

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
 Plaintiff,)
) **I.D.: 1908020399**
 v.)
)
 MICHAEL J. LACY,)
)
 Defendants.)

**ORDER ON DEFENDANT’S MOTION TO DISMISS FOR LACK OF
SPEEDY TRIAL AND MOTION TO MODIFY BAIL – DENIED**

Before the Court is a motion filed by defendant Michael J. Lacy to dismiss the charges against him due to a violation of his constitutional right to a speedy trial. In the alternative, defendant seeks a reduction of his bond so that he might be released pending trial. This order will deny both motions. It appears to the Court that:

1. Defendant was arrested on August 30, 2019. He was indicted on October 14, 2019 for Possession of a Firearm by a Person Prohibited; Carrying a Concealed Deadly Weapon; Police Signal; Leaving the Scene of a Collision; Reckless Driving; Aggravated Menacing; and Possession of a Deadly Weapon during the Commission of a Felony.
2. The case moved forward through the standard criminal case process. Both a first and final case review were held without resolution of the case. A suppression hearing was held on March 5, 2020. That motion was denied on March 12, 2020. Trial was scheduled to be held on March 17, 2020. On March 12, 2020 the State requested a continuance of the trial because the prosecutor in the case was traveling out of state.

At that time, the Delaware Department of Justice had enacted a policy that any employee traveling out of state could not return to work for 14 days following his or her return therefore the prosecutor would have been not able to conduct the trial. The defense did not object, and the trial was continued.

3. Even had there been no continuance of the original trial date, trial would not have proceeded on March 17, 2020. On March 13, 2020, the Chief Justice of Delaware Supreme Court declared a judicial emergency, “closing the courthouse to all but essential personnel and foreclosing the availability of jury trials.” Trial was rescheduled to April 7, 2020 but due to the ongoing judicial emergency, that trial date was automatically continued by the Court. A new trial date has not been set.

4. On March 24, 2020, following the continuance of trial, the defense filed a request to reduce Mr. Lacy’s bail. The State opposed. On March 27, 2020 the Court denied Mr. Lacy’s Motion. Mr. Lacy has been held in prison since.

5. On March 12, 2020, Governor John Carney issued a Declaration of a State of Emergency for the State of Delaware due to Public Health Threat created by COVID-19.¹ On March 16, 2020, the Governor’s order was modified to further limit gatherings, including public gatherings of persons, and other measures until May 15, 2020.² On March 22, 2020, the Governor’s order was modified to close all non-essential businesses and requiring essential businesses to follow social distancing and

¹ Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat, (March 12, 2020), (<https://governor.delaware.gov/health-soe/state-of-emergency/>).

² First Modification of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (March 16, 2020). <https://governor.delaware.gov/health-soe/state-of-emergency/>).

CDC guidelines.³ There have been subsequent modifications and an Emergency Order remains in place to this date.⁴

6. In response to the Governor’s orders and the COVID-19 pandemic, the Supreme Court issued an Order Declaring a Judicial Emergency on March 13, 2020 to last for thirty days.⁵ The Order included, *inter alia*, that all trial courts have discretion to continue trials in criminal cases for thirty days, that all courts utilize audiovisual devices to conduct proceedings except for jury trials, and stated that “all time requirements under the Speedy Trial Guidelines are hereby tolled.”⁶ On March 22, 2020, the Supreme Court issued Administrative Order Number 3, which closed all courthouses in the State of Delaware to the public from March 23, 2020 until April 15, 2020 or until further order of the Chief Justice of the Supreme Court.⁷ Subsequently, on April 14, 2020, the Chief Justice issued an Administrative Order Number 4 extending the closure of all state courts and their facilities to the public for another thirty days, until May 14, 2020.⁸ The Order stated “[d]uring the period of judicial emergency, all time requirements under the Speedy Trial guidelines are tolled.”⁹

Since then, the Chief Justice of the Supreme Court has extended the judicial emergency in Orders dated May 14, 2020, June 5, 2020, July 6, 2020, August 5, 2020,

³ Fourth Modification of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (March 22, 2020). (<https://governor.delaware.gov/health-soe/state-of-emergency/>).

⁴ Twenty-seven modifications: State of Emergency Declaration (February 19, 2021). (<https://governor.delaware.gov/health-soe/state-of-emergency/>).

