

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

CASE NO. 00-000

DEFENDANT  
Defendant.

\* \* \* \* \*

**MOTION TO DISMISS THE COMPLAINT  
(Re: Statutory Right to a Speedy Trial)**

TO THE HONORABLE JESUS A. CASTELLANOS  
UNITED STATES MAGISTRATE JUDGE  
FOR THE DISTRICT OF PUERTO RICO

COMES NOW Defendant, represented by the Federal Public Defender, seeking to dismiss the Indictment for violation of her statutory right to a speedy trial.

1. Defendant currently stands before the Court upon a determination of probable cause, made on December 5, 2001, for an alleged violation of 18 U.S.C. 111(a), under the misdemeanor modality of the offence.

2. Title 18, U.S.C. 3161, better know as the Speedy Trial Act, (hereafter referred to as the STA) provides for specific time limits in which federal criminal cases are to be prosecuted and brought to Trial.

3. “The Speedy Trial Act (“STA”)..., is designed ‘to protect a defendant’s constitutional right to a speedy...trial, and to serve the public interest in bringing prompt criminal proceedings’.” *United States v. Domingo Santiago-Becerril*, 130 F.3d 11 (1<sup>st</sup> Cir. 1997) (citing *United States v. Saltzman*, 984 F.2d 1087, 1090 (10<sup>th</sup> Cir. 1993)).

4. The STA specifies the term upon which a charging instrument must be filed against an individual. Section 3161 (b) of Title 18 states:

“Any information or indictment charging an individual with the commission of an offence shall be filed within thirty days from the date on which such individual was arrested or served with summons in connection with such charges. If an individual has been charged with a felony ...”

5. The STA, at 18 U.S.C. 3161 (h), identifies certain time periods of delay which shall be excluded in computing the time within which an information or indictment must be filed. If the indictment or information is not filed within the thirty day time limit required by § 3161(b), as extended by operation of § 3161(h)(1)-(9), the penalty provisions of the STA mandate that ‘the information or indictment shall be dismissed on motion of the defendant’. *Id.*

6. The Act’s thirty day period commenced on December 5, 2000, when Mrs. Defendant Alvarado was arrested, and for purposes of this calculation, includes until January 22, 2001, for a total of fifty five (55) days. The following is an analysis of the excludable dates upon application of the Act:

- one (1) day for the arrest and initial appearance, held on December 5, 2000. See docket entry #2;
- one (1) day for the preliminary hearing, held on December 6, 2000. See docket entry #7
- one (1) day for Notice of Appearance for attorney Juan Matos de Juan, filed on December 7, 2000. See docket entry #9;<sup>1</sup>

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<sup>1</sup> The defense undertands that this day should not properly be excluded under 18 U.S.C. 3161 (h)(1)(F), since the motion does not move the Court to take any action. However the day is excluded in this calculation since this analisis is presented in the light most favorable to the Government.

- eleven (11) days between the filing of Motion by the defense on December 8, 2000, and the ruling upon the same by the Court on December 18, 2000. See docket entries #8 and #10, respectively.

7. From the date of the arrest to January 29, 2001, a total of fourteen (14) excludable and forty one (41) non-excludable days have passed. Enclosed is a copy of the Court's Docket of the present case, downloaded from PACER on January 22, 2001.

8. When determining the sanctions to be applied upon violations of the STA, 18 U.S.C. 3162(a)(1) states:

If, in the case of any individual against whom a complaint is filed charging such individual with an offence, no indictment or information is filed within the time limit required by section 3161(b) as extended by section 3161 (h) of this chapter, such a charge against that individual shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offence; the facts and circumstances of the case which led to the dismissal; the impact of a reprosecution in the administration of this chapter and the administration of justice.

9. Given that a violation of the STA can be clearly established, the defense asks for a dismissal.

10. As an initial consideration, the offence with which the defendant is charged is a relatively minor offence, having been charged in the misdemeanor modality. The offence has no statutory minimum term of imprisonment, a maximum of one year, with a Guideline exposure from 0 to 6 months.

11. Going to the specific facts of the case, the defendant, who is a medium sized woman, is charged with attacking an officer significantly larger, taller and bulkier than her. In the video

presented by the Government during the preliminary hearing, it is the defendant who appears to be the victim of force, rather than the agent.

12. The During the preliminary hearing I.N.S. Agent , the alleged victim, showed to the Court a small scratch on the side his neck. On the other hand , the force used by Agent was significant enough that the medical records at MDC Guaynabo indicate that the defendant had suffered “multiple body trauma”, and X-Rays had to be taken to rule out possible head and cervical fractures.

13. A second consideration must be the responsibility of the defendant for the delay.

14. The dally in filing the appropriate charging document cannot be in any manner attributed to the defense. That is totally a within the discretion of the prosecutorial authority. *U.S. vs Osunde* 638 F. Supp. 171 (N.D. California, 1986). It is the Government who bears the burden of “stating and validating” the reasons for prosecutorial delay. See *U.S. vs Miller*, 23 F 3d 194 (8<sup>th</sup> Cir., 1994).

15. The delay in the filing of the Information is not the only delay which was beset this case. The facts alleged in the Complaint occurred on September 14, 2000. The Complaint was not sworn until December 1, 2000, and was not filed until December 5, 2000, day the defendant was arrested and brought to Court.

16. It is only after the defendant was interviewed concerning her injuries by other investigative agents that the Criminal Complaint was filed.

17. Taking all the above in to consideration in light of the analysis mandated by 18 U.S.C. 3162(a)(1), the United States should bear the consequences of the delay, and the Complaint should be dismissed with prejudice.

WHEREFORE, it is respectfully requested that the Court take notice of the above and DISMISS the Criminal Complaint WITH PREJUDICE.

I HEREBY CERTIFY that on today's date I served a copy of the foregoing Motion to Dismiss the Indictment (Re: Statutory Right to Speedy Trial) on counsel for the government, U.S. Attorney Guillermo Gil (Special Assistant U.S. Attorney Jared López) by delivering it to his office at Federico Degetau Federal Building, Room 452, Carlos Chardón Avenue, Hato Rey, Puerto Rico 00918.

In San Juan, Puerto Rico, this January 29, 2001.

Joseph C. Laws, Jr.  
Federal Public Defender

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