

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

PEOPLE OF THE VIRGIN ISLANDS,)	CASE NO: ST-2015-CR-0000156
)	
Plaintiff,)	14 V.I.C. §§ 921 & 922(a)(1)
)	14 V.I.C. §921 & 922(b)
-vs-)	14 V.I.C. §§ 295(1) & 295(3) & 1081
)	14 V.I.C. § 297(a)(2)
MEKEL BLASH,)	14 V.I.C. §§ 475(a)(1) & 475(a)(2)
(D.O.B. 04/26/87))	14 V.I.C. § 442(1)
)	14 V.I.C. §§ 1081 & 1083(1)
Defendant.)	14 V.I.C. §2251(a)(2)(B)

Cite as: 2019 VI SUPER U ST-2019-MO-016

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant Mekel Blash's Motion to Dismiss, which was filed on November 15, 2017. The People of the Virgin Islands filed its Opposition to Defendant's Motion to Dismiss on December 22, 2017. Being fully briefed, the Court will deny Blash's Motion to Dismiss.

I. BACKGROUND

On or about January 18, 2014, police officers with the Virgin Islands Police Department discovered James Malfetti dead in his apartment on St. John, Virgin Islands. On April 17, 2015, officers arrested Mekel Blash as a suspect, and the People subsequently filed an Information charging seven counts against Blash, including counts for First and Second Degree Murder.

Though this matter was initially scheduled for jury selection on November 30, 2015, with a trial date to be set within the following three-week trial period, a series of discovery disputes, counsel changes, and motions to continue caused that initial date for jury selection to be changed.

2015

On July 30, 2015, the Court ordered that the November 30, 2015 jury selection be continued to August 8, 2016, due to the unavailability of the People's Medical Examiner, Dr. Francisco Landron, and outstanding discovery related to the People's DNA evidence. On December 9, 2015, Blash filed a Motion to Compel Discovery seeking a multitude of information, such as DNA results, reports, chain of custody documentation, and more.

2016

On February 2, 2016, Blash filed a Renewed Motion to Compel Discovery seeking DVDs that the People had failed to turn over to him, as well as the DNA evidence requested in his previous Motion to Compel Discovery. Having ordered that the People turn over the requested discovery, on April 18, 2016, the Court ordered that the People appear before the Court on May 4,

2016, and show cause as to why it had not complied with the Court's March 2, 2016 Order requiring the disclosure of the discovery requested in Blash's two motions to compel. The People subsequently provided supplemental discovery to Blash on May 10 and 26, 2016. Still missing information, Blash filed a Motion to Compel Missing Surveillance Videos, Police Recorded Interview of the Witness Naiela Foy and FBI DNA Laboratory Comparison [sic] Results on June 29, 2016.

About a month later, the People filed an Information Motion to the Court in which the People informed the Court that Assistant Attorney General Daniel H. Huston was leaving the Department of Justice, which meant that a new attorney would be assigned to the matter, and moved the Court for a continuance of the jury selection.

The People also filed a Motion to Continue Jury Selection on July 28, 2016, moving again for a continuance in the jury selection. The Court granted the People's motion on August 4, 2016, and continued the jury selection, as well as scheduled a pretrial conference on September 6, 2016.

The Court issued another Order on October 12, 2016, in which it scheduled jury selection on January 23, 2017. About two months later, Blash filed a Motion to Continue Jury Selection/Trial on December 13, 2016, and asked for a continuance in the matter due to Blash's needing to hire a DNA expert and provide him or her time to review the DNA evidence in this matter. On December 16, 2016, the Court granted Blash's Motion and continued jury selection until May 30, 2017, and the pretrial conference until May 15, 2017.

