

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

**MEMORANDUM OPINION**

## I. FACTUAL AND PROCEDURAL BACKGROUND

<sup>1</sup> It is helpful to reference the Supreme Court of the Virgin Island's April 2010 opinion in this matter because it lays out at length, a significant portion the procedural history of this matter. *People of the Virgin Islands v. Jose Alberto Rodriguez*, S. Ct. No. 2009 – 28, 2010 VI LEXIS 15, at \* 2 (unpublished decision)(S. Ct. April 14, 2010)). After the Information was filed in this matter, the People gathered DNA evidence from Rodriguez but did not timely provide him with the requested discovery material as required under Fed. R. Crim. P. 16. As a result, the supreme court ordered that all DNA evidence would be excluded from Rodriguez's trial. *Id.* at \* 1. The People appealed. *Id.* In April 2010 the supreme court reversed the exclusion of DNA evidence and remanded this matter back for further consideration by this Court. While the supreme court did not address any speedy trial issues, the timeline of this matter was a necessary component of its opinion. *Id.*

with a copy of the DNA analysis report prepared by the FBI. On April 11, 2008 counsel for Rodriguez, requested a continuance of the June 2, 2008 trial date. In support of the motion, he informed that Court that the People had only recently provided him with a copy of the DNA analysis in this matter and he would need time to find an expert and have said expert review it. The motion also stated that counsel would be getting married on May 31, 2008 and would not be prepared to go to trial until after June 2, 2008. Rodriguez's motion was granted. Once again, trial was continued, this time until November 10, 2008. On May 5, 2008 Counsel for Rodriguez sent a letter to the People requesting discovery materials related to the testing, analysis and chain of custody of the DNA samples. The People did not respond. Another discovery request letter was sent on October 6, 2008. On November 8, 2008 Rodriguez motioned this Court to dismiss this matter or exclude the evidence at trial due to the People's failure to provide discovery. At a December 11, 2008 hearing on Rodriguez's motion for sanctions, the People claimed that they had given Rodriguez all discoverable material concerning the DNA analysis. Further, the People asserted that the materials Rodriguez wanted were with the FBI and could be obtained from that entity. On January 27, 2009 after a review of the record in this matter, the Court ordered the People to provide the DNA discovery to Rodriguez by February 10, 2009. The People did not do so.

The next day, Rodriguez filed a renewed motion to sanction the People. On February 26, 2009 before the Court ruled on Rodriguez's renewed motion, the People produced to Rodriguez all the material he requested related to the DNA discovery. On March 6, 2009 this Court held a hearing on Rodriguez motion for sanctions. At this hearing, the prosecutor stated that he only recently rejoined the Attorney General's office and did not know why the DNA materials were not produced to Rodriguez earlier. Further, the prosecutor explained that the Attorney General's office had incomprehensibly failed to request the materials from the FBI for a period of time. But he claimed that the People produced the DNA material to Rodriguez as soon as they received it from the FBI. Rodriguez argued that despite the production of the subject discovery, he would be prejudiced by the People's late production of the DNA material because he needed to have an expert evaluate it. The Court inquired as to why counsel for Rodriguez had not identified an expert when she received the DNA results on February 12, 2008; nearly thirteen months later. Counsel for Rodriguez explained that the People repeatedly promised to produce the materials related to the testing, analysis and chain of custody of the DNA samples, so she decided to wait until the information was provided before picking a particular expert. After the hearing, on March 9, 2009 this Court entered an order granting Rodriguez's motion to exclude the DNA evidence at trial. In response, on March 30, 2009 the People filed an interlocutory appeal. Pursuant to this, on April 17, 2009, this Court stayed this matter

