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ROCKINGHAM  
SUPERIOR COURT

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SUPERIOR COURT

STATE OF NEW HAMPSHIRE  
ROCKINGHAM, SS.

STATE OF NEW HAMPSHIRE

v.

JESSE T. BROOKS

08-S-579

**DEFENDANT'S MOTION TO DISMISS FOR VIOLATION OF  
SPEEDY TRIAL RIGHTS**

Defendant Jesse Brooks, by and through counsel, hereby moves to dismiss this case for violation of his speedy trial rights pursuant to the Sixth Amendment to the United States Constitution and Part 1, Article 14 of the New Hampshire Constitution. At present, nearly two years have passed since Mr. Brooks' arraignment and over fourteen months have passed since his indictment. He has been held in pretrial detention for nearly one year. Moreover, under the Court's Revised Scheduling Order (Dec. 9, 2008), Mr. Brook's trial in this case has now been postponed an additional seven months, from March until October 2009. By October, thirty-three (33) months will have elapsed since Mr. Brooks' arraignment, twenty-three (23) months will have elapsed since his indictment, and he will have been incarcerated awaiting trial for nearly twenty (20) months.

Mr. Brooks has in no way caused the postponement of his trial and has repeatedly asserted his rights to proceed promptly. The pending charges in this case are the only cause of his current incarceration. At this point, any further delay in Mr. Brooks' trial—let alone an additional seven-month delay—will be highly prejudicial to him and will violate his speedy trial rights. Therefore, Mr. Brooks moves to dismiss this case.

In further support of this Motion, Mr. Brooks states as follows:

1. Mr. Brooks appeared in Auburn District Court on February 5, 2007 and was arraigned on a criminal complaint for conspiracy to commit murder. An indictment against him for conspiracy to commit capital murder in violation of RSA 629:3, 630:1, I(c) issued on November 9, 2007 (07-S-2885).<sup>1</sup>

2. As the State has previously acknowledged, beginning with the earliest scheduling negotiations in this case Mr. Brooks has consistently requested “the earliest trial date possible.” See State’s Motion for Revised Trial Schedule ¶ 2 (June 27, 2008). On January 31, 2008, the Court issued a scheduling order that set Mr. Brooks’ trial date for January 19, 2009. At the time that the scheduling order issued, the trial of co-defendant Robin Knight was slated to follow Mr. Brooks’ trial.

3. On February 29, 2008, the Court allowed the State’s motion to revoke Mr. Brooks’ bail and ordered Mr. Brooks detained pending trial. Mr. Brooks, who is 32 years-old and has never previously been incarcerated, was immediately remanded to State custody. He has been incarcerated continuously for nearly a year since then, first at the Hillsborough County House of Correction and, for the last four months, at the Carroll County House of Correction.

4. For the first five months of his pretrial detention, Mr. Brooks believed that his trial would begin, as scheduled, in January 2009.

5. On March 5, 2008, a superseding indictment issued against Mr. Brooks (08-S-579). In addition to adding new factual allegations, the superseding indictment included a new

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<sup>1</sup> With Mr. Brooks’ assent, the time for the State to obtain an indictment in this matter was extended. See State’s Assented-To Motion for Extension of Time to Seek Indictment (June 14, 2007); Order dated Sep. 26, 2007 (granting motion).

legal theory of the crime charged.<sup>2</sup> Accordingly, Mr. Brooks moved for a revised scheduling order with new pretrial dates. See Def.'s Motion to Approve Revised Sched. Order (May 23, 2008). Mr. Brooks, however, explicitly sought to maintain his scheduled January 2009 trial date. See id. ¶ 3 ("Defendant also proposes to keep the previously scheduled January 2009 trial date." (emphasis in original)). At the same time, Mr. Brooks explicitly "assert[ed] his rights to a speedy trial." Id. ¶ 5.

6. The State opposed Mr. Brooks' Motion and, more specifically, proposed postponing Mr. Brooks' trial by three months to April 2009. See State's Objection to Def.'s Motion ¶ 7 (June 2, 2008). To serve its own purposes, the State also proposed that the co-defendants' trial order be switched and that the trial of Mr. Knight proceed before the trial of Mr. Brooks. See id. The Court ordered that the parties confer with counsel for Mr. Knight, who had been incarcerated longer than Mr. Brooks, to determine his schedule preference. Even though *both Mr. Knight and Mr. Brooks sought to keep their previously scheduled trial order and trial dates*, the State continued to argue in favor of re-ordering and postponing Mr. Brooks' trial. See Def.'s Notice Re. Trial Date (June 25, 2008); State's Motion for Revised Trial Schedule (June 27, 2008).

