IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

PEOPLE OF THE VIRGIN ISLANDS, Plaintiff, v. ANGEL ILARRAZA, Defendant.	)	CASE NO. SX-12-CR-0568

MEMORANDUM OPINION

MOLLOY, Judge.

THIS MATTER comes before the Court on a Motion to Dismiss Indictment for Speedy Trial Violation filed by Defendant, Angel Ilarraza ("Angel").[1] Angel requests that the Court dismiss the charges filed against him because of the People of the Virgin Islands' (the "People") delay in bringing this case to trial in violation of his right to a speedy trial under the Speedy Trial Act and the Sixth Amendment to the United States Constitution. The People oppose the motion. The Court held a hearing on November 19, 2013, and for the reasons stated below, the Court will deny the motion.

I. FACTUAL AND PROCEDURAL HISTORY

The facts relating to the charges filed in this case stem from an incident that occurred on or about November 15, 2012. The People allege that on that date, Angel discharged several shots in the air with an unlicensed firearm and stole a motor vehicle belonging to another individual. On November 28, 2012, the People filed a seven-count Information charging Angel with the following offenses: reckless endangerment in the first

[1] The Court will refer to Defendant Angel Ilarraza by his first name to avoid any confusion with his cousin and former co-defendant, Antonio Ilarraza.

degree, in violation of 14 V.I.C. § 625(a); carrying or using a dangerous weapon during the commission of a crime of violence, in violation of 14 V.I.C. § 2251(a)(2)(B); unauthorized possession of a firearm during the commission of a crime of violence, in violation of 14 V.I.C. § 2253(a); possession of ammunition, in violation of 14 V.I.C. § 2256(a); failure to report firearms obtained outside or brought into the Virgin Islands, in violation of 23 V.I.C. § 470(a); unauthorized use of a motor vehicle, in violation of 14 V.I.C. § 1382; and grand larceny, in violation of 14 V.I.C. § 1083(1). Angel was subsequently arrested pursuant to an arrest warrant on November 30, 2012.

On December 3, 2012, Angel was brought before a magistrate and advised of his rights. At the advice of rights hearing, the magistrate conditioned Angel's release upon a posting of a cash bail bond in the amount of $500,000. Being unable to post bail, Angel was detained pending trial. Angel was also arraigned on December 3, 2012, at which time Angel, through the Office of the Public Defender, pled not guilty to the charges listed in the Information and asserted his right to a speedy trial. The magistrate set this matter for jury selection and trial for April 1, 2013.

On December 18, 2012, the trial judge assigned to this case issued an Order scheduling Angel's case for jury selection and trial during the trial period of April 2, 2013 to April 26, 2013.

On March 6, 2013, the Office of the Public Defender filed a motion to withdraw as counsel due to a conflict of interest because the Office of the Public Defender was appointed to represent Angel's cousin, Antonio Ilarraza ("Antonio"), in Case No. SX-12-CR-569.

Several days later, on March 13, 2013, the People filed a motion requesting that Angel's case (SX-12-CR-568) be consolidated with Antonio's case (SX-12-CR-569) pursuant to Rule 13 of the Federal Rules of Criminal Procedure. Neither Angel nor Antonio opposed the People's motion to consolidate.

On April 8, 2013, the Court issued an Order rescheduling jury selection and trial in both cases for the trial period of June 24, 2013 to July 19, 2013.

On April 29, 2013, the Office of the Public Defender and Attorney Eszart Wynter filed a Stipulation for Substitution of Counsel stipulating that Attorney Wynter would serve as the attorney of record for Angel throughout the remainder the case. The Court issued an Order approving of the stipulation on May 17, 2013.

On June 10, 2013, the Court held a calendar call in both cases. At the calendar call, the Court orally granted the People's motion to consolidate the two cases.[2] Shortly thereafter, on June 19, 2013, the Court issued an Order scheduling jury selection and trial in both cases for June 24, 2013. However, on June 21, 2013, the Court issued an order continuing the trial previously scheduled for June 19, 2013, in order to avoid any prejudice associated with Antonio being tried in an unrelated matter involving the same jury pool.