2017

As with 2016, neither jury selection or trial occurred in 2017 for a myriad of reasons. On February 6, 2017, Attorney Julie Todman, then counsel for Blash, filed a Motion to Withdraw as Court Appointed Counsel. The Court granted Attorney Todman's Motion on February 17, 2017, and appointed Attorney Robert A. Leycock as counsel for Blash. Less than a month later, on March 7, 2017, Attorney Leycock filed a Motion to Withdraw as Counsel. On March 9, 2017, the Court granted Attorney Leycock's Motion and appointed Attorney W. Mark Wilczynski as counsel for Blash. More than a month later, on April 18, 2017, Blash filed a Motion to Continue Jury Trial, and the Court granted his Motion on May 8, 2017, continued jury selection without a date certain, and scheduled a status conference on July 5, 2017. Blash then filed a Motion to Continue Status Conference on June 12, 2017, and the Court granted the motion and continued the status conference until July 31, 2017. On June 27, 2017, Blash filed his Motion to Appoint Expert Witness (DNA), which the Court granted on July 11, 2017.

For the month of September 2017, the Court was closed and inoperable due to the catastrophic aftermath of Hurricanes Irma and Maria. The Court began to slowly regain operation towards the middle of October 2017. In fact, on October 17, 2017, the Court issued an Order requiring that the People provide Blash with all of the DNA discovery in their possession as requested by Blash's Supplemental Demand for DNA Discovery, which was filed on July 25, 2017. The Court also scheduled a status conference on December 7, 2017. On November 20, 2017, the Court granted the People additional time and ordered that they forward all supplemental DNA

discovery to Blash by no later than December 11, 2017. The People, on December 11 and 13, 2017, provided Blash with a Seventh Supplemental Discovery and Eighth Supplemental Discovery.

2018

On January 9, 2018, the Court issued an Order in which it scheduled jury selection on March 19, 2018. Alleging that he had yet to receive all of the DNA discovery, Blash filed a Motion to Extend All Deadlines and Continue Jury Selection on February 12, 2018. On the same day, Blash filed a Motion for Daubert Hearing on DNA Evidence. The Court, in two separate Orders, both of which were issued on February 23, 2018, ordered that the People file a response to Blash's Motion for Daubert Hearing on DNA Evidence, that Blash then file a reply, and that jury selection be continued to September 4, 2018 with trial scheduled on September 10, 2018. The Court also scheduled a pretrial conference on August 13, 2018.

On April 11, 2018, the People filed an Informational Motion and Motion to Continue Daubert Hearing on DNA Evidence. The Court granted the People's Motion on April 12, 2018, and continued the Daubert hearing until May 30, 2018. On the next day, April 13, 2018, Blash filed a Motion to Reschedule Daubert Hearing, which the Court granted in part on April 17, 2018, and continued the Daubert hearing until June 1, 2018. After the June 1, 2018 Daubert hearing, the Court issued an Order on June 4, 2018, in which it permitted both parties to file a post-hearing brief within 14 days of the June 1 hearing. Upon receiving the parties' post-hearing briefs and taking the issue under advisement, the Court issued a Memorandum Opinion and Order on August 24, 2018, ultimately finding the People's DNA expert and expert testimony admissible in trial.

Less than a week later, on August 30, 2018, the People filed an Unopposed Motion to Continue Sept 4, 2018 Jury Trial. The Court issued an Order granting the People's Unopposed Motion, continuing the jury selection and trial without date, and retaining the pretrial conference that was scheduled for September 24, 2018. A few days before the scheduled pretrial conference, Attorney Wilczynski filed a Motion to Withdraw as Defendant's Appointed Counsel. On September 24, 2018, the Court granted Attorney Wilczynski's Motion and appointed Attorney Darren John-Baptiste as Blash's new counsel of record. The Court also scheduled a status conference on November 5, 2018. Months later, on November 14, 2018, the Court issued an Order scheduling a pretrial conference on March 12, 2019, and jury selection on April 2, 2019, so that Blash's new counsel of record had an opportunity to become acclimated with his case.

With this history of events, the Court turns to Blash's Motion to Dismiss.