7. Counsel for Mr. Brooks again sought "the earliest trial date possible" by expressly objecting to the State's Motion. See State's Motion for Revised Trial Schedule ¶ 2; Def.'s Objection to State's Motion (July 7, 2008). The Court, however, endorsed the State's proposal, rescheduling Mr. Brooks' trial to follow Mr. Knight's and postponing Mr. Brooks' trial until March 2009. See Order Adjusting Trial Schedules (July 9, 2008).

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<sup>2</sup> The original indictment charged conspiracy to commit capital murder with reference to the solicitation provision of the capital murder statute. The superseding indictment added reference to the kidnapping provision of that statute, RSA 630:1, 1(b). See 08-S-579.

8. For five months following the Court's July Order, Mr. Brooks remained in pretrial detention believing that his trial would begin in March.

9. In October, Mr. Brooks' father, John A. Brooks, was convicted in this Court of participating in the same conspiracy with which Mr. Brooks is charged—and of capital murder in the first capital murder case to go to trial in this state in over forty years. Mr. Brooks' father has been sentenced to life in prison without possibility of parole.

10. Both co-defendants Michael Benton and Joseph Vrooman testified at trial against Mr. Brooks' father, and both have agreed to testify against Mr. Brooks. Indeed, the States' plea agreements with Mr. Benton and Mr. Vrooman are each contingent upon their cooperation in testifying against Mr. Brooks.

11. By December 2008, after ten months of pretrial detention, Mr. Brooks' trial date was only four months away. As the Court is aware, however, Mr. Brooks' trial schedule changed substantially in December. First, the case was transferred to the Presiding Justice. Then, because of the Presiding Justice's previously extant court schedule, Mr. Brooks' trial date was postponed an additional seven months, to October 2009. See Revised Scheduling Order (Dec. 9, 2008). At the chambers conference that preceded the Court's Order, counsel for Mr. Brooks again asserted his speedy trial rights.

12. If the current schedule and circumstances remain unchanged, by the time of Mr. Brooks' trial thirty-three (33) months will have elapsed since Mr. Brooks was first arraigned in this matter and twenty-three (23) months will have elapsed since his indictment. Moreover, by October, Mr. Brooks will have been incarcerated pre-trial for approximately twenty (20) months.

13. This delay in Mr. Brooks' trial violates his speedy trial rights under both the federal and New Hampshire constitutions. See U.S. Const. Amend. VI; N.H. Const. Pt. 1, Art.

14; see also Klopfer v. North Carolina, 386 U.S. 213, 222-23 (1967) (Sixth Amendment applicable to states under Fourteenth Amendment). “The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial, impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges.” United States v. MacDonald, 456 U.S. 1, 8 (1982). “By requiring that criminal trials be commenced with reasonable dispatch, the State and federal speedy trial rights protect three interests of criminal defendants: freedom from oppressive pretrial incarceration, freedom from undue anxiety or concern, and prevention of impairments to the defense.” State v. Langone, 127 N.H. 49, 52 (1985); see also State v. White, 116 N.H. 687, 688 (1976) (under both the federal and state constitutions, “the defendant is entitled to be free from capricious and oppressive delay”).

14. A defendant’s federal and state speedy trial rights are subject to the same analysis. See State v. Colbath, 130 N.H. 316, 319 (1988). Thus, in determining whether the defendant has been deprived of his right to a speedy trial, New Hampshire courts “balance the following four factors: (1) the length of the delay; (2) the reason for the delay; (3) the defendant’s assertion of his right to a speedy trial; and (4) the prejudice to the defendant caused by the delay.” State v. Stow, 136 N.H. 598, 602 (1993); see also Barker v. Wingo, 407 U.S. 514, 530 (1972) (listing factors); Langone, 127 N.H. at 55 (Court “puts substantial emphasis on the last two of the factors” (citation omitted)). None of these factors is “either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial” but rather “are related factors” that “must be considered together with such other circumstances as may be relevant.” Barker, 407 U.S. at 533.