pending a decision by the Virgin Islands Supreme Court on the exclusion of DNA evidence. While the appeal was pending, counsel for Rodriguez, filed a motion to withdraw as counsel. (Mot. Withdraw as Counsel, filed Jan. 29, 2010.) In the motion, counsel stated that she would be leaving her current place of employment and would be working for the Office of the Public Defender (OPD). This Court denied the motion because of lack of jurisdiction until the appeal in this matter was decided. (Order, entered March 15, 2010.) A little over a month later, on April 14, 2010 the Supreme Court of the Virgin Islands issued an order and opinion reversing the exclusion of DNA evidence at trial and remanding this matter for further consideration on that issue. *People of the Virgin Islands v. Jose Alberto Rodriguez*, S. Ct. No. 2009 – 28, 2010 VI LEXIS 15, at \* 2 (unpublished decision)(S. Ct. April 7, 2010)).

After remand, the Court granted counsel's motion to withdraw as Rodriguez's attorney. On May 23, 2010, co-counsel for Rodriguez, also motioned this Court to be relieved. (Mot. Relieved as Co-Counsel and for Reassignment to Off. Pub. Defender's, filed May 3, 2010.) Further, he petitioned the Court to reassign this matter to the OPD. *Id.* Co-counsel argued that he was only originally appointed as co-counsel so that he could provide support. *Id.* As Rodriguez's initial attorney in this matter was currently employed at the OPD and had intimate knowledge of the facts of this matter, co-counsel argued that it would be in the interest of Rodriguez to reassign his case to the OPD. *Id.* In response, the OPD motioned for more time to respond to co-counsel's motion. (Pub. Defender's Mot. Enlargement to Respond to Mot. for Reassignment, filed May 10, 2010)(Order granting Public Defender's Mot., entered on May 14, 2010.)) In its Reply filed on June 30, 2010, the Public Defender's petitioned the Court to deny co-counsel's motion. (Pub. Defender's Reply to Def.'s Mot. Relieved, filed on June 30, 2010.) The Public Defender's office contended that co-counsel in this matter had sufficient knowledge of this matter and could represent Rodriguez adequately.

Due to the potential reassignment of this matter to the OPD and to avoid any conflict of interest, this matter was reassigned to the undersigned on July 20, 2010. (Order of Recusal, entered on July 18, 2010.)(Not. of Reassignment, entered on July 20, 2010.) Later, an order was entered on September 13, 2010 denying co-counsel's motion to be relieved. (Order entered, Sept. 13, 2010.) A trial date was set in this matter. (Order Denying Mot. Relieved as Co-Counsel, entered on Sept. 13, 2010.) Subsequently, co-counsel filed a motion to continue this matter as he had another trial scheduled for the same period of time. (Def.'s Mot. Cont., filed on Sept. 15, 2010.) At a disposition hearing held on October 18, 2010 co-counsel once again stated that he was not familiar with the matter and was not prepared to proceed to trial. (Rec. Proceedings, entered on Oct. 18, 2010.) The

People averred that they were ready to proceed to trial. *Id.* The Court set this matter for calendar call on November 29, 2010 and for jury trial and selection during the trial period week of December 13, 2010 – January 7, 2011. At the November 29, 2010 hearing, co-counsel asked that the Court reconsider the issue of counsel for Rodriguez. (Rec. Proceedings, entered on Nov. 29, 2010.) He also made an oral motion on the issue of sanctions for the People’s discovery violations in this matter. *Id.* The Court scheduled a hearing on the issue of counsel for Rodriguez. (Rec. Proceedings, entered Dec. 15, 2010.) At the hearing, all Parties were represented; including Rodriguez’s former attorney. The Court found that given Rodriguez’s previous counsel knowledge in this matter, she would be reappointed as counsel for Rodriguez. *Id.* Co-counsel was relieved. *Id.* After the issue of representation was resolved, the Court scheduled this matter for a hearing on Rodriguez’s oral motion for sanctions. *Id.* At the hearing on January 12, 2011, the Court heard arguments from both sides on the issue of sanctions and informed the Parties that a ruling would be issued in writing on the issue. (Rec. Proceedings, entered on Jan. 12, 2011.) Further, the Court ordered that all materials related to this matter be turned over to the OPD. *Id.* A little less than a month later, Rodriguez filed the instant motion. (Def.’s Mot. Dismiss, filed Feb. 10, 2011.) The People filed an Opposition. (People’s Opp. Def.’s Mot. Dismiss, filed Feb. 15, 2011.) Defendant filed a Reply shortly thereafter. (Def.’s Reply to People’s Objection, filed Mar. 3, 2011.)

