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1 FOR PUBLICATION

2
3 IN THE SUPERIOR COURT
4 OF THE
5 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

6 THE COMMONWEALTH OF THE
7 NORTHERN MARIANA ISLANDS,

CRIMINAL CASE NO. 18-0039R

8 Plaintiff,

9 v.

ORDER DENYING DEFENDANT'S
MOTION FOR DISMISSAL DUE TO
VIOLATION OF RIGHT TO SPEEDY
TRIAL

10 LABOR DEE OGO,

11 Defendant.

12 I. INTRODUCTION

13 THIS MATTER came before the Court on August 24, 2018 at 9:00 a.m. at the Rota
14 Courthouse for a hearing on Defendant's Motion for Dismissal due to Violation of Right to
15 Speedy Trial. Assistant Attorney General Heather Barcinas represented the Commonwealth of
16 the Northern Mariana Islands ("Commonwealth"). Assistant Public Defender Heather Zona
17 represented Labor Dee Ogo ("Defendant"), who was not present.

18 II. BACKGROUND

19 On or about April 8, 2017, police officers arrested Defendant on Rota for allegedly
20 head butting and choking Isaiah Ogo. On March 26, 2018, the Commonwealth filed an
21 Information, charging Defendant with two counts of Assault and Battery, and one count of
22 Disturbing the Peace. Defendant was arraigned on April 25, 2018 and entered a not guilty plea.

23 III. LEGAL STANDARD

The Sixth Amendment of the United States Constitution guarantees that "[i]n all
criminal prosecutions, the accused shall enjoy the right to a speedy ... trial..." U.S. CONST.

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1 amend VI. The right to a speedy trial is also guaranteed by the Commonwealth Constitution.
2 See NMI CONST. art. I, § 4(d) (“There shall be a speedy and public trial.”); *Commonwealth v.*
3 *Superior Court (Ada)*, 2004 MP 14 ¶ 13; *Commonwealth v. Palacios*, 2003 MP 6 fn 13.

4 In determining whether a defendant’s right to speedy trial has been violated, a Court
5 conducts four enquiries. *Doggett v. United States*, 505 U.S. 647, 651 (1992) (citing *Barker v.*
6 *Wingo*, 407 U.S. 514, 530 (1972)). These four enquiries are: 1) whether delay before trial was
7 uncommonly long, 2) whether the government or the criminal defendant is more to blame for
8 that delay, 3) whether the defendant asserted their right to a speedy trial, and 4) whether
9 defendant suffered prejudice as the delay’s result. *Id.*

10 A person convicted of Assault and Battery may be punished by imprisonment for not
11 more than one year. 6 CMC § 1202(b). A person convicted of disturbing the peace may be
12 punished by imprisonment for not more than six months. 6 CMC § 3101(b).

13 6 CMC § 107 governs the time limitation for beginning prosecutions. 6 § 107(2-3)
14 reads:

15 ...

16 (2) A prosecution for an offense which is punishable by imprisonment for six months or
17 less, or by a fine only must be commenced within one year after it is committed.

18 (3) A prosecution for any other offense must be commenced within two years after it is
19 commenced...

20 Further, 6 CMC § 107(e) defines when a prosecution is “commenced”:

21 (e) A prosecution is commenced either when an information or complaint is filed, or
22 when an arrest warrant or other process is executed without unreasonable delay.

23 IV. DISCUSSION

In determining whether Defendant’s right to a speedy trial was violated, the Court finds
it appropriate to look to the pertinent statute of limitations and whether the Defendant suffered
presumptive prejudice, before undertaking the four-factor *Barker* test.

1 **A. Statute of Limitations**

2 As stated above, the time limitation for beginning prosecution in this case is one year
3 for the Disturbing the Peace charge and two years for the Assault and Battery charges. The
4 alleged events in this cases occurred on or about April 7, 2017. *Commonwealth v. Ogo*, Crim.
5 No. 18-0039R (NMI Super. Ct. March 26, 2018) (Information). The present case commenced
6 when the Information was filed on March 26, 2018 and the Defendant was held to answer for
7 the current allegations. *Commonwealth v. Ogo*, Crim. No. 18-0039R (NMI Super. Ct. March
8 26, 2018) (Penal Summons). No arrest warrant or other process was issued, thus this action
9 was commenced within the statute of limitations timeframe on March 26, 2018.

