

PEOPLE OF THE VIRGIN ISLANDS,) CRIMINAL NO. ST-10-CR-704
)
Plaintiff,)
)
v.)
)
ELWOOD JAMES,)
)
Defendant.)

Defendant Elwood James has filed a Motion to Dismiss with Prejudice, asking this Court to dismiss the Information against him for violation of his Sixth Amendment Right to Speedy Trial.¹ After weighing and evaluating the factors set out in *Barker v. Wingo*², this Court finds that the Defendant's right to a speedy trial has not been violated and thus, the Court will deny the Motion to Dismiss. .

On December 15, 1993 in Paul M. Pearsons Housing Community, St. Thomas, U.S. Virgin Islands, Alex Parson died from gunshot wounds. A witness saw Parson going to his vehicle after leaving Building 12 of PMP. The same witness saw James in the area of the shooting putting on a black cap and walking around the building where Alex Parson was located. The witness then heard Parson say "Elwood, stop playing with me man. What's wrong with you?" The witness then called the police, and after doing this, the witness heard several gunshots and went in the direction of the sound to find out what happened. When the witness arrived, he/she saw that Parson had been shot and was on the ground.

Another witness ("Witness 2") saw the first witness looking out the window, and saw Witness 1 call the police. Witness 2 then heard Parson say loudly, "stop playing with me, the man," and he then heard several gunshots.

A third witness ("Witness 3") stated that he saw Parson at the hospital, and that Parson stated that the person who shot him took his watch. Parson also told him that the person who shot him had a low haircut. Parson died on December 15, 1993 as a result of massive hemorrhaging due to the gunshot wounds he sustained.

¹ Defendant Elwood James is represented by Leonard Bernard Francis, Esq. The People of the Virgin Islands are represented by William Kelly Evans, Esq., Assistant Attorney General.

² 407 U.S. 514 (1972).

In addition, there is evidence of bad blood between Parson and James. One month before the shooting, James had smashed Parson's car window. Also, Parson had a romantic relationship with James's former girlfriend. Further, there is evidence that James left the island after Parson was killed and that he was extradited back to the Territory in December 2010.

On December 22, 2010, the People of the Virgin Islands filed an Information against James and he was arraigned on January 21, 2011. At arraignment, James pled not guilty and demanded a speedy trial by jury.

The Court, by Order dated May 2, 2011, scheduled a pretrial conference for June 15, 2011, and jury selection for July 8, 2011. By Order dated June 30, 2011 *nunc pro tunc* to June 15, 2011, the Court continued the date for jury selection to September 2, 2011 after the prosecutor informed the Court that she was related to the Defendant and that the new prosecutor needed additional time to prepare for trial.

On August 31, 2011, the People moved to continue jury selection, contending that they had newly discovered evidence of a new witness and possible accomplice, Clifton Fahie. The People further stated that the case, *Crawford v. Washington*,³ was causing evidentiary problems that they needed to evaluate. The Court, therefore, in an Order dated September 1, 2011, continued the September 2, 2011 jury selection date to October 28, 2011.

On October 27, 2011, the People again moved to continue the October 28, 2011 jury selection date. In their Motion, they contended that they could not proceed to trial because Fahie had not yet been arrested. The People also stated that Dr. James Glenn, the former medical examiner who had actually performed the autopsy on Parson, was hospitalized in Florida, and would not be able to attend trial. The Court granted the People's Motion and continued the trial date to January 9, 2012.

On January 5, 2012, the People moved to dismiss the Information without prejudice because of the unavailability of Dr. Glenn. The Court reserved ruling on the People's Motion to Dismiss and continued jury selection without a date.

The Court also held a hearing on the People's Motion to Dismiss on February 3, 2012. After the hearing, on February 10, 2012, the Court granted the People's oral motion to withdraw the Motion to Dismiss and oral motion for further continuance. The Court also scheduled this matter for a final pretrial conference on April 20, 2012 and trial for May 7, 2012.

The Court, on May 4, 2012, continued the May 7, 2012 trial date to July 30, 2012. In addition, in its May 4, 2012 Order, the Court advised the parties that the case would proceed to trial on July 30, 2012, failing which it would be dismissed with prejudice.

³ 541 U.S. 36 (2004).

DISCUSSION

I. AFTER WEIGHING THE FACTORS SET OUT IN *BARKER V. WINGO* TO DETERMINE WHETHER THE DEFENDANT'S RIGHT TO A SPEEDY TRIAL HAS BEEN VIOLATED, THIS COURT FINDS THAT THE DEFENDANT'S RIGHT TO SPEEDY TRIAL HAS NOT BEEN VIOLATED.