⁵ Order Declaring a Judicial Emergency, Seitz, C.J. (Del. March 13, 2020).

⁶ *Id.*

⁷ Administrative Order No. 3, In re: COVID-19 Precautionary Measures (Del. March 22, 2020).

⁸ Administrative Order No. 4, In re: COVID-19 Precautionary Measures (Del. April 14, 2020).

⁹ *Id.*

September 4, 2020, October 2, 2020, November 2, 2020, December 2, 2020, December 30, 2020, and January 28, 2021. Currently, Administrative Order No. 16 is in effect, which extends the judicial emergency to March 4, 2021.

The Superior Court also issued various Standing Orders outlining court procedures and closings in accordance with the Supreme Court's orders. Specifically, in Standing Order No. 2, the Superior Court suspended all civil and criminal jury trials through and including April 15, 2020.¹⁰ This continued to be the case until October 2020, when Superior Court began scheduling jury trial for non-victim cases. On November 16, 2020, however, the Court returned to Phase 2 of the Reopening Plan due to the serious risk to public health, thereby again halting jury trials.¹¹ In this case, the Defendant demanded a jury trial.

7. None of this is disputed by the defendant. Nonetheless, defendant argues that the failure to bring him to trial to date constitutes a violation of his right to a speedy trial.

8. Delaware does not have a statutory right of speedy trial. But there is a constitutional right to speedy trial embedded in the Sixth Amendment to the U.S. Constitution and a parallel guarantee in the Delaware Constitution, Article 1, Section 7.¹² The U.S. Congress has passed a Speedy Trial Act, 18 U.S.C. §§3161-3174, but the Delaware General Assembly has not done so.¹³ The Delaware Supreme Court has,

¹⁰ Standing Order No. 2 Concerning COVID-19 Precautionary Measures (Del. Super. March 15, 2020).

¹¹ Administrative Order No. 13, In re: COVID-19 Precautionary Measures (Del. Nov. 16, 2020).

¹² *State of Delaware v. Victor Duonnolo*, 2020 WL 2467077 (Del. Super. 2020).

¹³ *Id.*

however, issued an Administrative Directive calling on Superior Court to adjudicate 90% of criminal cases within 120 days of indictment and 100% within one year.¹⁴ That administrative directive, however, creates no rights independent of the constitutional right to a speedy trial.”¹⁵

9. Delaware Courts have adopted the U.S. Supreme Court's analysis of constitutional speedy trial claims under the rubric established in the case of *Willie Mae Barker v. John W. Wingo*.¹⁶ In *Barker*, the U.S. Supreme Court held that constitutional speedy trial issues must examine 1) the length of the delay; 2) the reasons for the delay; 3) the defendant's assertion of his right to a speedy trial; and 4) any prejudice to the accused.”¹⁷ In applying *Barker* this Court has stated that “it must be remembered that the discharge of a defendant for denial of a speedy trial is a drastic step, justifiable only when further proceedings against him would harm the interests protected by the Speedy Trial Clause, Thus, it is unlikely that a prosecution must be ended simply because the government has delayed unnecessarily, without the agreement of the accused.”¹⁸

10. The first factor under *Barker* is the length of delay. The length of the delay is from August 2019 to the present. As this delay is over a year it is presumptively

¹⁴ *Id.*; Delaware Supreme Court Administrative Directive No. 130 (July 11, 2001).

¹⁵ *Nikerray Middlebrook v. State of Delaware*, 802 A.2d 268 (Del. 2002).

¹⁶ 407 U.S. 514 (1972); *Nikerray Middlebrook v. State of Delaware*, 802 A.2d 268 (Del. 2002); *State of Delaware v. Victor Duonnolo*, 2020 WL 2467077 (Del. Super. 2020).