II. LEGAL STANDARD

The Sixth Amendment to the U.S. Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]"¹ To assess whether

¹ U.S. Const. Am. VI. The Sixth Amendment right to a speedy trial applies to the Virgin Islands through § 3 of the Revised Organic Act of 1954. *People of the Virgin Islands*, Criminal No. ST-09-CR-218, Criminal No. ST-09-CR-

a defendant's right to a speedy trial has been violated, courts in the Virgin Islands weigh the four factors delineated in *Barker v. Wingo*: (1) length of delay; (2) reason for the delay; (3) defendant's assertion of his right; and (4) prejudice to the defendant.² Though these four factors are weighted, with no one factor being sufficient or necessary on its own, the Supreme Court of the Virgin Islands has found that "[t]he most important factor to consider is whether the defendant suffered any prejudice from the delay."³

Before reaching the four factor analysis, however, the Court must determine that the alleged delay has "crossed the threshold dividing ordinary from 'presumptively prejudicial' delay[.]"⁴ No exact timeframe exists that automates a finding that a delay is "presumptively prejudicial," but several courts have presumed that a 12-month delay is sufficiently prejudicial to require an examination of the remaining *Barker* factors.⁵ Indeed, "the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge."⁶

III. ANALYSIS

In analyzing Blash's Motion to Dismiss,⁷ the Court must first determine whether the delay in this matter has reached the "presumptively prejudicial" threshold. If it has, then the Court must weigh the remaining factors, keeping in mind that it should provide the most weight to the amount of prejudice suffered by Blash due to the delay.

A. The length of delay is "presumptively prejudicial."

The Court agrees with Blash that the excessive delay in this matter is "presumptively prejudicial." VIPD officers arrested Blash on April 17, 2015. Jury selection in this matter was originally scheduled for November 30, 2015. Barring any need to continue jury selection again in this matter, the length of time between Blash's arrest and his eventual trial will amount to approximately four years. This length of time no doubt exceeds the timespans previously considered in this jurisdiction to be "presumptively prejudicial."⁸ Therefore, the Court finds that the length of delay in this matter is sufficient to trigger an examination of the remaining three *Barker* factors.

219, 2010 V.I. LEXIS 89, at *5 n.4 (V.I. Super. Ct. Dec. 27, 2010) (citing *In re Moses*, 48 V.I. 479, 486 n.5 (D.V.I. App. Div. 2006)).

² *Barker v. Wingo*, 407 U.S. 514, 530 (1972).

³ *Francis v. People of the Virgin Islands*, 63 V.I. 724, 746 (V.I. 2015) (citing *Brown v. People of the Virgin Islands*, 55 V.I. 496, 503 (V.I. 2011)).

⁴ *Doggett v. United States*, 505 U.S. 647, 651-52 (1992) (citing *Barker v. Wingo*, 407 U.S. 514, 530-31 (1972)).

⁵ *Doggett*, 505 U.S. at 652 n.1 ("Depending on the nature of the charges, the lower courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year."); *Francis*, 63 V.I. at 748 (finding that a 15-month delay "is sufficient to require evaluation of the three remaining *Barker* factors.").

⁶ *Barker*, 407 U.S. at 531.

⁷ Though the Motion to Dismiss only addresses delays leading up to its filing, the Court will, in the interest of fairness, consider the additional delays that have followed the date of filing.

⁸ See *Francis*, 63 V.I. at 748 (finding 15-month delay to be "presumptively prejudicial"); *Carty v. People of the Virgin Islands*, 56 V.I. 345, 365 (V.I. 2012) (finding same for 25-month delay).

