IN THE SUPERIOR COURT OF GLYNN COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	§	
	§	
v.	§	**Case No. CR2000433**
	§	
TRAVIS MCMICHAEL,	§	
GREG MCMICHAEL, and	§	
WILLIAM R BRYAN,	§	
	§	
Defendants.	§	

ORDER ON DEFENDANT BRYAN'S FIRST PLEA IN BAR
(SPEEDY TRIAL DEMAND)

Before the Court is Defendant William Roderick Bryan's (First) Plea in Bar – Speedy Trial Violation which seeks to dismiss the charges in the above captioned case. Defendant was arrested on May 21, 2020. Bryan's arrest occurred in the middle of a worldwide public health emergency. To be sure, at the time of Bryan's arrest the President of the United States had already declared a Public Health State of Emergency and had issued at least two national emergency declarations under both the Stafford Act and the National Emergencies Act (NEA). On March 14, 2020, the Governor of the State of Georgia declared a Public Health State of Emergency which has been continually extended through the date of this Order.

Specific to this Plea in Bar, the Chief Judge of the Georgia Supreme Court issued an "Order Declaring Statewide Judicial Emergency" on March 14, 2020. The Order was entered under the authority of the Judicial Emergency Act of 2004; O.C.G.A. § 38-3-60, *et. seq.* (the "Act"). In passing the Act, the General Assembly resolved "that it is in the best interests of the proper functioning of the courts and, ultimately, of the people, to provide our judicial system with a means by which to adjust certain rights, deadlines, and schedules to take into account the potentially devastating effects of a judicial emergency." 2004 Georgia Laws Act 498 (H.B. 1450). As long as the circumstances amounting to a "judicial emergency" under O.C.G.A. § 38-3-60(2) are present, any "authorized judicial

official" under O.C.G.A. § 38-3-60(1) may act pursuant to O.C.G.A. § 38-3-61 and O.C.G.A. § 38-3-62.

In declaring a judicial emergency and suspending jury trials, Chief Justice Melton presumptively acted pursuant to power and authority granted under the Act. Each of Chief Justice Melton's emergency orders document the Judicial Branch's continuing efforts to address the need to conduct jury trials and the attendant public health issues associated therewith. The Chief Justice's most recent order, filed May 8, 2021, provides a detailed summary of the circumstances surrounding the entry of each emergency order. *See* "Order Extending Declaration of Statewide Judicial Emergency"; May 8, 2021, pp. 10-14.[1]

Nonetheless, Defendant argues that the failure to bring him to trial in Glynn County constitutes a violation of his right to a speedy trial. First, Georgia's statutory right to a speedy trial was suspended and tolled by emergency order of the Supreme Court. The Court finds that the Supreme Court's emergency orders are sufficient authority to deny the defendant's statutory claim. However, as noted by the Defendant, there is a constitutional right to speedy trial embedded in the Sixth Amendment to the U.S. Constitution.

The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." U.S. CONST. amend. VI. In Duncan v. Louisiana, the Supreme Court held that the right to a jury trial applies to states by the Fourteenth Amendment. *See* Duncan v. Louisiana, 391 U.S. 145 (1968). The Supreme Court has not interpreted the right to a speedy trial to require that a case be brought within

[1] The Defendant claimed in a separate motion that the "indefinite suspension" of jury trials under the emergency order is unconstitutional. The motion was withdrawn, but the Defendant also argues here that the emergency orders are germane and were illegally entered. This Court is not the appropriate venue in which to raise those arguments as the Act provides redress to "[a]ny person whose rights or interests are adversely affected by an order declaring the existence of a judicial emergency or any modification or extension of such an order." O.C.G.A. § 38-3-64(a). The aggrieved is provided a remedy in a right to appeal, provided they conform to the process expressly set forth in the statute. The Defendant has failed to comply with the process of appeal established by statute.

a specific number of days. The Supreme Court explained in Barker v. Wingo that a defendant's constitutional right to a speedy trial can only be determined on an ad hoc basis. See Barker v. Wingo, 407 U.S. 514, 530 (1972). Some delay is inevitable, of course, so a court first must consider whether the delay is long enough to raise a presumption of prejudice and to warrant a more searching judicial inquiry into the delay. See Doggett v. United States, 505 U.S. 647, 651-652, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992). If the threshold is satisfied, courts must balance four factors when determining whether a defendant has been deprived of his right to a speedy trial: (1) the length of delay; (2) the reason for the delay (whether the State or the Defendant are responsible); (3) the defendant's assertion of his right, and (4) the prejudice to the defendant. None of these factors are dispositive, and courts must also consider any other circumstances that are relevant to the inquiry. *Id.* at 533; *see also* Doggett, *supra*; State v. Buckner, 292 Ga. 390, 393, 738 S.E.2d 65, 69 (2013).

