

February 12, 1980, but the county attorney presented no indictment for the grand jury's consideration. On February 15, the defendant filed a motion to dismiss for lack of speedy trial, which was heard on March 5. The State represented that it did not have the police file even though three months had elapsed since arrest and, further, that there was a delay because of the need to process some juveniles through court. At that hearing the Trial Court (Goode, J.) suggested that by waiving indictment the defendant could obtain a speedy trial. The court then denied the motion but gave no reasons.

On April 1, the grand jury sat again, and again the State presented no indictment. On May 15, the grand jury finally indicted the defendant for receiving stolen property. This occurred after the interlocutory appeal to this court had been filed.

First, we note that the defendant's right to waive grand jury indictment is his exclusive right and should not be recommended or insisted upon by either the court or the prosecutor. This court approves of no such recommendations.

Before a defendant can be tried for a felony, he must either be indicted or waive indictment. The State and Federal Constitutions guarantee a speedy trial but not a speedy indictment. U.S. CONST. Amend. V, XIV; N.H. CONST. pt. 1, art. 14; *United States v. Lovasco*, 431 U.S. 783 (1977). Of course, this defendant has been arrested, and the time clock for speedy trial runs from arrest rather than the later indictment. *Dillingham v. United States*, 423 U.S. 64 (1975); *State v. Collins*, 115 N.H. 499, 502, 345 A.2d 162, 165 (1975). In this case, the delay has not yet violated the right to speedy trial. See *State v. Fraser*, 120 N.H. 117, 411 A.2d 1125 (1980); *State v. Hudson*, 119 N.H. 963, 409 A.2d 1349 (1979).

We remind the State that it has a constitutional duty to make a diligent, good faith effort to bring a defendant to trial. *State v. Hudson*, *supra* at 966, 409 A.2d at 1351. Citizens cannot be arrested without probable cause; thus, if they are arrested there should usually be no reason to delay presentment of an indictment. See *Whiteley v. Warden*, 401 U.S. 560 (1971). If there is a shortage of prosecutors, then the answer is more prosecutors, not delayed presentments. See RSA 7:33-b, :33-c, :33-d (Supp. 1979).

We can see no reason why an indictment should not be brought within sixty days from the date of an arrest. If it is not, it will be the State's burden to demonstrate that the delay has not been

unreasonable. N.H. CONST. pt. 2, art. 73-A. Counties with infrequent grand jury sittings will have to make scheduling changes to provide county attorneys with the opportunity to make timely presentments.

Remanded for trial.

Hillsborough
No. 80-238

In re RAYMOND K.

June 18, 1980

Ahlgren & Smith, of Manchester (*Gregory J. Ahlgren* orally), for the plaintiff.

Gregory H. Smith, acting attorney general (*Betsy S. Westgate*, attorney, orally), for the State.

PER CURIAM. This interlocutory transfer raises the question whether the statutory "speedy trial" sections of RSA 169-B (Supp. 1979), applicable to district courts, shall likewise apply in cases of de novo appeals by juveniles to superior court. *See In re Russell C.*, 120 N.H. 260, 414 A.2d 934 (1980). We hold that they do not.

After delinquency proceedings in the Manchester District Court on two juvenile petitions, the juvenile was found delinquent and committed to the Youth Development Center for the term of his minority. Notices of appeal pursuant to RSA 169-B:29 (Supp. 1979) were filed in superior court on the respective juvenile petitions on February 12 and March 6, 1980. On April 22, 1980, the juvenile