

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

PEOPLE OF THE VIRGIN ISLANDS,	)	
	)	
Plaintiffs,	)	CASE NO. ST-13-CR-120
	)	
vs.	)	
	)	
NAHEEM WALTERS,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Naheem Walters's Motion to Dismiss for Lack of Speedy Trial (filed June 20, 2016). The People opposed the motion (filed September 6, 2016), and the matter came on for hearing on October 4, 2016. By Order dated October 6, 2016, the motion was denied. This memorandum opinion offers the reasons for the denial.

I. Statement of Relevant Facts and Procedural Posture

On March 5, 2013, Defendant Walters was arrested and ultimately charged with Third Degree Assault, Using a Dangerous Weapon during a Crime Of Violence, and Disturbance of the Peace. He was advised of his rights on March 6, 2013, the Office of the Public Defender was appointed to represent him, and he was released on bail that same day. At arraignment on March 21, 2013, Defendant Walters pled not guilty and requested a speedy jury trial. In a May 23, 2013 pretrial conference, the

Court ordered the People to turn over all discovery by June 10, 2013, and offer a plea by June 14, 2013.

The matter lay dormant for sixteen months until September 25, 2014, when Defendant Walters motioned for a trial or dismissal for failure to prosecute. The matter was then scheduled for status and scheduling conference on January 27, 2015 where certain deadlines were set. Then by order entered on March 5, 2015, the matter was scheduled for jury selection on May 4, 2015.

On April 22, 2015, the People moved for continuance of the May 4, 2015 jury selection because the victim was going to be off-island visiting a sick brother from May 3 to May 14, 2015.¹ The following day, April 23, 2015, defendant filed a Motion To Dismiss With Prejudice For Failure To Provide Discovery.² The Court granted the motion to continue and scheduled a hearing for May 27, 2015 on defendant's motion to dismiss. Defendant then asked for that hearing to be continued and it was continued to June 5, 2015. Pursuant to orders entered on July 7, 2015, defendant's motion to dismiss was denied and the matter was scheduled for jury selection on October 19, 2015. On October 13, 2015, defendant filed an emergency motion to continue the October 19 trial date as the public defender previously assigned to the matter left the office and new counsel had joined the public defender's office and needed an opportunity to prepare for trial. The Court granted the motion and

¹ Defendant filed an opposition to the motion to continue on April 28, 2015.

² In the interim, on March 18, 2015, defense counsel has also filed a Motion To Be Relieved As Court Appointed Counsel. However, that motion was denied on the record during a pretrial conference on April 14, 2015.

scheduled jury selection for January 11, 2016.³ During the pretrial conference on December 22, 2015, for reasons not explained in the written record, the Court continued the January 2016 trial date without date. On February 11, 2016, defendant filed a motion for a trial date. Then on March 8, 2016, defendant's counsel filed an emergency motion to withdraw as court appointed counsel. A hearing on the motion to withdraw was held on April 25, 2016, the motion was granted and new counsel appointed by orders dated May 4, 2016.⁴

On June 20, 2016, Defendant again filed a motion to dismiss for lack of speedy trial, which is the motion now before the court. The court scheduled a status conference for July 29, 2016. However, defendant objected to Judge Carroll presiding over the matter, and Judge Carroll disqualified himself from the matter.⁵

It was then reassigned, on July 30, 2016, to the undersigned judicial officer. The matter was then scheduled for status conference on August 25, 2016, pretrial conference on September 20, 2016 and jury selection on October 11, 2016.⁶

³ Order dated October 14, 2015.

⁴ The Office of the Public Defender was allowed to withdraw and Alex Golubitsky, Esq. was appointed to represent defendant.

⁵ In the interim there was a change in judicial officers. Judge Adam Christian, to whom this matter had been assigned since the date of arraignment, left the bench on or about May 24, 2016, and the case was re-assigned to Honorable James S. Carroll, Senior Sitting Judge.

⁶ Order dated August 22, 2016.