A defendant's right to a speedy trial in a criminal case is guaranteed by the Sixth Amendment to the United States Constitution and the Revised Organic Act of the Virgin Islands.⁴ In *Barker v. Wingo*,⁵ the United States Supreme Court set out four factors in determining whether a defendant's right to a speedy trial has been violated. These factors which must be balanced by the Court are: 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.⁶ "None of these four factors are either necessary or sufficient, individually, to support a finding that a defendant's speedy trial right has been violated."⁷ This Court will weigh these factors with a "full recognition [of] [] the [] [Defendant's] interest in a speedy trial, [] specifically affirmed in the Constitution."⁸

i. LENGTH OF THE DELAY

A delay of one year or more is considered to be presumptively prejudicial.⁹ James was arrested on January 13, 2011. At the present time, the case is scheduled for trial for July 30, 2012, a period of time which is approximately one year and one half after James's arrest. The Court opines that the length of the delay from the arrest to trial is a considerable period of time, and because it is in excess of one year, the Court considers it to be excessive. The Court, therefore, reasons that this factor supports the Defendant's Motion to Dismiss and dictates that this Court should consider the other three factors.

⁴ Revised Organic Act of the Virgin Islands 1954, as amended, § 3, 48 U.S.C. § 1561, reprinted in V.I. CODE ANN., Historical Documents, Organic Acts, and U.S. Constitution at 861(1995) (preceding V.I. CODE ANN. tit. 1 (1995)); see also *In Re Moses*, D.C. Civ. App. No. 2006/068, 2006 WL 2572090 at *4 (D.V.I App. Div. Aug. 29, 2006) ("The Sixth Amendment right to a speedy trial applies in the Virgin Islands per section 3 of the Revised Organic Act.").

⁵ *Barker v. Wingo*, 407 U.S. 514.

⁶ *Id.* at 530.

⁷ *Id.* at 533.

⁸ *Id.*

⁹ *Gov't v. Richardson*, D.C. Crim. App. No. 2002-172, 2009 WL 102734, at *4 (D.V.I. App. Div. Jan. 13, 2009) (citing *Doggett v. United States*, 505 U.S. 647, 652 n. 1 (1992)).

ii. REASON FOR THE DELAY

Since there have been several delays in this matter, the Court must weigh this factor. Thus, the Court will consider the reasons for each delay to determine whether the delay should weigh against the People, and what weight should be given to the delays.

The initial delay in this case was because the assigned prosecutor was related to the Defendant and for that reason, another prosecutor had to be assigned to the case. Although this delay can be attributed to the prosecution, it cannot weigh heavily against the Government since it was not for the purpose of gaining an advantage over the Defendant, but because of legitimate ethical concerns.¹⁰ Also, it would be permissible for the Court to allow the succeeding attorney a reasonable period of time to prepare.

In their first written Motion to Continue, filed on August 30, 2011, the People pointed out that the fact that this case dates back to 1993, and because it was such an old case, it would cause evidentiary problems that had to be examined. Further, the People stated that they had new evidence concerning a witness, who could be an accomplice and they needed additional time to review the evidence against James to determine whether the charges needed to be “amended, revised or redrafted in terms of aiding and abetting.”

This factor would weigh against the People. The Court must weight this request for delay more heavily against the People since problems relating to the age of the case should have been anticipated at the outset of the case and in general preparation, and should not have occasioned a delay in proceeding to trial. However, the other asserted reason for the delay, the newly discovered witness, should be more neutral, since the People could not have anticipated the newly discovered witness, and would be entitled to a short delay to determine whether they needed to amend the Information.

The last three delays requested by the People have been occasioned solely by the unavailability of a necessary Government witness, Dr. Glenn, the forensic pathologist who conducted the autopsy in this case. On three occasions, October 28, 2012, January 9, 2012 and May 7, 2012, the People have requested continuances of the trial date based upon Dr. Glenn’s unavailability. Although delays caused by scheduling problems are attributable to the prosecution, such delays weigh very lightly against the Government. Indeed, *Barker* holds that delays caused by witness unavailability may be considered appropriate.¹¹

¹⁰ *Barker*, 407 U.S. at 531 (Delays caused by overcrowding of courts should not weigh as heavily against the defendant as a deliberate delay, but such neutral delays do count against the Government, since the ultimate responsibility for such circumstances lies with the Government.); *People of the Virgin Islands v. Rivera*, No. ST-09-CR-F53, 2010 WL 4723455, at *7 (V.I. Super. Ct. Nov. 17, 2010) (time to decide motions by the Court cannot be weighed heavily against the People under the Sixth Amendment speedy trial analysis.)

