defendant based upon Rule 2.5A asserted only that

the complaint must be dismissed under the plain language of the rule because it was not filed within fifteen days of its issuance. D.App. at 3-4. The defendant's notice of appeal presented the question on appeal as a trial court error in finding that good cause excused the failure to comply with a "jurisdictional rule." NOA at 3.

However, even if the Court considers a separation of powers argument for the first time on appeal, the argument must fail. Part I, article 37 is the source of the separation of powers doctrine in the New Hampshire Constitution. With respect to that guarantee, however, this Court has stated:

The drafters . . . recognized . . . that a complete separation of powers would disrupt the efficient operation of government, and thus, in the nature of things there must be some overlapping of powers. Part I, article 37 . . . does not require the erection of impenetrable barriers between the branches of our government. On the contrary, the three departments must move in concert without improper encroachments by one branch upon the functions of another. The doctrine is thus violated when one branch usurps an essential power of another.

Petition of Mone, 143 N.H. 128, 134 (1998) (internal citations and quotations omitted). In Petition of Mone, this Court held that the legislature had violated the separation of powers provision by removing authority over court security officers from the judicial branch. Id. Similarly, in State v. LaFrance, 124 N.H. 171 (1983), this Court held that the legislature could not control, by statute, the wearing of firearms in the courtroom because it unconstitutionally encroached

upon the power of the judiciary “to promulgate and administer rules concerning practice and procedure in the courtroom.” Id. at 180.

In this case, RSA 262:44, by providing that plea by mail traffic violations that are uncontested can be disposed of by the DMV rather than the court, does not encroach upon an essential power of the judicial branch. Apart from the power to control the courtroom, a well-recognized essential function of the judiciary is to “independently decide controversies.” Opinion of the Justices, 141 N.H. 562, 577-578 (1997) (proposed bill concerning the admissibility of evidence in sexual assault cases conflicted with Rule 404(b)); see also LaFrance, 124 N.H. at 177 (“A function of the judicial branch is to adjudicate the rights of citizens . . .”). When the recipient of a traffic citation decides to either admit or not to contest the matter and pay the statutory fine, there is no controversy for the court to decide. The only function the executive branch (the DMV) has assumed is the administrative one of collecting the fine. Thus, this case involves no usurpation of an essential judicial power.

**B. Even If There Is A Conflict Between The Court Rule And The Statute, The Trial Court Correctly Found “Good Cause” For The Late Filing Of This Complaint.**

The trial court found that there was a conflict between District Court Rule 2.5A and RSA 262:44, but held that the fact that the officer filed the complaint with the DMV in the first instance constituted “good cause” sufficient to avoid

dismissal under the rule. D.App. at 14-15. This ruling should be upheld. In reaching this conclusion, the court looked to the purpose of the court rule, and found that it was intended to ensure that the police would timely file complaints in the appropriate court so that the recipients of the complaints would have sufficient opportunity to comply with the statutory directive that they answer the complaint within thirty days of issuance. This purpose was fulfilled by the clear notice that was given to the defendant on the face of the complaint and summons issued to him that he was to respond to it at the DMV. The defendant did in fact have an opportunity to respond to the complaint at the DMV within the thirty day period. Nor did the procedure followed in this case deprive the defendant of his right to contest the complaint, as he was able to enter his not guilty plea at the DMV, which then followed the statutory mandate to transmit this plea to the proper court so that the court could schedule a trial. RSA 262:44, II.

For these reasons, the trial court correctly found that “good cause” for the late filing of the complaint was shown, and therefore refused to dismiss it. Because a finding of “good cause” to excuse non-compliance with a court rule is entrusted to the discretion of the trial court, it should be upheld unless there is a finding that the trial court abused its discretion. Keshishian v. CMC Radiologists, 142 N.H. 168, 181 (1997). Here, the trial court carefully analyzed the purpose of the rule requiring dismissal of a complaint for late filing and determined that it would not be served by ordering dismissal in this case. The trial court’s ruling in

this regard was sound and should be upheld. McPherson v. Weiner, 158 N.H. 6, 9 (2008) (noting that “good cause” is a “common legal term” that “generally signifies a sound basis”).

**II. THE TRIAL COURT CORRECTLY DENIED THE DEFENDANT’S MOTION TO DISMISS BASED UPON THE ALLEGED VIOLATION OF HIS RIGHT TO SPEEDY TRIAL.**

**A. As This Traffic Violation Case Is Civil In Nature, The Sixth Amendment Right To A Speedy Trial Is Inapplicable.**

In State v. Fitzgerald, 137 N.H. 23 (1993), this Court held that traffic violation cases that are subject to plea by mail procedures are “civil offenses.” Id. at 26. Thus, in Fitzgerald, this Court held that the constitutional protection against double jeopardy was not applicable. The defendant admits, as he must, that the traffic violation brought against him is civil, and that, therefore, the United States Constitution’s Sixth Amendment guarantee to the right to speedy trial is not applicable to this case. D.Br. at 19-21.