II. Discussion

“A criminal defendant is guaranteed a speedy trial under the Sixth Amendment of the United States Constitution, which is applicable in the Virgin Islands pursuant to the Revised Organic Act of 1954.” *Francis v. Virgin Islands*, 63 V.I. 724, 744 (VI. 2015). In *Barker v. Wingo*, 407 U.S. 514, 530 (1972), the Supreme Court created the four-factor balancing test that determines if there has been a violation of the Sixth Amendment right to a speedy trial. The four factors are “(1) the length of delay; (2) the reason for the delay; (3) the defendant's assertion of his rights; and (4) and prejudice to the defendant.” *Carty v. People*, 56 V.I. 345, 364 (VI. 2012) (citing *Barker*). The Court will now analyze these factors.

(1) Length of Delay.

“The length of delay is measured from either the date of arrest or the date a defendant is indicted, whichever is earlier.” *People v. Hakim*, Case No. SX-09-CR-0435, 2014 V.I. LEXIS 67, at *8 (VI. Super. Ct. 2014). “[L]ength of delay is a ‘trigger’ that, if found to be ‘presumptively prejudicial,’ requires a court to consider and weigh the remaining three Barker factors.” *Brown v. People*, 55 V.I. 496, 503 (VI. 2011) (citing *Doggett v. United States*, 505 U.S. 647, 652-53 (1992)). “Where the charge is serious and complex a greater length of delay can be tolerated, as opposed to an ordinary street crime where the delay that can be tolerated is considerably less.”

United States v. Benjamin, 28 V.I. 133, 149 (D.VI. 1993).

Defendant was arrested 42 months ago. Accordingly, the Court finds this to be “presumptively prejudicial” and, as required, weighs the remaining three factors.

(2) **The Reason for the Delay.**

“Delays attributed to the People weigh in favor of [Walters] speedy trial claim, while delays attributed to [Walters] do not.” *Francis*, at 748. Also, when “applying this prong of the *Barker* test, courts are directed to give different weights to different reasons.” *Benjamin*, at 149. “While a deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government...a more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered...” *People of the Virgin Islands v. Ilarraza*, Case No. SX-12-CR-0568, 2013 V.I. LEXIS 70, at *9 (V.I. Super. Ct. Dec. 5, 2013). “[D]elays caused by the Superior Court are attributed to the government...However, although these types of delays are attributable to the People the weight of these delays is treated as minor.” *People of the Virgin Islands v. Francis*, 64 V.I. 149, 155 (VI. Super. Ct. 2016); see *Brown*, at 504 (“delays—such as a re-assignment of judges...were attributable to the government”).

Defendant Walters argues that as a result of the delays, he has been prejudiced, and “[t]here is no way that the Defendant can proceed with a fair trial in this matter.” Def.’s Mot. to Dismiss Speedy Trial 7.

Defendant Walters’ case has been pending for forty-two months. Some of the delays in the case are attributed to Defendant Walters, including a motion to

reschedule a hearing and a motion for leave because Defendant Walters was assigned a new public defender who needed time to become familiar with the case. However, it is clear that those delays are not as great as the delays caused by the People (and the Court).

Only three months are attributable to Defendant Walters. The majority of delays in Defendant Walters' case must be attributed to the People. This includes their own delays, and the delays of the Superior Court. For example, the Superior Court's delays include allowing the matter to remain dormant from June 2013 to January 2015. Another delay, though considerably shorter, was caused by one judge leaving the bench and another being disqualified. While the delays caused by the Superior Court "are attributable to the People the weight of these delays is treated as minor." The People's delays include failing to meet discovery deadlines and seeking a continuance because its witness would be off-island during the initial trial period.

While this second *Barker* factor weighs in favor of Defendant Walters, there is no evidence that the People made deliberate attempts to delay the trial in order to hamper the defense. Therefore, the reasons for the delay are weighed less heavy.

(3) If defendant asserted his right.

A defendant, represented by counsel, shows that he has asserted his right to a trial when "he can identify a motion or evidence of direct instructions to his counsel to assert that right at a time when a formal assertion of his rights would render some chance of success." *Carty*, 56 V.I. at 366.

This factor weighs in favor of Defendant Walters because he asserted his right to a speedy trial at his arraignment, and has also filed two motions to dismiss for lack of speedy trial, including the one currently before the court.

(4) Prejudice to the Defendant.