10 In *United States v. Marion*, the United States Supreme Court opined on the relationship
11 between the relevant statute of limitations and the Sixth Amendment Right to Speedy Trial:

12 The law has provided other mechanisms to guard against possible as distinguished
13 from actual prejudice resulting from the passage of time between crime and arrest
14 or charge. As we said in *United States v. Ewell, supra*, at 122, “the applicable
15 statute of limitations ... is ... the primary guarantee against bringing overly stale
16 criminal charges.” Such statutes represent legislative assessments of relative
17 interests of the State and the defendant in administering and receiving justice;
18 they “are made for the repose of society and the protection of those who may
19 [during the limitation] ... have lost their means of defence.” *Public Schools v.*
20 *Walker*, 9 Wall. 282, 288 (1870). These statutes provide predictability by
21 specifying a time limit beyond whether there is an irrebuttable presumption that a
22 defendant’s right to fair trial would be prejudiced. As this Court observed in
23 *Toussie v. United States*, 397 U.S. 112, 114-115 (1970):

 “The purpose of a statute of limitations is to limit exposure to criminal
prosecution to a certain fixed period of time following the occurrence of those
acts the legislature has decided to punish by criminal sanctions. Such a limitation
is designed to protect individuals from having to defend themselves against
charges when the basic facts may have become obscured by the passage of time
and to minimize the danger of official punishment because of acts in the far-
distant past. Such a time limit may also have the salutary effect of encouraging
law enforcement officials promptly to investigate suspected criminal activity.”

 There is thus no need to press the Sixth Amendment into service to guard against
the mere possibility that pre-accusation delays will prejudice the defense in a
criminal case since statutes of limitation already perform that function.

404 U.S. 307, 323 (1971).

1 It would be difficult to argue that the statutory period that determines when a
2 prosecution begins for statute of limitations purposes can differ from the time a formal
3 prosecution or accusation has been made for speedy trial purposes.

4 **B. *Barker v. Wingo* Test**

5 The Court next turns to the *Barker* test. The preliminary inquiry is whether the
6 defendant suffered presumptive prejudice due to the delay. *Doggett*, 505 U.S. at 651. Upon
7 such a showing, the Court then conducts the four-factor test set forth in *Barker. Id.*

8 Here, Defendant claims his right to a speedy trial has been violated by measuring the
9 time between his arrest (April 8, 2017) and the filing of the Information (March 26, 2018),
10 which was eleven months. On the other hand, the Commonwealth argues the proper start date
11 for the right to speedy trial analysis began on March 26, 2018, when the Information was filed.
12 Defendant’s Motion was filed on July 16, 2018, which is a period of roughly four months since
13 the filing of the Information.

14 The Court agrees with the Commonwealth’s contention that the proper date to begin the
15 time computation is March 26, 2018, as this was the date on which Defendant became
16 ‘accused.’ In the Commonwealth, an individual becomes an “accused” upon the execution of
17 an arrest warrant. *Commonwealth v. Flores*, Crim. No. 92-197 (NMI Super. Ct. March 22,
18 1993) (Opinion and Order p. 3). In this instant case, no arrest warrant was issued, instead, only
19 an information and penal summons.

20 In cases such as this where the Defendant is simply arrested and released without any
21 conditions, they are not ‘accused’ at that time. *See People v. Williams*, 207 Cal. App. 4th Supp.
22 1 (“An arrest that precedes the filing of a charging document begins the speedy trial clock only
23 if the arrest comes with “actual” or “continuing” restraint) (citing *Marion*, 404 U.S. at 320);
People v. Martinez, 22 Cal.4th 750, 762 (“[I]t appears that the right attaches upon arrest, *unless*
the defendant is released without restraint or charges are dismissed.”); *United States v. Jones*,

1 676 F.2d 327, 331 (8th Cir. 1982) (“Considering the Supreme Court’s statement in *MacDonald*
2 that the right to speedy trial is only applicable to delay while charges are pending and
3 considering the other provisions of the Speedy Trial Act which exclude delay while no charges
4 are pending, the term “arrest” in section 3161(b) of the Act *must be construed as an arrest*
5 *where the person is charged with an offense.*”) (emphasis added); *United States v. Candelaria*,
6 704 F.2d 1129, 1131 (9th Cir. 1983) (agreeing with the analysis in *Jones*, 676 F.2d 327).