On July 9, 2013, Angel filed a motion to dismiss the indictment alleging that his right to a speedy trial has been violated. The People filed an opposition on September 30, 2013. The Court held a hearing on Angel's motion to dismiss on November 19, 2013. This case is currently scheduled for jury selection and trial on December 9, 2013.

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[2] The trial judge originally assigned to these cases orally granted the People's motion to consolidate on June 12, 2013. However, this Order was not reduced to writing. On September 30, 2013, the People filed a "Motion to Withdraw Motion to Consolidate, or for Order to Bifurcate." The Court granted the People's motion on November 25, 2013, and severed the cases.

II. DISCUSSION

In his motion to dismiss, Angel argues that the Information filed against him should be dismissed for two reasons: (1) the People violated his right to a speedy trial under the Speedy Trial Act; and (2) the People violated his right to a speedy trial under the Sixth Amendment. The Court will address each of these arguments below.

A. The Speedy Trial Act Does Not Apply to Criminal Offenses Established by the Legislature of the Virgin Islands Prosecuted in the Superior Court

First, Angel contends that the Court should dismiss the charges against him due to the People's repeated violations of his right to a speedy trial under the Speedy Trial Act. The Speedy Trial Act, codified at 18 U.S.C. § 3161, *et seq.*, is a federal statute and does not apply to the prosecution in the Superior Court of criminal offenses established by the Legislature of the Virgin Islands. *Gov't of the Virgin Islands v. Bryan*, 818 F.2d 1069, 1072 (3d Cir. 1987) (opining that "territorial crimes established by the Legislature of the Virgin Islands are not criminal offenses in violation of an Act of Congress and are not 'offenses' within the meaning of the Speedy Trial Act"). The People charged Angel with committing seven criminal offenses established by the Legislature of the Virgin Islands. Because the Speedy Trial Act does not apply to territorial offenses, Angel's claim alleging a violation of the Speedy Trial Act will be denied.

B. The People Did Not Violate Angel's Sixth Amendment Right to a Speedy Trial

The Sixth Amendment to the U.S. Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. A defendant's Sixth Amendment right to a speedy trial is applicable to the

Virgin Islands through Section 3 of the Revised Organic Act. *Carty v. People of the Virgin Islands*, 56 V.I. 345, 364 (2012). When a defendant asserts a violation of his or her right to a speedy trial, the Court must apply the four-part balancing test set forth in *Barker v. Wingo*, 407 U.S. 514 (1972), which requires an analysis of the following: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of the right; and (4) prejudice to the defendant. *Barker*, 407 U.S. at 530. "None of these factors is 'either a necessary or sufficient condition,' and the factors 'must be considered together with such other circumstances as may be relevant." *United States v. Battis*, 589 F.3d 673, 678 (3d Cir. 2009) (quoting *Barker*, 407 U.S. at 533); *see also Carty*, 56 V.I. at 364 ("In weighing these factors, we must evaluate and scrutinize the conduct and actions of the trial court, [the defendant], and the People and the role each played in causing the delay before trial.").

1. Length of the Delay

The first *Barker* factor—length of the delay—"defines a threshold in the inquiry: there must be a delay long enough to be 'presumptively prejudicial.'" *United States v. Loud Hawk*, 474 U.S. 302 (1986) (quoting *Barker*, 407 U.S. at 530). Generally, "delay is measured from the date of arrest or indictment, whichever is earlier, until the start of trial." *Battis*, 589 F.3d at 678. Because "[t]he length of the delay . . . is a triggering mechanism", there must be some delay that is "presumptively prejudicial" that would necessitate an inquiry in the three remaining factors. *Barker*, 407 U.S. at 530-31. "If the delay is relatively brief, then it is not necessary to consider the other *Barker* factors." *Battis*, 589 F.3d at 678. Conversely, "[i]f the delay is sufficiently long, courts assess the extent to which the delay was long enough to "intensify' the prejudice caused by the delay." *Id.* In *Doggett*, the United