B. The reason for the delay.

Blash argues that the People are the primary reason for the delay.⁹ According to Blash, the People have consistently sought continuances due to their inability to timely provide discovery to Blash and their changes in counsel.¹⁰ The People likewise point to Blash's actions as primary contributors to the delay in this matter.¹¹ They argue that Blash has required multiple changes in counsel, which in turn has required continuances.¹² They further aver that Hurricanes Irma and Maria caused substantial delays in court proceedings and required extensions of deadlines.¹³

Throughout a criminal proceeding, many reasons may justify, or fail to support, a delay in the proceedings. For instance, "a valid reason, such as a missing witness, should serve to justify appropriate delay,"¹⁴ whereas "[e]vidence of a deliberate attempt to hamper the prosecution must be weighed heavily against the Government."¹⁵ Of course, "more neutral reason[s] such as negligence or overcrowded courts" weigh less heavily against the People.¹⁶ Regardless of the justification, or lack thereof, all reasons attributed to the People "should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant."¹⁷ Conversely, any delay caused by the defense will weigh against the defendant,¹⁸ such as delay due to a defendant's interlocutory appeal¹⁹ or a defendant's attorney's "acting, or failing to act, in furtherance of the litigation."²⁰

Without question, the People bear some responsibility for delay in this matter. In July 2015, the People's Medical Examiner's unavailability caused the jury selection to be continued. The People also failed to consistently provide Blash with discovery despite several requests, which led to the filing of multiple motions to compel and motions to continue.²¹ This lack of discovery transmittal is more significant given that this matter involves a First Degree Murder charge – and all its complexities – with DNA being imperative to the People's case. Beyond discovery, the People have also had their fair share of counsel changes, which has caused them to move for

⁹ Def.'s Mot. to Dismiss 10.

¹⁰ *Id.* at 10-11.

¹¹ Opp'n to Def.'s Mot. to Dismiss 1-2.

¹² *Id.* at 2.

¹³ *Id.*

¹⁴ *United States v. Battis*, 589 F.3d 673, 679 (3d Cir. 2009) (quoting *Barker v. Wingo*, 407 U.S. 514, 531 (1972)) (internal quotation marks omitted).

¹⁵ *People of the Virgin Islands v. Hakim*, 2014 LEXIS 67, at *8 (V.I. Super. Ct. Aug. 21, 2014) (quoting *United States v. Benjamin*, 28 V.I. 133, 149 (D.V.I. 1993)).

¹⁶ *Battis*, 589 F.3d at 679.

¹⁷ *Vermont v. Brillon*, 556 U.S. 81, 90 (2009) (quoting *Barker v. Wingo*, 407 U.S. 514, 531 (1972)).

¹⁸ *Id.*

¹⁹ *United States v. Loud Hawk*, 474 U.S. 302, 316 (1986) ("A defendant who resorts to an interlocutory appeal normally should not be able upon return to the district court to reap the reward of dismissal for failure to receive a speedy trial.").

²⁰ *Brillon*, 556 U.S. at 90-91 (quoting *Coleman v. Thompson*, 501 U.S. 722, 753 (1991)).

²¹ See Mot. to Compel Discovery (Dec. 9, 2015); Renewed Mot. to Compel Discovery (Feb. 2, 2016); Mot. to Compel Missing Surveillance Videos, Police Recorded Interview of the Witness Interview of the Witness Naiela Foy and FBI DNA Laboratory Comparison [sic] Results (June 29, 2016); Mot. to Extend All Deadlines and Continue Jury Selection (Feb. 2, 2018) (Blash arguing that he had yet to receive all of the DNA evidence)

continuances.²² Although the Court does not find that the People have deliberately attempted to delay this matter or hamper the prosecution of such, the People's lack of diligence in transmitted discovery coupled with their shuffling of counsel does weigh against them.