## II. STANDARD OF REVIEW

Rodriguez asserts that his sixth amendment right to a speedy trial has been violated. The Sixth Amendment to the Constitution asserts “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial<sup>2</sup>.” U.S. Const. amend. VI. In *Barker v. Wingo*, the Supreme Court instructed lower courts to consider four factors once a defendant claims that his or her right to a speedy trial has been violated; (1) the length of delay; (2) the reasons for the delay; (3) the defendant’s assertion of the right to a speedy trial; and (4) prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). The only remedy available for a sixth amendment speedy trial violation is dismissal with prejudice of the charges against the defendant. *Strunk v. United States*, 412 U.S. 434 (1973).

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<sup>2</sup> The Sixth Amendment right to a speedy trial applies to the U.S. Virgin Islands through Section 3 of the Revised Organic Act. 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)).

### III. DISCUSSION

#### Length of Delay

Lower courts generally engage in a *Barker* analysis once post accusatory delay reaches one year. *Doggett v. United States*, 505 U.S. 647, 651 n. 1 (1992). The delay in bringing Rodriguez to trial affects the speedy trial analysis in two ways; first a court must analyze whether the delay “has crossed the threshold dividing ordinary from ‘presumptively prejudicial’ since by definition, [the accused] cannot complain that the government has denied him a ‘speedy trial’ if it has in fact, prosecuted his case with customary promptness.” *Doggett v. United States*, 505 at \*652. If the delay passes the threshold test of “presumptive prejudice” that the *Barker* inquiry is triggered<sup>3</sup>. *Id.* But even if the delay passes the “presumptive prejudice test” this does not by itself prove that a defendant’s right to a speedy trial has been violated. *Id.* at \* 651, n. 1.

Under this prong, the delay in this matter triggers the presumption of prejudice. As a result the remaining *Barker* factors must be considered.

#### Reason for Delay

The Court must consider whether the government fulfilled its constitutional mandate to make a diligent, good faith effort to bring Rodriguez to trial. *Moore v. Arizona*, 414 U.S. 25, 26 (1973)(citing to *Smith v. Hooey*, 393 U.S. 374, 383 (1969) *See also Government of the Virgin Islands v. Richardson*, D.C. Crim. App. No. 2002 – 172, Super Ct. No. F145/99, 2009 WL 102734 at \* 5 (D.V.I. Jan. 13, 2009))). Under *Barker*, different reasons for delay are weighed differently. *Barker*, 407 U.S. at \*531. Delays due to negligence and overcrowded courts are not weighed as heavily as delays caused by the bad-faith acts of the People. But a defendant may not profit from delays caused by his own acts. *U.S. v. Battis*, 589 F. 3d 673,678 (3d. Cir. Pa., 2009)(quoting *Vermont v. Brillion* 129 S.Ct. 1283, 1290 – 91 (2009)). These acts weigh against the defendant. *Id.* Finally, the government always bears the burden of justifying the delay. *Id.* (citing to *Hakeem v. Breyer*, 990 F.2d 750, 770 (3d. Cir. Pa. 1993).