“The most important factor to evaluate is whether the defendant suffered prejudice from the delay.” *Rivera v. People of the Virgin Islands*, 64 V.I. 540, 582 (VI. 2016). In assessing prejudice to a defendant caused by a speedy trial violation, the Court considers three interests a right to a speedy trial is designed to protect: “(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.” *Carty*, 56 V.I. at 367 (quoting *Barker*, 407 U.S. at 532). “The burden of proving prejudice lies with the defendant.” *Id.*

Here, Defendant Walters has failed to meet his burden. Oppressive pretrial incarceration is minimal in the instant case because Defendant Walters was released the day after his arrest. Defendant Walters has not expressed any prejudice due to anxiety or concern. Because “a certain amount of anxiety and other forms of personal prejudice to the accused is inevitable in a criminal case,” *Government of Virgin Islands v. Pemberton*, 813 F.2d 626, 629 (3d Cir. 1987) (citing *U.S. v. Dreyer*, 533 F.2d 112, 115 (3d Cir. 1976)) Defendant Walters must have shown “unusual burden of anxiety.” *Id.* (citing *Government of the Virgin Islands v. Birmingham*, 788 F.2d 933,

937 (3d Cir. 1986). Defendant Walters has failed to provide any evidence of specific psychological disorders suffered as a result of the pending criminal charges.

With respect to impairment of the defense, in the October 4, 2016 hearing to dismiss for lack of speedy trial, Defendant Walters, through counsel, argues that he cannot locate a witness due to the passage of time. However, the defense also states they have never spoken with this witness, and notably does not even know if the witness will be helpful to the defense. This argument inherently fails to prove Defendant Walters' defense was impaired because by not knowing if the witness will be helpful, "[Defendant Walters] has not offered any evidence that any witness or potential witnesses favorable to him actually existed." *Carty* 56 V.I. at 368 (citing *United States v. Brown*, 498 F.3d 523, 528-29 (6th Cir. 2007) (claim that delay caused actual prejudice insufficient because defendant unable to show that lost testimony would have significantly aided defense)).

Defendant Walters' motion to dismiss for lack of speedy trial argues that "It is well-known that the ability of witnesses to recall details of an incident decreases with passage of time...[a]s such, prejudice to the Defendant in this matter is clear." Def.'s Mot. to Dismiss Speedy Trial 7. This is a faulty assertion. Instead, "the mere possibility of absence or loss of memory of witnesses in a case is not sufficient to make out a speedy trial violation." *Pemberton*, at 813 F.2d at 629.

III. Conclusion

After weighing the four *Barker* factors, the Court finds that Defendant's Sixth Amendment right to a speedy trial has not been violated. Defendant Walters has failed to prove that he is entitled to relief as he is unable show that the defense has been prejudiced by the delay. "[U]nlike the right to counsel or the right to be free from compelled self-incrimination, deprivation of the right to speedy trial does not per se prejudice the accused's ability to defend himself." *Barker*, 407 U.S. at 521. In addition, jury selection was held on October 11, 2016, and trial began the following day.

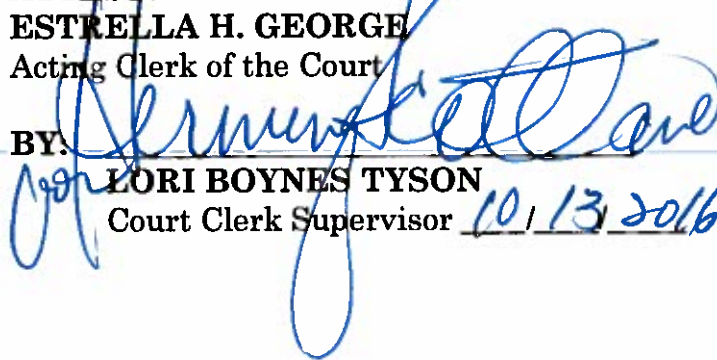
An order denying the motion to dismiss was entered on October 6, 2016 to promptly advise the parties of the decision in light of the October 11, 2016 jury selection date. This memorandum opinion serves to support the October 6 Order.

Copies of the Memorandum Opinion shall be directed to counsel of record.

DATED: October 12, 2016


Kathleen Mackay
Judge of the Superior Court
of the Virgin Islands

ATTEST:
ESTRELLA H. GEORGE
Acting Clerk of the Court

BY: 
LORI BOYNES TYSON
Court Clerk Supervisor 10/13/2016