7 In *United States v. MacDonald*, the United States Supreme Court discussed the reasons
8 why a defendant is not ‘accused’ upon an arrest and release:

9 The Sixth Amendment right to a speedy trial is thus not primarily intended to
10 prevent prejudice to the defense caused by passage of time; that interest is
11 protected primarily by the Due Process Clause and by the statutes of limitations.
12 *The speedy trial guarantee is designed to minimize the possibility of lengthy*
13 *incarceration prior to trial, to reduce the lesser, but nevertheless substantial,*
14 *impairment of liberty imposed on an accused while released on bail, and to*
15 *shorten the disruption of life caused by arrest and the presence of unresolved*
16 *criminal charges.*

17 456 U.S. at 8 (emphasis added). The United States Supreme Court further solidified this
18 reasoning in *United States v. Loud Hawk*. 474 U.S. 302, 312 (1986) (“We therefore find that
19 under the rule of *Macdonald*, when Defendants are not incarcerated or subjected to other
20 substantial restrictions on their liberty, a court *should not weigh that time towards a claim*
21 *under the Speedy Trial Clause.*”) (emphasis added).

22 Here, Defendant was arrested and released without bail or any bail conditions imposed
23 and without any probable cause determination being made by a judge. Further there were no
other substantial restrictions placed on his liberty. In fact, Defendant was able to continue on
with his everyday life. Defendant held jobs at Rota Resort and worked over the summer at the
Department of Lands and Natural Resources on Rota. Defendant even had the opportunity to
participate in mixed martial arts tournaments on Saipan. It appears Defendant suffered no

1 disruption of life or substantial restrictions on his liberty as envisioned by the United States
2 Supreme Court in *MacDonald* and *Loud Hawk*.

3 In *Barker*, the United States Supreme Court established that “[u]ntil there is some delay
4 which is presumptively prejudicial, there is no necessity for inquiry into the other factors that
5 go into the balance.” 407 U.S. at 531. While there is no bright-line test to establish the amount
6 of delay which is “presumptively prejudicial,” and such an inquiry is “necessarily dependent
7 upon the peculiar circumstances of the case,” courts generally require a minimum of five or six
8 months. *Commonwealth v. Rubidizo*, Crim. No. 93-132 (NMI Super Ct. December 1, 1994)
9 (Decision and Order Denying Motion to Dismiss) (citing *United States v. Nance*, 666 F.2d 353
10 (9th Cir. 1982); *United States v. Rich*, 589 F.2d 1025 (10th Cir. 1972); *United States v. Diaz-
11 Alvarado*, 587 F.2d 1002, 1005 (9th Cir. 1978)).

12 Defendant became ‘accused’ on March 26, 2018 and Defendant’s motion was filed on
13 July 16, 2018, a period of just under four months. A four-month delay is below the five or sixth
14 month delay generally used by courts in determining whether a delay has risen to the level of
15 “presumptively prejudicial.” Thus, because the delay is not presumptively prejudicial, there is
16 not necessity to inquire into the other factors that are used in a *Barker v. Wingo* analysis. 407
17 U.S. at 531.

18 19 V. CONCLUSION

20 For the aforementioned reasons, Defendant’s Motion for Dismissal due to Violation of
21 Right to Speedy Trial is **DENIED**. This instant case was filed within the pertinent statute of
22 limitations, the Defendant was not ‘accused’¹ until the filing of the Information on March 26,

23

¹ The Court notes that the *Marion* decision states “arrest.” However, *Marion* is superseded by *MacDonald* and *Loudhawk*. Further, the Court interprets *Marion* to require that a defendant be officially accused. Here, the Defendant was not actually accused (charged) until roughly eleven months after his arrest. An arrest is not necessarily followed by a formal accusation. Thus, the Court believes that the Speedy Trial Clock begins when a defendant is actually facing filed charges.

1 2018, and the four-month delay from the filing of the Information to the filing of this instant
2 motion does rise to the level of “presumptively prejudicial.” Thus, it is unnecessary to weigh
3 the four factors in the *Barker v. Wingo* analysis.

4 **SO ORDERED** this 21th day of September, 2018.



7 **ROBERTO C. NARAÑA**, Presiding Judge

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