

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES, )  
 )  
 Plaintiff, )  
 )  
 v. ) **Crim No. 2002-119**  
 )  
 DAMIEN DOWARD, )  
 )  
 Defendant. )  
 )

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**ATTORNEYS:**

**Nelson Jones, Esq.**  
Assistant U.S. Attorney  
St. Thomas, U.S.V.I.  
*For the plaintiff,*

**Patricia Schrader-Cooke, Esq.**  
Assistant Federal Public Defender  
St. Croix, U.S.V.I.  
*For the defendant.*

**MEMORANDUM OPINION**

Moore, J.

This matter is before the Court on the defendant's motion to dismiss the indictment due to a violation of his rights under the Speedy Trial Act, 18 U.S.C. §§ 3161-3174.<sup>1</sup> He avers that the speedy trial clock expired in October 2002, and that the indictment should be dismissed. A review of the record confirms the defendant's claim, and requires the dismissal of the charges against him without prejudice.

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<sup>1</sup> The defendant has also filed a motion to suppress. Because I will grant his motion to dismiss, however, the motion to suppress is mooted.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On April 26, 2002, Virgin Islands Police officers received a phone call reporting gunfire in the Bovoni Housing Project on St. Thomas and that the two black males suspects fled in a black two-door vehicle. The government alleges that, while pursuing a vehicle fitting this description, it stopped and Damien Doward ["Doward" or "defendant"] appeared to get out. The officers approached Doward as he emerged from some bushes with guns drawn and ordered him to stop. Doward allegedly refused, a physical altercation ensued between Doward and one of the officers, and an officer discovered that the defendant was carrying a firearm.

On June 27, 2002, Doward was charged by indictment in this Court with felony possession of a firearm, possession of a firearm with an obliterated serial number, unauthorized possession of a firearm, and discharging of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and (k), 924(a)(1)(B) and (a)(2), 14 V.I.C. § 2253(a) and 23 V.I.C. § 479(a). Doward by that time was in custody under process of the Territorial Court, and it apparently took until August 2, 2002, to bring him before the magistrate judge on St. Croix for arraignment, at which time he plead not guilty and demanded a speedy trial. (See Tr. of Arraignment, Aug. 2, 2002 at 6.) On October 15, 2002, Doward filed a motion to dismiss the indictment under the Speedy Trial

Act because he has not been tried within seventy days of his arraignment.

## **II. DISCUSSION**

### **A. Jurisdiction**

This Court has jurisdiction over federal crimes as well as local crimes that "are of the same or similar character or part of, or based on, the same act or transaction." Section 22 of the Revised Organic Act of 1954, codified at 48 U.S.C. § 1612.<sup>2</sup>

### **B. The Speedy Trial Act Requires the Dismissal of the Indictment**

The Speedy Trial Act, 18 U.S.C. §§ 3161-3174, requires that in any case in which a plea of not guilty is entered, the trial of a defendant shall commence within seventy days from the date the defendant has appeared before a judicial officer in the court in which such charge is pending. 18 U.S.C. § 3161(c)(1). If the defendant is not brought to trial within seventy nonexcludable days, the court must dismiss the indictment on motion of the defendant. 18 U.S.C. § 3162(a)(2); *United States v. Hamilton*, 46 F.3d 271, 275 (3d Cir. 1995). Because more than seventy days have passed from the date of Doward's arraignment to the date on

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<sup>2</sup> The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 (1995 & Supp. 2001), reprinted in V.I. CODE ANN. 73-177, Historical Documents, Organic Acts, and U.S. Constitution (1995 & Supp. 2001) (preceding V.I. CODE ANN. tit. 1).

which he filed his motion to dismiss, this Court will dismiss the indictment.

The speedy trial clock began to run in this case on August 3, 2002, the day after Doward was arraigned.<sup>3</sup> See 18 U.S.C. § 3161(c)(1) (mandating that speedy trial clock begins to run on either the date on which the indictment was filed or on the date the defendant first appears before a judicial officer, whichever date last occurs); see also *United States v. Lattany*, 982 F.2d 866, 871 (3d Cir. 1992) (noting that this jurisdiction excludes days on which triggering events occurred). From that date until October 15, 2002, when Doward filed his motion to dismiss, seventy-four days had run on the clock – four more than the Speedy Trial Act allows. Accordingly, the indictment in this matter must be dismissed.

I now determine whether the indictment should be dismissed with or without prejudice. Section 3162(a)(2) enumerates factors which must be considered in determining whether to dismiss with or without prejudice: (1) the seriousness of the offense; (2) the facts and circumstances of the case which led to the

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<sup>3</sup> Although it is clear from the record that Doward was arraigned before the magistrate judge on St. Croix on August 2, 2002, for some reason he was rearraigned before the magistrate judge on St. Thomas on October 16, 2002, the day after he filed his motion to dismiss. For purposes of the Speedy Trial Act and this motion to dismiss, the seventy days within which the government was required to bring him to trial began the day after his arraignment on August 3, 2002.

dismissal; and (3) the impact of a reprosecution on the administration of this chapter and on the administration of justice. See *United States v. Taylor*, 487 U.S. 326, 333 (1988).

Clearly, possession of a firearm with an obliterated serial number and the discharging of it in a public place constitute very serious offenses. Nothing in the record before me suggests that a second prosecution of Doward would adversely affect the administration of the Speedy Trial Act or of justice.

Accordingly, I conclude that the dismissal should be without prejudice.

### **III. CONCLUSION**

Damien Doward was arraigned on August 2, 2002, and filed his motion to dismiss for speedy trial violations on October 15, 2002. Because more than seventy non-excludable days have passed, I must dismiss the indictment. Given the serious nature of the charges against Doward, and that I find that reprosecution of him would not adversely affect either the administration of the Speedy Trial Act or the administration of justice, I will dismiss the charges without prejudice.

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**ENTERED this \_\_\_ day of March, 2003.**

**FOR THE COURT:**

\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**WILFREDO F. MORALES**  
**Clerk of the Court**

**By:** \_\_\_\_\_  
**Deputy Clerk**

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**Patricia Schrader-Cooke, Esq.**  
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St. Croix, U.S.V.I.  
*For the defendant.*

**ORDER**

For the reasons stated in the accompanying Memorandum Opinion of even date, the indictment charging Damien Doward with felony possession of a firearm, possession of a firearm with an obliterated serial number, unauthorized possession of a firearm, and discharging of a firearm, in violation of 18 U.S.C. §§ 922(g) (1) and (k), 924(a) (1) (B) and (a) (2), 14 V.I.C. § 2253(a) and 23 V.I.C. § 479(a), is hereby **DISMISSED WITHOUT PREJUDICE**. It is **FURTHER ORDERED** that the defendant's motion to suppress is **DENIED AS MOOT**.

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**ENTERED this \_\_\_ day of March, 2003.**

**FOR THE COURT:**

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**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**WILFREDO F. MORALES**  
**Clerk of the Court**

**By:** \_\_\_\_\_  
**Deputy Clerk**

**Copies to:**  
Hon. Geoffrey W. Barnard  
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Patricia Schrader-Cooke, Esq.  
Mrs. Jackson  
Chris Ann Keehner, Esq.