

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

JOHNNY COBB,

Defendant.

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CRIMINAL NO. 09-256-1

MEMORANDUM OPINION AND ORDER

RUFE, J.

June 25, 2010

Before the Court is Defendant Johnny Cobb’s Amended Motion to Dismiss Pursuant to the Speedy Trial Act.¹ Defendant argues that due to a speedy trial violation, the Court should dismiss all charges against him with prejudice. The Government filed a response to the Motion,² and the Court held oral argument thereon. The Motion is now ripe for disposition.

I. PROCEDURAL BACKGROUND

Defendant Cobb and two indicted co-defendants, Jerrod Abney and Terrell Dobson, were arrested for the underlying charges by officers in the Upper Merion Police Department on March 12, 2009. On March 20, 2009, the Government issued a federal Complaint and Warrant charging Cobb, Abney, and Dobson with conspiracy, access device fraud, and aggravated identity theft.³ Four days later, Cobb appeared in front of Magistrate Judge David R. Strawbridge for a preliminary examination and detention hearing, after which he was released on his own

¹Doc. No. 105. Defendant withdrew his First Motion to Dismiss on the record at oral argument on June 21, 2010.

²Doc. No. 107.

³Doc. No. 1.

recognizance.⁴ On April 16, 2009, the Government issued a twenty-two (22) count indictment against Cobb, Abney, and Dobson.⁵ Cobb's arraignment was held on June 19, 2009.⁶

In the intervening period between the issuance of the indictment and Cobb's arraignment, all three defendants filed motions. On May 11th, Defendant Dobson filed a Motion to Sever Trial from that of Co-defendants' trial⁷ and a Motion for Joinder and Adoption of All Motions filed by Co-Defendants⁸; the Court scheduled a hearing on the former Motion, and issued an Order granting the latter Motion provided that Dobson file a specific statement of which motions he requests to join.⁹ Dobson failed to file such a statement. On June 3, 2009, three weeks before trial, Defendant Cobb filed a Motion to Suppress¹⁰ (and then an Amended Motion to Suppress¹¹ later the same day).

On June 16th, before the hearing on Defendant Dobson's Motion to Sever had been held, Dobson moved to withdraw his severance motion¹². Shortly thereafter on the same date,

⁴Doc. No. 12.

⁵Doc. No. 22.

⁶Cobb's arraignment was originally scheduled for April 30, 2009. However, on April 29, 2009, Cobb was taken into custody on a criminal matter in New York state. On May 26, 2009, the Court issued an Order to the George Motchen Detention Center in New York state and the United States Marshal to produce Cobb for arraignment in June. Doc. No. 41.

⁷Doc. No. 37.

⁸Doc. No. 38.

⁹Doc. Nos. 43, 44.

¹⁰Doc. No. 45.

¹¹Doc. No. 46.

¹²Doc. No. 49.

Defendant Abney filed a Motion to Continue Trial¹³. The Court promptly granted Dobson’s Motion to Withdraw the Motion to Sever¹⁴, and then granted Abney’s Motion for Continuance, noting that “defense counsel needs additional time to effectively prepare the . . . matter for trial” and finding that “the ends of justice to be served by granting a continuance in this matter outweigh the public’s interest in a speedy trial”¹⁵ No party objected to the continuance. Two days later, on June 18th, Defendant Dobson also requested a continuance,¹⁶ which the Court promptly granted.¹⁷ The Court also issued a Report of Speedy Trial Delay¹⁸, further notifying Cobb that his co-defendants had requested and been granted continuances, and that no severance request was pending. The following day, Cobb filed a Motion for Severance or in the Alternative Request to Schedule Suppression Motion for Disposition.¹⁹ The Court granted the alternative request by scheduling a suppression hearing for July 10, 2009.²⁰

The Court denied Cobb’s Motion to Suppress and issued findings of fact and conclusions of law on November 12, 2009,²¹ after the suppression hearing had been held and the parties had been given the opportunity to file post-hearing briefs. The Court then dismissed Cobb’s

¹³Doc. No. 50.

¹⁴Doc. No. 52.

¹⁵Doc. No. 53.

¹⁶Doc. No. 51.

¹⁷Doc. No. 54.

¹⁸Doc. No. 56.

¹⁹Doc. No. 58.

²⁰Doc. No. 60.

²¹Doc. Nos. 69, 70.

Motion for Severance as moot on November 30, 2009, having already granted his request for relief.²²

On February 24, 2010, a trial date was set for June 21, 2010 for all defendants.²³ From February 1, 2010 to June 18, 2010, the Court considered two pending Motions to Suppress²⁴ of Defendants Abney and Dobson, on which it held two hearings.²⁵ Defendant Cobb filed the instant Amended Motion to Dismiss on June 16, 2010. The Court conducted a hearing on the Amended Motion on June 21st.

II. DISCUSSION

The Sixth Amendment of the United States Constitution provides that “in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.”²⁶ To grant effect to the Sixth Amendment, Congress enacted the Speedy Trial Act²⁷, which provides specific time limitations within which a criminal trial must be commenced:

In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.²⁸

Certain periods of delay are excluded from this calculation, including continuances that the Court

²²Doc. No. 76.

²³Doc. Nos. 83, 84, 85.

²⁴Doc. Nos. 79, 95.

²⁵Doc. Nos. 98, 102.

²⁶U.S. Const. amend VI.

²⁷18 U.S.C. §§ 3161-3174 (2008).