The Court first turns to several events that necessitated procedural delays in this matter. This matter was first re-assigned because of the untimely passing of an honorable judge of this Court. His untimely passing demanded the reassignment of the cases assigned to him. In the interim, Rodriguez’s court appointed counsel recused herself from this matter. Several procedural issues

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<sup>3</sup> The length of delay is considered a second time under the prejudice prong of the analysis, with the presumption that prejudice to the accused intensifies over time. *Doggett*, 505 at \* 652.

arose from her recusal and thus this matter's progress toward trial was necessarily halted. Under *Barker*, these procedural delays are imputed on to the People. *Barker*, 407 U.S. at \*531. This is because the... "ultimate responsibility for such circumstances must rest with the government rather than the defendant." *Id.* But delays by the trial court are generally not weighed heavily against the prosecution. *Id.* See also *People of the Virgin Islands v. Rafael Rivera*, No. ST-09-CR-453, 981 F. Supp. 893, 895, 2010 V.I. LEXIS 78 at \* 13 (Super. Ct. Nov. 17, 2010)(citing to *Leoland Geoffrey Yung v. State of Wyoming*, 906 P.2d 1028, 1032) (Wis. Sup. Ct. 1995)(delay caused by a busy court schedule characterized as a neutral factor))). Further, the Court is reluctant to assign great prejudicial weight to delay due to the recusal and reassignment of counsel for Rodriguez. A defendant's right to assistance of counsel is as strong a constitutional right as the right to a speedy trial. *Gideon v. Wainwright*, 372 U.S. 355 (1963). Thus, the procedural delays in this matter will not be weighed heavily against the People.

Rodriguez argues that the People's decision to file an interlocutory appeal in this matter and the subsequent delay triggered by that decision should be weighed against the People. Under *Barker*, "delays in bringing [a]case to trial caused by the [People's] interlocutory appeal may be weighed in determining whether a defendant has suffered a violation of his rights to a speedy trial." *U.S. v. Loud Hawk*, 474 U.S. 302, 312 (1986). Nevertheless, a defendant cannot simply point to the People's decision to file an interlocutory appeal and the subsequent delay engendered by the appeal process as proof that his or her right to a speedy trial was violated. Courts are tasked with balancing both the defendant's right to a speedy trial and the need for orderly appellate review. *Id.* at \*315. Thus, an interlocutory appeal by the government will not be given any effective weight against it if there is no showing of bad faith and the appeal was reasonable. *Government of the Virgin Islands v. Pemberton*, No. 86-3116, 813 F.2d 626, 627 (3d Cir.1987). Here, the Court cannot find that the People acted in bad faith to delay this matter. Nor was it unreasonable to file an appeal; without the DNA evidence, the People would have been severely hindered in their ability to prosecute this matter. Therefore, the interlocutory appeal and the supreme court's subsequent delay in deciding the appeal will not weigh against the People. *Id.*

Rodriguez final accusation is the most serious. He claims that over a "ten month period, the People repeatedly, on and off the record, mislead the Court and Rodriguez about the production of critical evidence." (Def.'s Reply People's Obj. Mot. Dismiss, filed Mar. 3, 2011.) The Court readily acknowledges that the People have given this matter a "remarkable lack of attention." *People of the Virgin Islands v. Jose Alberto Rodriguez*, S. Ct. No. 2009 – 28, 2010 VI LEXIS 15, at \* 9 (Super. Ct. Order, entered Mar. 9, 2009.) The Court does not condone this. But there is no evidence that the

People deliberately delayed this matter. *Barker*, 407 U.S. \* 531. Instead, the continuances filed, the initial refusal to turn over discovery evidence, the delay in requesting the DNA testing results from the FBI stemmed from several factors;

- 1) The People's decision to reassign this matter to a different assistant attorney general unfamiliar with it (Rec. Proceedings, entered March 6, 2009);
- 2) low prosecutorial priority (*People of the Virgin Islands v. Rodriguez*, S. Ct. Crim. No. 2009-028)(The People never responded to several of Rodriguez's request for discovery)); and
- 3) A misunderstanding of the law (Rec. Proceedings, entered Dec. 11, 2008)(At a hearing on Rodriguez's motion to dismiss or exclude the evidence for discovery violations, the People erroneously assert that whatever DNA material and analysis Rodriguez needed was with the FBI and that he would have to request it from that entity.)))))