Blash, of course, has also caused delay. One very obvious cause of delay is Blash's multiple changes in counsel and the reasons for such changes. For instance, Attorney Todman moved to withdraw as Blash's counsel due to multiple profanity laced tirades, threats to the attorneys and staff of the Office of the Territorial Public Defender, and ultimately a breakdown in communication. Upon granting Attorney Todman's Motion to Withdraw, the Court appointed Attorney Leycock to represent Blash, but Attorney Leycock also filed his own Motion to Withdraw, citing a conflict of interest due to other representation. Thereafter, the Court appointed Attorney Wilczynski, and he requested a continuance of the matter to become acclimated with the case. After the Court continued jury selection and scheduled a status conference for July 5, 2017, Blash moved to continue that status conference. In February 2018, Blash filed a Motion for Daubert Hearing, which the Court scheduled for April 16, 2018. After the Court granted the People's motion to continue the *Daubert* hearing, Blash also filed a Motion to reschedule the new date for the *Daubert* hearing. Later, on September 21, 2018, Attorney Wilczynski filed a Motion to Withdraw as counsel because of a breakdown of communication between his team and Blash. According to Attorney Wilczynski, upon the Court's refusal to exclude the People's DNA evidence under *Daubert*, Blash became agitated and upset, and he began phoning Attorney Wilczynski and Attorney Carl Williams'²³ offices upwards of four times per day. At one point, when Attorney Williams visited Blash at the Bureau of Corrections, Blash had to be escorted from the visiting room due to his escalating tones and eventual screaming. The Court therefore granted Attorney Wilczynski's Motion and appointed Attorney Darren John-Baptiste as Blash's new counsel on September 24, 2018, which involved providing Attorney John-Baptiste with time to become acclimated with Blash's case.

Taking everything into consideration, it is clear that both the People and Blash have caused delay in this matter, some unnecessary and some necessary. However, the Court finds that the facts weigh against the People here because, at the end of the day, it is the People's responsibility to ensure that this case be brought to trial with expediency and "even . . . 'neutral' reason[s] weigh[] against the [People]."²⁴ Therefore, the Court finds that the second *Barker* factor weighs, albeit slightly, against the People.

C. Blash's assertion of his speedy trial rights.

The third *Barker* factor examines the defendant's assertion of his right to a speedy trial:

²² See Informational Mot. to the Court (July 22, 2016) (informing the Court that Assistant Attorney General Daniel H. Hutson was leaving the Department of Justice); Mot. to Continue Jury Selection (July 28, 2016); Notice of Appearance (August 3, 2016) (stating that Assistant Attorney General Quincy G. McRae was appearing on behalf of the People); Notice of Appearance (January 10, 2017) (stating that Assistant Attorney General Ednin D. Martinez was appearing on behalf of the People).

²³ Attorney Wilczynski enlisted the services of Attorney Carl Williams, an experienced criminal defense attorney, to aid in the defense of Blash's case at no cost to Blash. See Mot. to Withdraw as Def.'s Appointed Counsel 3.

²⁴ *Battis*, 589 F.3d at 680.

A defendant shows that he has asserted his right to a trial (1) when he is represented by counsel and 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; or (2) if defendant is proceeding *pro se*, he is not required to make a procedurally perfect assertion of his right to a speedy trial; instead he must make a reasonable assertion of his right to a speedy trial in a manner that would place authorities on notice of his claims.²⁵

In this instance, Blash first asserted his right to a speedy trial at his May 7, 2015 Arraignment and later through a motion to dismiss on November 15, 2017 – more than two years after his arrest. Therefore, the Court finds that this factor weighs in favor of Blash.

D. Prejudice suffered by Blash due to the delay.

The final and most important *Barker* factor is the prejudice suffered by Blash. When analyzing prejudice, the Supreme Court of the Virgin Islands has looked to the three interests that a right to a speedy trial is designed to protect: (1) the prevention of oppressive pretrial incarceration; (2) the minimization of anxiety and concern of the accused; and (3) the limiting of the possibility that the defense will be impaired.²⁶ “Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.”²⁷ A defendant, however, is not limited to assert a speedy trial claim based on prejudice that is “specifically demonstrable,” as the Supreme Court of the United States has “allowed defendants to claim prejudice without providing affirmative proof of particularized prejudice.”²⁸ The ultimate burden of proving prejudice, however, still falls to the defendant.²⁹

