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Defense lawyers protest lag in filing misdemeanor charges

By Raul Hernandez

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Four days before the one-year statute of limitations was going to run out, the Ventura County district attorney filed a misdemeanor charge of driving while intoxicated against Ashley Jennifer Newell of Huntington Beach.

She was surprised.

Almost nine months earlier, a judge had discharged her case because the district attorney had not charged her with a crime, even after Newell, 26, showed up at the Ventura courthouse three months in a row as she was told to do.

Far from being a unique case, however, defense attorneys, including Newell's lawyer Ronald Jackson, say

it is an example of how prosecutors are exercising their ability to file charges up to one year later in a disturbing number of misdemeanor cases in Ventura County.

"This is the only county that I know that has this problem, and I do these things all over the state," Jackson said.

The Ventura-based attorney said 20

of the 32 DUI cases he is working on in the county involve waits of several months or longer for prosecutors to file complaints.

Precise figures are unavailable on how many cases are delayed and for how long, but other defense attorneys confirm the long waits and call the situation unfair.

"To require people to wait three

months to 11 months to find out the answer to the basic question of whether the district attorney believes there is enough evidence to file a charge is grossly inefficient," Ventura defense attorney Brian Vogel said. "And it denies the defendant a speedy resolution of their misdemeanor matter."

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Top D.A. official cites several reasons for delays in filings

MISDEMEANORS

From A1

A top official in the District Attorney's Office said there are various reasons for delays, including police officers not submitting paperwork in a timely manner, increases in the workload and late laboratory DUI test results.

"We file thousands of cases. We are very busy filing and reviewing cases," Special Assistant District Attorney Michael Schwartz said.

He said the District Attorney's Office is understaffed and has requested additional clerks and lawyers from the Board of Supervisors to handle cases.

"We did receive a couple of positions in the last budget cycle," Schwartz said. "We are doing the best we can with the resources we have."

Schwartz said he "sympathizes" with defendants who have had to return to court to find out if complaints have been filed.

DUI results done in a few weeks

For its part, the sheriff's Forensics Sciences Laboratory says DUI test results are done as quickly as possible. DUI test results involving alcohol usually take two to three weeks to complete, and those involving drugs usually take two to four weeks, according to Renee Artman, forensics sciences laboratory manager.

"We are trying to turn them out as quickly as possible," Artman said. "I

think we are doing relatively good."

Vincent Tucci, president of the 300-member California DUI Lawyers Association, said he doesn't know whether there are delays in DUI filings by prosecutors in Ventura County, but he has defended DUI suspects in Los Angeles, Orange, Riverside and San Bernardino counties, where such charges typically are filed within two to four months.

Tucci said timely filing ensures that a defendant's memory is fresh and that crucial evidence such as witnesses and police-dispatch tape recordings are still available.

Some police departments destroy dispatch recordings after six months. Those tapes record when DUI stops were made and other crucial evidence involving DUI arrests, Tucci said.

Defense attorney Jay Leiderman, president of the Ventura County Criminal Defense Bar Association, said he has been in courthouses in at least 10 other counties and, for the most part, misdemeanors elsewhere are filed in a less time.

"No other county is this disorganized," Leiderman said. "In other counties, if they aren't going to charge you, they don't charge you. They don't play this game."

He attributed the situation in Ventura County to "just laziness and bad management" by the District Attorney's Office.

Jackson, the Ventura lawyer representing Newell, is immediate past president of the California DUI Law-

yers Association. He said other counties struggle with budget and manpower constraints and manage to file charges within a few weeks or months after an arrest.

He said people suffer "anxiety and anguish" if they have to wait nearly a year to find out if criminal charges are going to be filed.

Jackson and other defense attorneys say that when no criminal charges are filed quickly and a case is delayed, the accused person has to return to the courthouse — or pay his lawyer to do that — which runs up costs for travel, legal fees, time off from work and more. Until a criminal complaint is filed, a defendant can't enter a plea.

Motion to dismiss rejected

Jackson, so far, has been unsuccessful in getting judges to toss out some of the delayed convictions on constitutional grounds, based on the right to a speedy trial.

On May 8, he argued before Ventura County Superior Court Judge Rebecca Riley, who denied Jackson's legal motion to dismiss Newell's DUI charges.

Next, Jackson asked the county Superior Court's Appellate Division to revoke Riley's decision. On June 19, without a hearing or comment, the county's Appellate Division — Judge Barry Klopfer along with Judges Harry Walsh and Kent Kellegrew — denied it.

Jackson said state law doesn't allow

him to take this case to a higher appellate court.

In a similar case, Jackson filed a writ of mandate with the county's Appellate Division for another client, Christopher Reimers, who was arrested on suspicion of DUI on Jan. 19, 2007. Prosecutors filed the criminal complaint against Reimers more than eight months later, on Sept. 5.

Reimers pleaded guilty to DUI on Feb. 28, according to court records.

Jackson appealed the Reimers case based on his right to a speedy trial. That case is scheduled to be heard by the Appellate Division on Aug. 8.

To determine whether the Speedy Trial Act was violated, judges consider such things as reasons for the delays and whether those delays were prejudicial against the defendant, said Schwartz, the special assistant district attorney. "For example, have witnesses disappeared?" Schwartz said.

The judge can, in the interest of justice, dismiss the case if a violation has occurred, Schwartz said.

Leiderman said that never happens, adding that judges share the responsibility for the situation in the county by allowing prosecutors frequently to submit late criminal charges.

Presiding Superior Court Judge Colleen Toy White declined to comment for this report, citing judicial ethical concerns and pending litigation.

Leiderman noted that sometimes judges "discharge" defendants if

charges have not been filed. A defendant who is discharged may then incorrectly believe that he or she isn't going to be prosecuted, he said. But prosecutors still can file complaints before the one-year statute of limitations runs out.

Being discharged simply means that a person is no longer under the court's control or under a bail, Leiderman said. If a charge is filed by the district attorney, people are notified by mail, defense attorneys say. But in some cases, they've moved away, don't get the letters and are unaware that charges have been filed, Leiderman said.

Did not act in bad faith

In the Newell case, Jackson said his client was arrested on suspicion of driving while intoxicated Nov. 19, 2006.

She was issued a Notice to Appear on Dec. 20, Jan. 21 and Feb. 21, at which time she was "discharged" by a judge. The district attorney filed a criminal complaint Nov. 15, 2007.

Schwartz said that he understands how delays can burden defendants, but that misdemeanor charges are serious and are going to be filed once the evidence is gathered.

In a petition opposing the motion to dismiss, submitted to Riley in the Newell case, the district attorney said that prosecutors did not act in bad faith, and that the filing of a complaint within a year didn't constitute a trial delay.