As stated earlier, negligence is weighed against the People. *Doggett v. United States*, 505 U.S. at \*657. Applying this principle here, the People bear responsibility for delays in this matter. But the interlocutory appeal and subsequent delay will not be weighed against the People. Further, the Court finds no evidence that the People acted in bad-faith to purposefully hinder the trial process in this matter or harm Rodriguez. Taking all the circumstances together, this factor does not weigh in Rodriguez's favor.

#### **Defendant's Assertion of His Right to a Speedy Trial**

Under *Barker*, courts must evaluate how and when a defendant asserts or fails to assert his or her right to a speedy trial. *Barker*, 407 U.S. at \* 528. This includes balancing the frequency and force of a defendant's assertion to his right to a speedy trial as opposed simply attaching significant weight to a purely pro forma objection. *Id.* at \* 529. Here, this factor can be disposed of quickly as the Court finds that Rodriguez has been fairly consistent in asserting his right to a speedy trial. (Def.'s Mot. Dismiss or Sanctions, filed Nov. 8, 2008)(Def.'s Renewed Mot. Dismiss or Sanctions, filed Feb. 11, 2009)(Rec. Proceedings, entered on Nov. 29, 2010)(Rec. Proceedings, entered on Jan. 11, 2011)(Def.'s Mot. Dismiss, filed Feb. 10, 2011))). As such, this factor favors Rodriguez.

**Prejudice to the Defendant**

Rodriguez correctly claims that delays may significantly hamper a defendant's ability to defend him or herself. *Barker*, 407 U.S. at \*526. Our court of appeals considers the fourth factor, prejudice to the defendant, the most "critical" factor under *Barker*. *Petstock*, 941 F. 2d at \* 258, *See also Government of the Virgin Islands v. Andrew Birmingham*, No. 85 – 3159, 788 F.2d 933, 936 (3d. Cir. April 17, 1986). Under this factor, *Barker* lays out three areas that must be assessed; whether the defendant has suffered oppressive pretrial incarceration; whether the delay contributed to the anxiety and concern of the accused; and whether the delay impaired the defendant's ability to defend him or herself at trial. Of these factors, the last is the most serious. *Barker*, 407 U.S. at \*526.

***A. Oppressive Pretrial Incarceration***

The restraint on liberty as a result of pretrial incarceration is severe. *Petstock*, 941 F.2d at \* 257. Thus, prejudice resulting from long delays before trial is considerably greater if the defendant is incarcerated. *Id.* Rodriguez was arrested on or about May 2, 2007. (Info., filed May 4, 2007.) The Court issued an order releasing Rodriguez two days later. (Order, entered on May 4, 2007.) Rodriguez has not suffered oppressive pretrial incarceration.

***B. Whether the Delay Contributed to the Anxiety and Concern of the Accused***

Even if a defendant is not incarcerated, a defendant who awaits his or her day in trial is disadvantaged by other restraints on his liberty and may be living under a cloud of anxiety, suspicion, and often hostility. *Barker* 407 U.S. at \*532. Thus, courts must evaluate whether a defendant awaiting trial has raised a cognizable claim that he or she suffered as a result of the delay. *Id.* Rodriguez claims that since this matter commenced, he has received death threats and attempts on his life, which have caused him to live under a cloud of anxiety due to the accusations overshadowing his life and the possibility of imprisonment if found guilty at trial. He also states that he has scarred him emotionally and physically. Our appellate court has established that a certain amount of anxiety is a part of any criminal prosecution. *Government of the Virgin Islands v. Andrew Birmingham*, Crim. No. 85 – 3159, 788 F. 2d 933, 936 (3d. Cir. 1986) *See also U.S. v. Julio Colon*, Crim. No. 2006 – 12, 2008 WL 1777385 \* 9 (D.V.I. April 16, 2008)). Under this standard, a defendant must show that his or her anxiety extended beyond that which "is inevitable in a criminal case." *Hakeem v. Beyer*, 999 F.2d 750, 762 (1991). Specifically, the defendant must prove specific psychic injury. *See United States v. Dreyer*, 533 F.2d 112 (3d. Cir. 1976)(In *Dreyer*, the [defendant] experienced severe mental disturbance. She consulted a psychiatrist just after her arrest and was in intensive therapy for acute anxiety and depression...[t]he psychiatrist's report indicates that, during this period, despite continued treatment she was unable to work.")). Rodriguez provides no evidence