The defendant also correctly notes that this Court has interpreted the New Hampshire Constitution’s part I, article 14 guarantee of the right “to obtain right and justice . . . promptly and without delay” as being applicable to both civil and criminal cases. D.Br. at 20. However, the defendant erroneously claims that this Court has applied the familiar four-part speedy trial test of Barker v. Wingo, 407 U.S. 514 (1972), which is derived from the Sixth Amendment to the federal

constitution, to both civil and criminal cases “without distinction.” D.Br. at 20.

This is not so.

There are very few civil cases in which the part I, article 14 guarantee of “justice . . . without delay” has been discussed by this Court. In his brief, the defendant asserts that, in State v. Lake Winnepesaukee Resort, 159 N.H. 42 (2009), this Court “assumed the [Barker v. Wingo] speedy trial analysis was appropriate in a state environmental case seeking monetary penalties.” D.Br. at 20. This is incorrect. In Lake Winnepesaukee Resort, this Court held that that the defendant’s part I, article 14 speedy trial claim was outside the scope of the interlocutory issue raised. Id. at 49. The Court went on to say that “[e]ven assuming the instant action is criminal under the test enunciated in State v. Fitzgerald, 137 N.H. 23, 26, 622 A.2d 1245 (1993), and that this renders the speedy trial analysis appropriate, the speedy trial right would not attach until this action *commenced*.” Id.

Thus, what this Court actually said in Lake Winnepesaukee Resort was that, in a case such as this one, which clearly does *not* meet the definition of a “criminal action” as enunciated in Fitzgerald, the traditional speedy trial test applicable to criminal cases does not apply. Therefore, the question before the Court in this case with respect to the defendant’s speedy trial claim is what protection against delay part I, article 14 provides to a civil litigant.

First, as indicated in the above quote from Lake Winnepesaukee Resort, for purposes of a civil case, the right to speedy trial is measured from the commencement of the action in the district court, not, as argued by the defendant, from the date the summons was issued to him. 159 N.H. at 49. This makes sense as, in a civil traffic violation case such as this one, the defendant is not in the same situation as a defendant who has been arrested for or charged with a crime. This Court has explained the purpose of the speedy trial guarantee in criminal cases: “The guarantee of speedy trial serves to prevent undue and oppressive pretrial incarceration, to minimize the anxiety that attends public accusation, and to limit the risk that a long delay might impair the ability of the accused to defend himself.” State ex.rel. McLellan v. Cavanaugh, 127 N.H. 33, 37 (1985).

In this case, unlike a criminal case, there was no arrest, no incarceration, and no bail conditions were imposed upon the defendant. Nor is there any “public accusation.” Instead, the defendant is merely served with a summons and complaint and notified that he may pay the \$100 fine within thirty days at the DMV, or he may elect to plead not guilty and be given a trial date. Until the defendant elected to plead not guilty, there was no public proceeding lodged against him in which he was in an adversarial position with respect to the State. Cf. State v. Jeleniewski, 147 N.H. 462, 468 (2002) (for purposes of attachment of the Sixth Amendment right to counsel, formal adversary proceedings were not pending against the defendant until the complaint was filed in the district court).

Thus, for purposes of examining whether the defendant's right to "justice . . . without delay" was violated, the length of delay must be calculated from the time the complaint was filed in the district court. There is no record in this case of exactly when that was. As RSA 262:44 provides that the DMV should wait thirty days to give a defendant time to enter a plea; the summons in this case was issued to the defendant on December 20, 2008; and the record reflects that the defendant entered his not guilty plea sometime on or after January 16, 2009 (D.App. at 3); it may be assumed that the complaint could not have been filed with the Franklin District Court until sometime on or after January 20, 2009. The defendant's trial took place on July 14, 2009. The period of time between the commencement of the action against the defendant and his trial was less than six months. Therefore, to the extent that the time frames set forth in the superior court's speedy trial policy apply to this case, there is no presumption of prejudice here. Cf. State v. Allen, 150 N.H. 290, 294 (2003) (in misdemeanor criminal case pending in district court, Court applies superior court speedy trial policy to determine whether presumption of prejudice attached).

As applied to civil cases, this Court has described part I, article 14 of the New Hampshire Constitution as intended "to make civil remedies readily available, and to guard against arbitrary and discriminatory infringements on access to the courts." Sherryland, Inc. v. Snuffer, 150 N.H. 262, 267 (2003) (in landlord-tenant action, rejecting landlord's claim that fifteen month delay between

date of original hearing and date when hearing held violated part I, article 14); see also State v. Basinow, 117 N.H. 176, 177 (1977) (in rejecting part I, article 14 claim in parking violation case, stating that “the section is basically an equal protection clause in that it implies that all litigants similarly situated may appeal to the courts both for relief and for defense under like conditions and with like protection and without discrimination” (internal quotations omitted)); cf. Riendeau v. Municipal Court of Milford, 104 N.H. 33, 34-35 (1962) (in habitual offender proceeding where the defendant was found guilty and ordered to pay a fine, stating that “[a] disposition of a case made according to the prevailing proceedings of law free from arbitrary, vexatious, and oppressive delays is considered to be in accordance with . . . [the] constitutional requirement [of part I, article 14].”).