²⁸18 U.S.C. § 3161(c)(1).

believes serve “the ends of justice.”²⁹ Such continuances do not require a defendant’s consent to be excludable, but it is required that the Court “set forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.”³⁰ Allowing time for trial preparation and plea negotiation is a permissible reason for an “ends of justice” continuance.³¹ Open-ended continuances are not a violation of a defendant’s rights if they are necessary for justice and reasonable under the circumstances.³²

The Speedy Trial Act also provides that a court may exclude “[a] reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.”³³ In evaluating the reasonableness of such a delay, courts can consider factors such as the efficiency of joint trials.³⁴ Any time in which a pre-trial motion is pending is also excludable.³⁵

In his present Amended Motion to Dismiss, Cobb errs in interpreting the Speedy Trial Act and calculating the speedy trial time. First, he counts several periods of time in which motions filed either by Cobb or his co-defendants were pending. The time in which pre-trial motions are pending is clearly excludable under the Speedy Trial Act. Second, he misconstrues the effect of the

²⁹Id. § 3161(h).

³⁰Id. § 3161(h)(7)(A).

³¹United States v. Fields, 39 F.3d 439, 444 (3d Cir. 1994).

³²See United States v. Lattany, 982 F.2d 866 (3d Cir. 1992).

³³18 U.S.C. § 3161(h)(6).

³⁴See, e.g., United States v. Pena, 793 F.2d 486, 489-90 (2d Cir. 1986).

³⁵18 U.S.C. § 3161(h)(1)(D).

Court granting a continuance at the request of his two co-defendants. The continuance, granted on June 18, 2009 for the purpose of allowing defense counsel more time to prepare for trial, was an open-ended continuance in that it did not specify when the trial would be held. In the ensuing months after continuance was granted, the Court considered Cobb's Motion to Suppress. After the disposition of that Motion on November 12, 2009, the continuance remained in effect, and the speedy trial clock did not begin to run. Thus, all time after June 18, 2009 is excludable.

Cobb further argues that the Government failed to timely file its memorandum after the suppression hearing, and that the thirty (30) day delay in filing should be added to the speedy trial calculation pursuant to § 3161(h)(8)(C). The record reflects that at the July 10, 2009 suppression hearing, all parties and the Court were aware of the scheduling issues of the Government.³⁶ Therefore, the delay was not the result of a lack of diligent preparation by the Government, but a foreseeable and reasonable accommodation afforded to one party based on previous disclosures, to which Cobb failed to object. Nevertheless, regardless of whether the thirty (30) day extension to the Government to file its supporting brief is counted as excludable time, it would still not lead to a violation of the Speedy Trial Act.

The Court finds that the only period prior to its granting of the continuance in which pretrial motions were not pending was the time between the filing of the Indictment³⁷ on April 16, 2009 and the filing of Defendant Dobson's motions on May 11, 2009. Therefore, the maximum amount of includable speedy trial time was approximately twenty-six (26) days. This falls well short

³⁶Transcript of suppression hearing held on July 10, 2009 at 104:11 - 106:14.

³⁷Under the Speedy Trial Act, the seventy (70) day period begins at the later of either the date on which the defendant first appears before a judicial officer in a court where the case is pending, or the date on which the indictment is made public. 18 U.S.C. § 3161(c)(1). In the present matter, the Court finds that April 16, 2009 is the earliest date upon which the speedy trial clock could have started to run.

of the seventy (70) day limit. Moreover, the Court itself and all parties have exercised diligence in attempting to move the case forward to a just and efficient resolution. The Court finds no speedy trial violation, and therefore will deny Cobb's Amended Motion to Dismiss.

Cobb also appears to make a speedy indictment argument, alleging that the time period between arrest and the filing of the indictment exceeded thirty (30) days as required by § 3161(b) of the Speedy Trial Act. However, Cobb's contention that the original arrest and detention by state authorities was actually a federal investigation is unsupported by the evidence before this Court. The facts presented to the Court regarding the events of March 12, 2009 through multiple pre-trial hearings establish that the Upper Merion Police Department made the traffic stop and conducted the searches at the scene. The period of time between the federal arrest (March 24, 2009), and the filing of the indictment (April 16, 2009), was less than thirty (30) days.³⁸ Furthermore, the cited case of United States v. Germaine Battis³⁹ does not support Cobb's argument for dismissal. In Battis, the government admitted that it intentionally delayed bringing defendant to trial for thirty-five (35) months while state proceedings were pending.⁴⁰ The Third Circuit applied the test from a United States Supreme Court case, Barker v. Wingo⁴¹, and determined that the defendant was deprived of his constitutional right to a speedy trial. The instant case is easily distinguishable from Battis, as the Government did not delay in initiating federal proceedings, nor seek to prolong the period before trial. In fact, it was Cobb's co-defendants that requested time to prepare, and all three

³⁸18 U.S.C. § 3161(b).

³⁹United States v. Battis, 589 F.3d 673 (3d Cir. 2009).

⁴⁰Id. at 680.

⁴¹407 U.S. 514 (1972).

defendants have appropriately exercised their rights to file pre-trial motions. Thus, we find that Cobb's argument on speedy indictment grounds has no merit.

III. CONCLUSION

For the foregoing reasons, Defendant Johnny Cobb's Amended Motion to Dismiss will be **DISMISSED**. An appropriate Order follows.

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CRIMINAL NO. 09-256-1

ORDER

AND NOW, this 25th day of June, 2010, upon consideration of Defendant's First Motion to Dismiss on Speedy Trial [Doc. No. 104], Defendant's Amended Motion to Dismiss Pursuant to the Speedy Trial Act [Doc. No. 105], the Government's response [Doc. No. 107], and oral argument held thereon, it is hereby **ORDERED** that:

- 1) Defendant's First Motion is **DISMISSED** as withdrawn; and
- 2) Defendant's Amended Motion to Dismiss is **DISMISSED** for the reasons stated in the attached Memorandum Opinion.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

Cynthia M. Rufe, J.