of specific psychic injury suffered as a result of the pending criminal charges and delay. *Pemberton*, 813 F. 2d \* 630. Thus, the Court does not find that Rodriguez has suffered anxiety so as to prejudice him.

Rodriguez claims that the delays in this matter have caused him to lose various jobs and disrupted his family life. Interruption of a defendant's family life, employment and financial resources is indicative of prejudice suffered by a defendant. *Barker. Pemberton*, 813 F.2d 626. *See also Moore v. Arizona*, 414 U.S. 25. 27 (1973)( *quoting Barker*, 407 U.S. at 537)). But a close reading of the instant motion evidences that the disruption to family life suffered by Rodriguez was not caused by delays in this matter. Rodriguez states that "at the time the criminal action commenced, [he] was married with young children. As a result of the charges, [he] is now divorced." (Def.'s Mot. Dismiss.) The Court is cognizant of the distress this has caused Rodriguez. The divorce, however, happened as a result of the charges, not the subsequent delays in this matter. As such he cannot claim the delays in this matter have disrupted his family life. Next the Court turns to Rodriguez's claims of loss of employment. He alleges that he lost his job as a police officer for the Virgin Islands Police Department (VIPD) as a result of the delays in this matter. The People contend that Rodriguez lost his job as a result of an Internal Affairs Investigation by the VIPD. (People's Obj. Def.'s Mot. Dismiss.) A copy of the Internal Affairs findings was not provided to the Court. Nevertheless, given the gravity of the charges against Rodriguez, it is unlikely that he would have been allowed to continue to work as a police officer. Thus, the Court cannot find that Rodriguez was fired from the Virgin Islands Police Department as a result of the delays in this matter. Rodriguez's also alleges that he was fired from the Hovensa Oil Refinery because of the criminal charges looming over him. Rodriguez obtained employment with Hovensa in 2007. In August 2008, Hovensa instituted a program that required all employees to obtain a "Transportation Worker Identification Credential" (TWIC) Card from the Transportation Security Administration. Rodriguez had until June 30, 2009 to obtain this card. He contends that because of the pending criminal action against him, TSA would not grant him TWIC card. As a result, he lost his job with Hovensa. In this instance, the Court finds that Rodriguez suffered prejudice as a result of the delays in this matter.

*C. Whether the Delay Hampered the Defendant's Ability to Defend Himself*

Finally, the Court turns to the question of whether the delays impaired Rodriguez's ability to defend himself at trial. In *Doggett v. United States*, the Supreme Court clarified the 'prejudice to defendant' prong of *Barker. Doggett*, 505 U.S. at \* 655. Courts must examine the potential impairment of the defendant's ability to defend him or herself given ". . . time's erosion of

exculpatory evidence and testimony..." *Id.* (quoting *Barker* 407 U.S. \* 532). This type of prejudice can rarely be shown but is part of a relevant mix of facts that must be considered when a defendant claims violation of his or her speedy trial right. *Id.* It is presumed that the longer the delay, the more this type of prejudice increases. *Id.* But delay in criminal matters is a two-edged sword. *Loud Hawk*, 407 U.S. \* 315. ("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 impossible for the Government to carry this burden.") Thus the prosecution may rebut the presumption that a defendant's ability to defend him or herself has been eroded by the passage of time. *Barker*, 407 at \* 658. A defendant cannot prevail on a speedy trial violation claim by relying solely on the alleged erosion of exculpatory evidence or witness testimony. *Id.*