¹⁷ *Id.*

¹⁸ *State of Delaware v. William E. Johnson*, 564 A.2d 364, 369 (Del. Super. Ct 1989)

prejudicial and favors Mr. Lacey.¹⁹ The delay of over a year necessitates that this Court consider the remaining *Barker/Middlebrook* factors.²⁰

11. The second *Barker* factor is the reason why a defendant's trial has been delayed. "[A] valid reason may justify appropriate delay and will not weigh against the state at all."²¹ Like many criminal defendants, Mr. Lacy's trial has been repeatedly delayed due to COVID's effect on the ability of the Superior Court to hold live, in-person jury trials. Neither Lacy nor the State prosecutor's office are at fault for this delay, and the interests of public safety amidst a pandemic represents a valid justification for the delay.²² This factor does not weigh against the state nor does it weigh in favor of Mr. Lacy.²³

12. The third factor under *Barker* is Lacy's assertion of his Sixth Amendment rights and analogous rights under the Delaware Constitution. Lacy's current Motion represents a clear assertion of his Sixth Amendment rights. However, as the State

¹⁹ *Chyanne Dabney v. State of Delaware*, 953 A.2d 159, 164 (Del. 2008)

²⁰ *Id.*

²¹ *Clinton N. Harris v. State of Delaware*, 956 A.2d 1273, 1276 (Del. 2008)

²² *State of Delaware v. Victor E. Duonnolo*, 2020 WL 2467077 (Del. Super. 2020); *State of Delaware v. Jawon Watson*, 2121 WL 303032 (Del. Super. 2021); *State of Delaware v. Carlos B. Chavez-Mendez*, 2020 WL 3065738 (Del. Super. 2020).

²³ Hundreds of cases have addressed the question of speedy trial delay considering the pandemic. While most of the cases are analyzed under the U.S. Speedy Trial Act the analysis under that act is instructive in the Constitutional right to a Speedy Trial context. In the hundreds decided this Court was unable to find one case where a defendant has prevailed on a speedy trial claim where the delay resulted from the effects from the pandemic. *U.S.A. v. Jesus Doran*, 2021 WL 413520 (CDCA 2021); *United States of America v. Hamid Akhavan & Ruben Weigand*, No. 20-CR-188 (JSR), 2021 WL 797806, at *5 (S.D.N.Y. Mar. 1, 2021)(denying claim that Defendants' Sixth Amendment right to a speedy trial because a delay of more than a year was caused by the COVID-19 pandemic, not the actions of either of the parties.)

points out, the continued Judicial Emergency Orders are preventing in-person jury trials from taking place. Since the underlying reason for the delay in this case is valid, and so compelling, this should not weigh in Lacy's favor or be held against the State.²⁴

13. The final *Barker* factor asks the Court to consider what prejudice Lacy will suffer as a result of the delay. Lacy asserts that he has been prejudiced by the delays in his trial date because the memories of key witnesses in the case may fade and render their testimony less reliable. In this case, this does not appear to be a significant concern, since the State's brief indicates that there is extensive documentary evidence regarding the incident for which the State has charged Lacy. Additionally, the dramatic nature of the alleged incident in this case makes it very likely that the key witness in this case (the alleged victim who claimed that Lacy pointed a gun at him) will remember the incident sufficiently well to testify accurately about the key details of the incident and identify Lacy. In any event, the documentary evidence in this case can be used to refresh the memory of Butler and any other witnesses where it is necessary to do so.

14. The Court is sympathetic to the defendant's continual plight of being incarcerated, and not being able to make bail with no trial date yet set. This worldwide pandemic has created numerous hardships on all, including the defendant and those defendants similarly situated. Balancing the *Barker* factors with the facts of this case, the Court concludes that it will not take the drastic step of dismissing this case since

²⁴ *State of Delaware v. Victor E. Duonnolo*, 2020 WL 2467077 (Del. Super. 2020) at page 2.

further proceedings against him will not harm the interests protected by the Speedy Trial Guidelines. The only factor that favors Mr. Lacy is the length of the delay. The other factors are either neutral or favor the State. On this scale, and at this time, the drastic measure of Dismissal is not warranted.

15. I now turn to the defendant's request to modify bail. A similar motion was made in March 2020 and denied by this Court on March 27, 2020. The only changed circumstances since the March 27, 2020 bail decision is the additional time that the defendant has been incarcerated and the fact that he was in isolation in the infirmary from December 12, 2020 to February 2, 2021. This Court does not believe that these two changed circumstances justify a modification of this Court's March 27, 2020 bail decision. This Court finds that the factors laid out in the Court's March 27, 2020 bail modification denial continue to exist and the changed circumstances do not justify a modification of the bail presently in place.

IT IS SO ORDERED this _____ day of March, 2021.

Francis J. Jones, Judge

/jb
Original to Prothonotary

cc: Brett Hession, Assistant Public Defender, Office of the Public Defender
Jillian Schroeder, Deputy Attorney General, Office of the Attorney General