The first inquiry is "whether the interval from the accused's arrest, indictment, or other formal accusation to the trial is sufficiently long to be considered 'presumptively prejudicial.' If not, the speedy trial claim fails at the threshold." State v. Porter, 288 Ga. 524, 525, 705 S.E.2d 636, 640 (2011), *citing* Ruffin v. State, 284 Ga. 52, 55, 663 S.E.2d 189. The length of the delay in this case is calculated from May 2020 to the present. During that entire period a State of Emergency has existed. "[T]o trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from "presumptively prejudicial" delay, 407 U.S. at 530-531, since, by definition, he cannot complain that the government has denied him a "speedy" trial if it has, in fact, prosecuted his case with customary promptness." Doggett, 505 U.S. at 651-652. Given the circumstances presented, it does not appear that this case has presented any "uncommonly long" delay and thus, Defendant's constitutional speedy trial claim must fail.

Pretermitting the lack of any uncommon delay, the Georgia Supreme Court has held that a delay in trial of less than one year does not trigger further inquiry into the remaining Barker v. Wingo factors. Porter, *supra;* 288 Ga. at 526–27, 705 S.E.2d at 641.

The delay in this case is approximately one year, based on the date of this Order, and as such would not generally require any further analysis of the Barker v. Wingo factors. However, given that the Defendant's trial is now scheduled to begin on October 18, 2021 and thus will not take place within the presumptive one year period, the Court will review the Barker v. Wingo factors which also demonstrate that dismissal is unwarranted.

The first factor is the length of the delay. In Barker v. Wingo, the Supreme Court found no "constitutional basis for holding that the speedy trial right can be quantified into a specified number of days or months". Barker, 407 U.S. at 523. The permissible length of delay is a dependent upon the peculiar circumstances of the case. Under the peculiar circumstances of this case, and the more general conditions of the pandemic, the Court does not find the length of the delay unreasonable.

The second factor is the reason for the delay and whether it is attributable to the State or the Defendant. Deliberate delay to gain an improper advantage over the accused strikes at the very heart of the speedy trial guarantee and is thus "weighted heavily against the government". Ruffin v. State, 284 Ga. 52, 59, 663 S.E.2d 189, 198 (2008). Here, the delay in bringing this matter to trial is unquestionably the outbreak of the coronavirus. It appears the Defendant is suggesting that compliance with the emergency orders of the State are a deliberate act of delay. This Court does not accept that reasoning. The delay caused by the pandemic is ongoing with the Courthouse subject to the emergencies declared by the Chief Justice and the Governor. Under O.C.G.A. § 38-3-60, *et seq.,* the Chief Justice determined that the public health emergency brought on by the coronavirus "substantially endangers or infringes upon the normal functioning of the judicial system, the ability of persons to avail themselves of the judicial system, or the ability of litigants or others to have access to the courts or to meet schedules or time deadlines imposed by court order or rule, statute, or administrative rule or regulation."

The Defendant suggests that "a more searching inquiry is warranted – an evidentiary hearing into the length of delay, reason for the delay, defendant's assertion of his speedy trial right, and prejudice to the defendant." However, the length of the delay, reason for the delay, and the assertion of the Defendant's right to a speedy trial has

already been acknowledged and documented. The Defendant has proposed that the pandemic and the actions taken by the State to protect its citizen's from this public health threat is not sufficient to justify the delay in this case. Specifically, he contends that "there is considerable doubt both as to the necessity of the on-going suspension of criminal jury trials generally, from a public health perspective, and specifically as to the length of delay required for the Superior Court of Glynn County to modify facilities for jury trial." This Court finds that the emergency orders are a valid and reasonable response to a world-wide pandemic that has killed hundreds of thousands and is transmitted through human contact. Further, the Defendant has failed to raise any of these issues under O.C.G.A. § 38-3-64(a). *See* Footnote 1, *supra*. Under the peculiar circumstances of this case, the Court concludes that the case is being prosecuted with the promptness required of the State.

The third factor is the assertion of the right to a speedy trial by the accused. Defendant asserted his right to a speedy trial after the courthouse was already subject to the emergency orders referenced above. Because the reason for the delay in his trial is so compelling and the timing of the Defendant's assertion so considered, the Court attaches little significance to the timing of the Defendant's assertion of his right.

The fourth factor is prejudice to the accused. This factor requires the court to consider three interests: (i) preventing oppressive pretrial incarceration, (ii) minimizing anxiety and concern of the defendant, and (iii) limiting the possibility that the defense will be impaired. Johnson v. State, 268 Ga. 416, 417, 490 S.E.2d 91, 92 (1997). This Court notes that an extensive bond hearing has already occurred and an order has been issued on both the bond application and on Bryan's motion to reconsider the denial of bond in this case. Thus, evidence on the issues of pretrial incarceration and the Defendants anxiety associated with his detainment is in the record and not dispositive. As part of the bond petitions, the Defendant has presented abundant evidence and expressed that he suffers from "anxiety and concern". Pretrial incarceration generally is a cause for both. But the Court does not believe that the constitutional right to a speedy trial is the appropriate vehicle by which to re-litigate his bond or his conditions of confinement.

Finally, Defendant has failed to present any compelling argument that delay caused by the pandemic has impaired his defense.

Accordingly, the Defendant's Motion is **DENIED**.

SO ORDERED, this 15th day of June, 2021.

Timothy R. Walmsley, Judge,
Superior Court of Georgia
Eastern Judicial Circuit

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