¹¹ *Barker*, 407 U.S. at 531 (“[A] valid reason, such as a missing witness, should serve to justify appropriate delay.”).

iii. ASSERTION OF THE RIGHT

Turning to the assertion of the right to a speedy trial, the Court agrees that James asserted his right to a speedy trial at arraignment. However, the formal assertion of the right to a speedy trial did not occur again until February 17, 2012 when James moved to dismiss on speedy trial grounds. At the same time, though, the Court does not believe that the Defendant requested a single continuance during the one year and six months leading up to the trial of this matter. The Court will, therefore, count this factor against the People.

IV. PREJUDICE TO THE DEFENDANT

Finally, the Court has to weigh the fourth *Barker* factor relating to prejudice. Although there is a general prejudice to James caused by the delay, the lapse of time prejudices the Government as much as or more than the resulting prejudice to James. Indeed, since the People have the burden to prove guilt beyond a reasonable doubt, and that burden remains on the People, this type of prolonged delay can only aid James.

A trial court, when weighing this factor, focuses on: 1. the prevention of oppressive pretrial incarceration; 2. minimizing the defendant's angst; and 3. limiting the likelihood that the accused's ability to defend himself will be weakened.¹²

This Court notes that when it became evident that the People were not going to proceed to trial as promptly as possible, the Court held a bail hearing on November 10, 2011. Thereafter, James was released on bail by Order dated November 14, 2011. Also, on March 27, 2012, the Court further modified James's bail conditions to allow him to assist with the payment of the cost of electronic monitoring.

The Court cannot ignore the fact that much of the problem that the People have had in proceeding to trial has been caused by the fact that this is an old case." James bears some responsibility, since he left the Virgin Islands in 1993 and did not return for seventeen years when crucial witnesses would have faded memories, or would have been ill or even dead. In the case of Dr. Glenn, he has been too ill to appear in court, and this is a direct result of the passage of time brought about by James's absence.

James also does not point to any specific prejudice nor assert any type of undue anxiety in the Motion to Dismiss. This Court, thus, finds that James has not been prejudiced by the delay and this factor does not support his Motion to Dismiss. The Court also finds that the prejudice factor is neutral and does not weigh against the People, since the People have been prejudiced in their ability to present the case, because of James's absence from the jurisdiction.

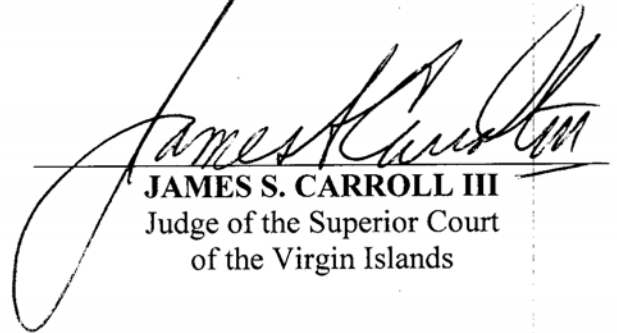
¹² *United States v. Colon*, Crim. Action No. 2006-12, 2008 WL 1777385, at *8 (D.V.I. Apr. 16, 2008).

The Court acknowledges that this matter has been delayed for one year and six months and this weighs against the Government and that James has not caused any of the delays since the date of his arrest. However, after weighing the other *Barker* factors, the Court concludes that the Government did not purposefully cause the delay and the reasons for delay are legitimate, James has not been prejudiced by the delay, and James is partially responsible for the delay because of his long absence from the jurisdiction. Accordingly, the Court concludes that the Defendant's speedy trial rights have not been violated.

CONCLUSION

After reviewing the factors pursuant to *Barker v. Wingo*, the Court concludes that the Defendant's right to a speedy trial under the Sixth Amendment and the Revised Organic Act has not been violated. Accordingly, the Defendant's Motion to Dismiss will be denied.

DATED: July 27, 2012


JAMES S. CARROLL III
Judge of the Superior Court
of the Virgin Islands

ATTEST:

VENETIA H. VELAZQUEZ, ESQUIRE
Clerk of the Court

BY:


LORI BOYNES-TYSON

Court Clerk Supervisor 7/30/12