States Supreme Court recognized that "lower courts have generally found post-accusation delay 'presumptively prejudicial' at least as it approached one year." *Doggett v. United States*, 505 U.S. 647, 652 n. 1 (1992); *Carty*, 56 V.I. at. 365 (recognizing that "other circuits have held that a delay that exceeds one year has even been presumed to be sufficiently prejudicial to require evaluation of the three remaining factors"); *People of the Virgin Islands v. Rivera*, 54 V.I. 116, 126 (Super. Ct. 2010) ("Courts generally will consider a delay approximating one year to be presumptively prejudicial, thus warranting an examination of the other *Barker* factors."). In addition, the Third Circuit Court of Appeals has found that post-accusation delay that also involves pretrial incarceration of at least seven months is sufficient to trigger an analysis into the remaining *Barker* factors. *See Wells v. Petsock*, 941 F.2d 253, 258 (3d Cir. 1991) (opining that seven-month pretrial incarceration is long enough to require plenary inquiry into remaining *Barker* factors).

In this case, Angel was arrested on November 30, 2012, and has been detained since his arrest. The trial in this case is scheduled for December 9, 2013. As of the issuance of this Memorandum Opinion, this case has been pending for approximately 370 days. Thus, because the delay exceeds one year, coupled with the fact that Angel has been incarcerated for 370 days, the Court finds that the delay is sufficient to trigger an analysis of the three remaining *Barker* factors.

2. Reason for the Delay

The second *Barker* factor, the reason for the delay, is to be given different weight based upon the nature of the reason. *United States v. Mensah-Yawson*, 489 Fed.Appx. 606, 611 (3d Cir. 2012). "A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government." *Barker*, 407 U.S. at 531. However, "[a] more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." *Id.* Nonetheless, in the absence of any strong showing of bad faith or dilatory purpose by the prosecution, delays caused by the court are not heavily weighed against the government. *Gov't of the Virgin Islands v. Pemberton*, 813 F.2d 626, 628 (3d Cir. 1987). On the other hand, "[w]hen the reason for the delay originates with the defendant or his counsel, such delay will not be considered for purposes of determining whether the defendant's right to a speedy trial has been infringed." *Petsock*, 941 F.2d at 258 (citations omitted); *see also Coleman v. Thompson*, 501 U.S. 722, 753 (1991) ("Delay caused by the defendant's counsel is also charged against the defendant."). The government bears the burden to justify the delay. *Hakeem v. Beyer*, 990 F.2d 750, 770 (3d Cir. 1993).

The Court finds that this case was delayed for reasons not directly attributable to the People. First, the Court continued the original trial date of June 24, 2013, in order to avoid any prejudice associated with Angel's co-defendant being involved in two different trials with the same jury pool. *See* Order dated June 21, 2013 at 3 ("In order to ensure a fair trial for Antonio Ilarraza, trial in this matter should not be held until a new jury panel begins their service, especially considering how close in time Antonio Ilarraza's recent trial is to the trial date in this case."). Second, this case was delayed due to the retirement of the trial judge originally assigned to the case and the reassignment of the case to the undersigned.[3] Although these delays were caused by the Court, and therefore attributed to the government, the Court finds that these delays should be considered as neutral reasons not weighed heavily against the government. *See Rivera*, 54 V.I. at 129 (opining that delays caused by the trial court due to the reassignment of trial judge should not be weighed heavily against the prosecution). The Court also finds that the record is void of any evidence that the People deliberately attempted to delay this case or otherwise impeded, obstructed, or hampered the defense in preparing his case. There is no indication that the People were not ready to proceed to trial on any of the days scheduled by the Court. Accordingly, this factor weighs against Angel's claim of a violation of his right to a speedy trial.