The Court is unpersuaded that Blash has suffered prejudice in this matter that reaches to the level of unconstitutionality. While Blash asserts that he remains incarcerated during the pendency of his trial, he has failed to provide the Court with any evidence suggesting that such incarceration has reached the level of oppressive, i.e. the conditions of his incarceration fall below established, standard levels so as to place his physical and mental integrity in jeopardy.³⁰ Further, Blash argues that the People’s delay in this matter inhibited him from tending to personal, family matters and has caused him personal anxiety; however, this broad, general argument does not rely on anything concrete nor rests on any evidentiary support.³¹ Indeed, Blash’s asserted anxiety does not appear to amount to more than the “amount of anxiety in the form of personal prejudice to the

²⁵ *Carty*, 56 V.I. at 366-67.

²⁶ *Francis*, 63 V.I. at 753.

²⁷ *Barker*, 407 U.S. at 532.

²⁸ *Battis*, 589 F.3d at 682 (quoting *Doggett v. United States*, 505 U.S. 647, 655-56 (1992)).

²⁹ *Carty*, 56 V.I. at 367 (citing *Hakeem v. Beyer*, 990 F.2d 750, 760 (3d Cir. 1993)).

³⁰ See *Wells. V. Petsock*, 941 F.3d 253, 257 (3d Cir. 1991); *People of the Virgin Islands v. Ilarraza*, Case No. SX-12-CR-0568, 2013 V.I. LEXIS 70, at *13 (V.I. Super. Ct. Dec. 5, 2013).

³¹ *Ilarraza*, 2013 V.I. LEXIS 70, at *14 (“Vague allegations of anxiety are insufficient to state a cognizable claim.”) (quoting *Hakeem v. Beyer*, 990 F.2d 750, 762 (3d Cir. 1993)).

accused [that] is inevitable in a criminal case.”³² Lastly, Blash argues that the lengthy gaps in the production of evidence have made it difficult to ascertain whether evidence has been lost or otherwise mishandled. While the Court recognizes that the “impairment of one’s defense is the most difficult form of speedy trial prejudice to prove,” Blash fails to point to any specific type or group of evidence that could be lost or that should concern the Court. The crux of the evidentiary disputes in this matter have revolved around DNA evidence, but Blash has received the People’s DNA evidence and has had the opportunity to challenge said evidence through a *Daubert* hearing. In sum, whatever prejudice that Blash has suffered over the course of this matter, he has not shown that it amounts to the level of impairing his defense specifically or constituting a speedy trial violation generally.

IV. CONCLUSION

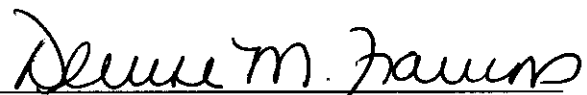
Upon considering the weight of the four *Barker* factors, the Court does not believe that Blash’s right to a speedy trial was violated here. Certainly, the People’s actions and inactions in this matter have caused several of the *Barker* factors to weigh against them. However, notwithstanding the People’s shortcomings, the Court does not find that Blash has suffered prejudice that would impact or impair his overall ability to present a competent defense. The accumulated weight of the four factors simply do not weigh in favor of Blash. Therefore, the Court will deny his Motion to Dismiss. Accordingly, it is hereby

ORDERED that Defendant Mekel Blash’s Motion to Dismiss is **DENIED**; and it is further

ORDERED that Defendant Mekel Blash’s Motion for Extension of Time to File Reply is **DENIED as MOOT**; and it is further

ORDERED that a copy of this Memorandum Opinion and Order shall be directed to counsel of record and the Bureau of Corrections on behalf of the Defendant and its record.

DATED: 2/14/2019



DENISE M. FRANCOIS
Judge of the Superior Court
of the Virgin Islands

ATTEST:

Estrella H. George
Clerk of the Court

By:



Lori Boynes-Tyson
Chief Deputy Clerk

³² *Burkett v. Fulcomer*, 951 F.2d 1431, 1444 (3d Cir. 1991).