15. All of these factors, however, clearly establish a violation of Mr. Brooks' speedy trial rights. First, the length of the delay in Mr. Brooks' trial has been and will be substantial. "The period of delay considered for purposes of analyzing a defendant's speedy trial claim begins to run when he is arrested or charged, whichever comes first." Humphrey v. Cunningham, 133 N.H. 727, 734 (1990); see also State v. Collins, 115 N.H. 499, 502 (1975) ("[T]he speedy trial right attaches at the time of arrest or indictment, whichever occurs first."). Even if the clock on Mr. Brooks' speedy trial rights did not begin running until his indictment in November 2007, it has already run for fourteen (14) months.<sup>3</sup> Moreover, under the current schedule, the clock on Mr. Brooks' rights will have run for just under two years before Mr. Brooks' trial begins. See Ruffin v. State, 284 Ga. 52, 57 (2008) ("Two years, two months, and twenty-three days is an exceptionally long time to keep a presumptively innocent person in jail on the strength of nothing more than a grand jury's finding of probable cause ....").

16. The trial delay to date, let alone the additional seven months added by the December Order, is sufficient to be presumptively prejudicial. See State v. Locke, 149 N.H. 1, 8 (2002) ("For the purposes of this case, a delay of over nine months is presumptively prejudicial."); see also Superior Court Rules Appx. (Superior Court Speedy Trial Policy). If a delay is long enough to be "presumptively prejudicial, it warrants an examination of the remaining three factors." State v. Stow, 136 N.H. 598, 602 (1993) (citations omitted).

17. "The second factor requires that [the Court] assess why the trial has been delayed, to which party the delay is attributable, and how much weight to give the delay." State v. Allen, 150 N.H. 290, 294 (2003). In this case, Mr. Brooks has caused none of the delay in his trial. He

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<sup>3</sup> Because Mr. Brooks' speedy trial rights attached at the time of his arraignment, and he has consistently sought the earliest possible trial date, his assent to the State's delay in seeking an indictment is irrelevant to this analysis.

has never sought a trial continuance or agreed to a trial postponement. On the contrary, the initial delay in his trial resulted directly from the State's efforts to arrange the schedule of co-defendant Robin Knight's trial to serve the State's own purposes. The additional seven-month delay resulting from the Court's December Order, although attributable to the busy calendars of the Court and the Presiding Justice, also supports Mr. Brooks' speedy trial rights. See Langone, 127 N.H. at 54-55 (“[D]elay due to the crowded docket of the court is ... held against the State, although to a lesser extent than would a deliberate delay.”).

18. Third, Mr. Brooks has repeatedly asserted his speedy trial rights. As noted above, Mr. Brooks has, from the beginning of this matter, sought “the earliest trial date possible.” See State's Motion ¶ 2 (June 27, 2008). Accordingly, he opposed the State's effort to postpone his trial from January 2009 and to re-order his and Mr. Knight's trials. See Langone, 127 N.H. at 55 (defendant's objections to State's motions for continuance constituted assertion of speedy trial rights); Locke, 149 N.H. at 9 (defendant asserted speedy trial rights where he “raised concerns about the delay on several occasions”). He has also explicitly asserted his speedy trial rights on multiple occasions, including at the time that the Court proposed postponing his trial to October.

19. The last factor requires the Court to “determine whether and to what extent the defendant suffered prejudice” from trial delay. Allen, 150 N.H. at 294. Prejudice may include “oppressive pretrial incarceration [or] anxiety,” as well as “an impaired defense.” Lamarche, 157 N.H. at 344; Barker, 407 U.S. at 532. However, “consideration of prejudice is not limited to the specifically demonstrable, and ... affirmative proof of particularized prejudice is not essential to every speedy trial claim.” Doggett v. United States, 505 U.S. 647, 655 (1992). “[E]xcessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify.” Allen, 150 N.H. at 294.

[T]he major evils protected against by the speedy trial guarantee exist quite apart from actual or possible prejudice to an accused's defense. To legally arrest and detain, the Government must assert probable cause to believe the arrestee has committed a crime. Arrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends.

United States v. Marion, 404 U.S. 307, 320 (1971).<sup>4</sup>

20. Mr. Brooks faces substantial prejudice from the continued delay in his trial. This prejudice stems, perhaps most notably, from considerable and oppressive anxiety due to the unique circumstances of Mr. Brooks' case. The historic trial of Mr. Brooks' father for capital murder and his October conviction for that charge and for the same conspiracy with which Mr. Brooks is charged, as well as his father's sentence of life in prison, has been highly stressful for Mr. Brooks. Mr. Brooks waits every day for his own "day in court," and for the opportunity to clear his name, under the shadow of his father's trial and conviction.