In this case, the trial court found that the “time frame between the issuance of the complaint and the trial is customary for a plea-by-mail violation level offense[,]” and that the delay in scheduling the defendant’s trial was “not inordinate.” D.App. at 11-12. This Court “will not disturb the findings of the trial court unless they lack evidentiary support or are erroneous as a matter of law.” Sherryland, Inc., 150 N.H. at 265. Thus, although the trial court apparently decided the defendant’s speedy trial motion by applying the Barker v. Wingo factors, see D.App. at 11 (reviewing the four factors without citation to the case), its holding essentially found that the delay in the defendant’s case was not “arbitrary,” “discriminatory,” or “oppressive.” See Sherryland, 150 N.H. at 266;

and Riendieu, 104 N.H. at 34. Thus, the trial court's denial of the defendant's motion for dismissal based on speedy trial grounds was "consonant with applicable law," Sherryland, 150 N.H. at 265, and should be upheld. "When a trial court reaches the correct result, but on mistaken grounds, this court will sustain the decision if there are valid alternative grounds to support it." Sherryland, 150 N.H. at 267; accord State v. Beede, 156 N.H. 102, 106 (2007).

**B. Even If The Barker v. Wingo Speedy Trial Analysis Applies To This Case, The Defendant's Motion To Dismiss Was Properly Denied.**

In Barker v. Wingo, 407 U.S. 514, 530 (1972), the Supreme Court adopted a four-factor "balancing test" to be applied to claims raising a denial of the Sixth Amendment right to a speedy trial. Those factors are "[l]ength of delay, the reason for the delay, the defendant's assertion of the right, and prejudice to the defendant." Id. The Court also stressed that "failure [of the defendant] to assert the right will make it difficult to prove that he was denied a speedy trial." Id. at 532. The Court also noted that, of the possible prejudice that can result to a defendant by a denial of speedy trial, the most serious is impairment of the defense. Id. This Court has applied the same four-factor analysis adopted in Barker v. Wingo to criminal cases wherein a denial of speedy trial pursuant to part I, article 14 is raised. State v. Colbath, 130 N.H. 316, 319 (1988).

As set forth above, the delay in this case was less than six months from the filing of the complaint in the district court. According to the findings of the trial court, this delay was attributable to the court's docket. D.App. at 12. Most importantly, the defendant did not assert his right to a speedy trial until he filed his motion to dismiss on the day of his trial. Id. Indeed, the trial court noted that, had he asserted the right earlier, the court "would have made an effort to accommodate him with an earlier trial date." Id.

The defendant argues that "he did what he could to move the case forward," and that, until he received the notice of his trial date he "could not know where to go to move it forward." D.Br. at 21-22. These claims are specious. The summons that was issued to the defendant on December 20, 2008, identified the Franklin District Court as the court with jurisdiction over this matter. D.App. at 1. RSA 262:44, II provides that, when a plea of not guilty is entered at the DMV, that agency is to forward the matter to the appropriate court, which "shall schedule a trial." It borders on the absurd for the defendant to claim, as he does in his brief, that the State "deprived [him] of awareness that the charge was proceeding to trial" by failing to meet the filing deadline in Rule 2.5A." D.Br. at 23.

Nor did the defendant do "what he could to move the case forward." D.Br. at 21. By his own admission he was notified of the July 14 trial date on May 9, 2009. Yet, he did not assert his right to speedy trial until over two months later, on the very day set for trial.

The defendant's claim of prejudice resulting from the alleged delay does not hold up to scrutiny. He argues that the delay in scheduling the trial "deprived [him] of an opportunity to obtain photographs showing the location of the alleged violation as it existed under winter conditions." D.Br. at 23. The defendant, however, was served with the summons on December 20, 2008. Presumably, he intended to plead not guilty from the outset. He at least knew he was going to contest the charge by January 16, 2009, when he tried to enter a plea at the court. Thus, he had ample opportunity to document the appearance of the intersection during winter months and simply failed to do so.

For these reasons, the defendant has failed to show that he was denied his right to a speedy trial even if the four-factor Barker v. Wingo test is applied to his case. The trial court's denial of his motion to dismiss on this ground must therefore be upheld.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Honorable Court affirm the judgment below.

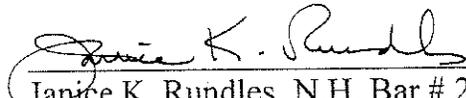
The State requests a 15-minute oral argument.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE

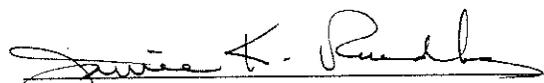
By its attorneys,

Michael A. Delaney  
Attorney General

  
Janice K. Rundles N.H. Bar # 2218  
Senior Assistant Attorney General  
Criminal Justice Bureau  
33 Capitol Street  
Concord, N.H. 03301-6397  
(603) 271-3671

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I hereby certify that two copies of the foregoing State's brief were mailed this day, postage prepaid, to William L. O'Brian, Esq., counsel of record.

  
Janice K. Rundles