3. Defendant's Assertion of His Right to a Speedy Trial

The third factor considers the defendant's responsibility to assert his right to a speedy trial. "The defendant's assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Id.* at 531-32. Angel first asserted his right to a speedy trial at his arraignment held on December 3, 2012. Angel also filed the motion to dismiss asserting his constitutional right to a speedy trial on July 9, 2013, approximately nine months after his arrest. Accordingly, the Court finds that this factor weighs in his favor.

4. Prejudice to the Defendant

The fourth factor is prejudice to the defendant. This factor requires the Court to assess the interests of defendants that the speedy trial right was designed to protect which

[3] The trial judge originally assigned to this case retired sometime in September 2013. This case was reassigned to the undersigned on October 21, 2013.

are: (1) to prevent oppressive pretrial incarceration; (2) to minimize anxiety and concern of the accused; and (3) to limit the possibility that the defense will be impaired. *Barker*, 407 U.S. at 532. "Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the interests of the entire system." *Id.* Furthermore, a defendant can claim prejudice without providing "affirmative proof of particularized prejudice" if the delay is excessive. *Doggett*, 505 U.S. at 655. "The burden of showing prejudice lies with the individual claiming the violation." *Hakeem*, 990 F.2d at 760.

a. Oppressive Pretrial Incarceration

The restraint on liberty as a result of pretrial incarceration is severe. *Petsock*, 941 F.2d at 257. Prejudice resulting from long delays before trial is considerably greater if the defendant is incarcerated. *Id.* However, "[a]ll pretrial detention is not equally oppressive or precisely definable." *Id.* The oppressiveness of the pretrial conditions must worsen to a point where the physical or mental integrity of the accused is placed in jeopardy. *Id.* Although Angel has been incarcerated for approximately twelve months, he has failed to demonstrate that his incarceration was severe enough to be considered oppressive.

b. Anxiety and Concern of the Accused

Courts recognize that "[a] certain amount of anxiety and other forms of personal prejudice to the accused is inevitable in a criminal case." *United States v. Dreyer*, 533 F.2d 112, 116 (3d Cir. 1076). However, when evaluating defendant's claim of a violation of his right to a speedy trial, anxiety must extend to a level "beyond that which 'is inevitable in a criminal case.'" *Hakeem*, 990 F.2d at 762 (citing *Dreyer*, 533 F.2d at 116). "In order to reach that level, the petitioner must produce evidence of psychic injury." *Hakeem*, 990 F.2d at 762. Psychic injury can be demonstrated by showing "some objective manifestation of distress". *Burkett v. Fulcomer*, 951 F.2d 1431, 1443-44 (3d Cir. 1991). "Vague allegations of anxiety are insufficient to state a cognizable claim." *Hakeem*, 990 F.2d at 762.

In *Burkett*, the Third Circuit found the defendant suffered anxiety beyond that which is inevitable in a criminal case. Burkett, 951 F.2d at 1444. The court found that the delay in the criminal case caused the defendant to suffer lack of sleep, loss of appetite, loss of companionship and emotional distress. *Id.* Although the Third Circuit ultimately denied the defendant's claim of a violation of his right to a speedy trial, the court found that the defendant was able to show anxiety that resulted in objective manifestations of distress that weighed in favor of his violation of the right to a speedy trial claim.