Rodriguez contends that given the passage of time, it is likely that witnesses' memories will have faded and may have forgotten potential key details that might have helped him defend himself. Under *Barker*, 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"). Nevertheless, absent extreme delay or special circumstances, general allegations that a witness's memory may have faded are insufficient to create prejudice. *See Hakeem* 990 F.2d at \* 763. *See also Doggett*, 505 U.S.\* 647) Rodriguez has put no evidence on the record that potential witnesses in this matter have suffered impaired recall due to the passage of time. The possibility of prejudice based on the general allegation that witnesses may have forgotten certain events is not sufficient to demonstrate actual prejudice.

On its face, Rodriguez's final contention holds more weight. He claims that his ability to defend himself at trial has been severely hindered by the death of a witness, Officer Claudette Sutton. (Def.'s Mot. Dismiss.) The death of a witness is explicit evidence of prejudice against a defendant. The Supreme Court has stressed that "if witnesses die or disappear during a delay, the prejudice is obvious." *Barker*, 407 U.S. \* 532. Officer Claudette Jocinha Sutton - Joseph passed away on June 17, 2010. Claudette Jocinha Sutton – Joseph Dies at 43, St. Croix Source, June 26, 2010. Rodriguez claims that Officer Sutton was a key alibi witness for him and "[g]iven Officer Sutton's standing in the community and her detailed and time specific accounting of the events in her knowledge, her testimony would have been invaluable at trial." To be sure, the record indicates that Officer Sutton may have testified at trial. But a review of the record also evidences that Officer Sutton's witness statement was taken shortly after it was alleged she came into contact with Rodriguez. (Sutton Wit. People's Opp. Ex. A) What's more, in her witness statement, Officer Sutton

references several individuals who could potentially substantiate what Rodriguez claims only Officer Sutton could do. *Id.* This includes other police officers, who arguably would have the same or a similar level of "standing" in the community as Officer Sutton. The Court finds that Officer Sutton's passing does not prejudice Rodriguez's ability to defend himself so as to warrant dismissal of the charges against him.

Under this prong, prejudice to the defendant must be balanced against other factors. *Barker*, 407 at \*533. ("All factors must be considered and weighed as no one factor is dispositive nor talismanic.") Applying this principle here, the Court finds that as a whole Rodriguez has not suffered a level of prejudice warranting dismissal of the underlying charges against him.

#### IV. CONCLUSION

Ultimately, the Court find that the delays in this matter triggered a speedy trial inquiry but was no so excessive to warrant dismissal on its own, the People bore more responsibility than Rodriguez but circumstances require that this is not weighed completely against the People, the right to a speedy was sufficiently asserted, and the alleged prejudice in this matter do not warrant relief for violation of the Sixth Amendment Right to a Speedy Trial. Accordingly, under separate order of even date, Defendant's Motion to Dismiss for Sixth Amendment Speedy Trial Violation will be denied.

#### ORDER

The Court, having rendered a Memorandum Opinion this date, and in accordance with that Opinion, it is hereby

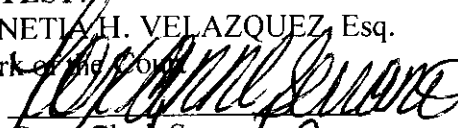
**ORDERED** that Defendant's Motion to Dismiss for Sixth Amendment Speedy Trial Violation is **DENIED**.

February 16, 2012

  
DARRYL DEAN DONOHUE, SR.  
Presiding Judge of the Superior Court

ATTEST:  
VENETIA H. VELAZQUEZ Esq.

Clerk of the Court

By: 

Court Clerk Supervisor

Dated: 