21. Additionally, Mr. Brooks awaits trial every day under the burden of a mountain of inflammatory and prejudicial pretrial publicity. It is no mere cliché to suggest that Mr. Brooks has likely already been "convicted in the court of public opinion." See, e.g., Sarah Schweitzer, "In NH, did a grudge lead to murder?", Boston Globe, May 20, 2007 (stating incorrectly allegation that on June 27, 2005 "Jesse Brooks ... travel[ed] to the horse farm in Deerfield" where Jack Reid was killed).

22. Moreover, Mr. Brooks awaits trial every day facing the testimony of co-defendants Benton and Vrooman. By the time of his trial, Mr. Brooks will be all that stands between each of these men and the fulfillment of their parts in the plea deals to which each has

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<sup>4</sup> "When a defendant does not-or cannot-articulate the particular harm caused by delay, we inquire whether the length and reason for the delay weigh so heavily in the defendant's favor that prejudice need not be specifically demonstrated." State v. Paone, 142 N.H. 216, 220 (1997)

agreed. Mr. Brooks is acutely aware of the important role that the testimony of Mr. Benton and Mr. Vrooman played in his father's case and of the motivation that each has in testifying against him. See, e.g., Trent Spiner, "Juror in Brooks' case speaks out," Union Leader, Dec. 30, 3008 (reporting statements by juror in John Brooks case that "[t]estimony from Joseph Vrooman, an accomplice, proved to be powerful evidence" in support of John Brooks' conviction).

23. Mr. Brooks awaits trial every day from the confines of his pretrial detention. As noted, Mr. Brooks is about to pass the one-year mark in what would be, as presently scheduled, over twenty months of pretrial detention. Mr. Brooks has never previously been incarcerated, and his bail revocation in this case is the only cause of his current detention. Cf. Lamarche, 157 N.H. at 344 (anxiety of pretrial detention mitigated where defendant was incarcerated on other charges while awaiting trial). Consequently, unless something changes, Mr. Brooks will live each day of the next nine months confined to the Carroll County House of Correction simply awaiting trial in this case.

24. Mr. Brooks' continued pretrial detention only compounds the prejudice of further delay in his trial.

[O]bviously the disadvantages for the accused who cannot obtain his release are even more serious. The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness.... The time spent in jail is simply dead time. Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Imposing those consequences on anyone who has not yet been convicted is serious.

Barker, 407 U.S. at 532-533.

25. Mr. Brooks will likely face additional prejudice in the continued delay of his trial. The trial of Mr. Knight will provide the State an additional opportunity to fine-tune its case against him, while adding to the mountain of prejudicial news reports concerning Mr. Brooks.

Moreover, adding seven months to that delay only increases the opportunities for evidentiary impairment.

26. Further delay at this point serves no productive purpose, even for the State. Cf. Doggett, 505 U.S. at 656 (“The government may need time to collect witnesses against the accused, oppose his pretrial motions, or, if he goes into hiding, track him down.”). The State’s prosecution and conviction of Mr. Brooks’ father during September and October indicate that the State’s investigation in this case is complete.

27. The violation of Mr. Brooks’ speedy trial rights requires dismissal of the case against him. “This is indeed a serious consequence .... but it is the only possible remedy” for denial of speedy trial rights. Barker, 407 U.S. at 522; see also State v. Cole, 118 N.H. 829, 831 (1978).

28. Moreover, as set forth in Mr. Brooks’ Motion for Release on Bail Pending Trial filed herewith, Mr. Brooks should be released on bail promptly, regardless of the resolution of this Motion.

29. The State objects to this Motion.

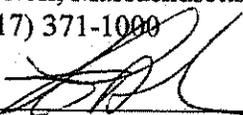
WHEREFORE, Defendant Jesse T. Brooks respectfully requests that this Honorable

Court:

- A. Schedule a hearing;
- B. Grant this Motion to Dismiss for Violation of Speedy Trial Rights; and
- C. Grant such other relief as is just and appropriate.

Respectfully submitted,  
JESSE T. BROOKS,  
By his attorneys,

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Dated: January 21<sup>st</sup> 2009

**Certificate of Service**

I hereby certify that a copy of the foregoing was forwarded on this date, January \_\_, 2009, to counsel of record.