Here, Angel has not argued, nor has he provided any evidence, that he has suffered any psychological injuries or any other objective manifestations of distress as a result of this criminal prosecution. Instead, Angel argues that he was stabbed multiple times on or about May 24, 2013, while he was incarcerated. The Court finds this evidence insufficient to establish that he suffered any prejudice as a result of the delay in this case. First, the stabbing incident occurred in May 2013, approximately six months after his arrest. Angel has not made any arguments that this case should have proceeded to trial prior to the date of the stabbing incident. Second, Angel fails to establish that the stabbing incident was related to any delays associated with this case. Nonetheless, even if the stabbing incident contributed to the anxiety of incarceration, Angel has not demonstrated that he suffered psychological injuries due to this anxiety. *See Pemberton*, 813 F.2d at 629-30 (denying claim of violation of right to a speedy trial where defendant, *inter alia*, failed to produce evidence of a specific psychological disorder resulting from the anxiety of incarceration). Thus, the Court finds that Angel has not suffered anxiety that extends "beyond that which is inevitable in a criminal case."

c. ***The Possibility that the Defense Will be Impaired***

The "impairment of one's defense is the most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory evidence and testimony 'can rarely be shown.'" *Doggett*, 505 U.S. at 655 (citing *Barker*, 407 U.S. at 532). Prejudice may be evident if witnesses are unable to recall accurately events of the distant past. *Barker*, 407 U.S. at 532 ("Loss of memory, however, is not always reflected in the record because what has been forgotten can rarely be shown"). Courts, however, recognize that "delay is a two-edged sword. It is the government that bears the burden of proving its case beyond a reasonable doubt. The passage of time may make it difficult or impractical for the government to carry its burden." *Loud Hawk*, 407 U.S. at 315. The Supreme Court, however, has stressed that "if witnesses die or disappear during a delay, the prejudice is obvious." *Barker*, 407 U.S. at 532.

Angel has not argued, nor has he suggested, that his defense has been prejudiced in any way. There is no evidence any of his potential witnesses died, suffered memory loss, or are otherwise unavailable to testify. Contrarily, Angel has strenuously argued, on many occasions, that the People should dismiss this case based on the sworn statements made by material witnesses. *See e.g.*, Def.'s Motion to Dismiss dated May 29, 2013. Accordingly, the Court finds that Angel has failed to demonstrate that the delay in this case impaired his ability to defend himself in this criminal proceeding. *See Government of the Virgin Islands v.*

Burmingham, 788 F.2d 933, 937 (3d Cir. 1986) (finding little likelihood of prejudice to defendant's defense where "witnesses had good reason to remember the events in question").

As mentioned above, a defendant can also demonstrate prejudice without the need to show affirmative proof of prejudice if the delay is excessive. In *Hakeem*, the Third Circuit opined that a delay of "fourteen and one-half months . . . is insufficient to allow an inference of prejudice solely from the length of the delay." *Hakeem*, 990 F.2d at 764. The delay in this case is approximately twelve months. Therefore, the Court will not infer prejudice solely from the length of the delay. As a result, the Court finds that this factor weighs against Angel's claim of a violation of is right to a speedy trial.

III. CONCLUSION

After a consideration of the *Barker* factors, the Court concludes that the People have not violated Angel's Sixth Amendment right to a speedy trial. The Court also concludes that the federal Speedy Trial Act is not applicable to criminal proceedings pending in the Superior Court. Accordingly, Angel's Motion to Dismiss Indictment for Speedy Trial violation is denied.

Dated: December 5, 2013

ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

By: ____________
Court Clerk Supervisor

Dated: 12/5/13

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

PEOPLE OF THE VIRGIN ISLANDS, Plaintiff, v. ANGEL ILARRAZA, Defendant.	)	CASE NO. SX-12-CR-0568

ORDER

THIS MATTER comes before the Court on a Motion to Dismiss Indictment for Speedy Trial Violation filed by Defendant Angel Ilarraza. For the reasons stated in the accompanying Memorandum Opinion of even date, it is hereby

ORDERED that Defendant Angel Ilarraza's Motion to Dismiss Indictment for Speedy Trial Violation is **DENIED.**

Dated: December 5, 2013

ROBERT A. MOLLOY
Judge of the Superior Court

ATTEST:

VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

By: ______________
Court Clerk Supervisor

Dated: 12/5/13