SCOTUS Opinion: Speedy Trial Act does not require that pre-trial motion actually cause, or expect to cause, delay in trial

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In *United States v. Tinklenberg*, Case No. 09-1498, the United States Supreme Court ruled that the Speedy Trial Act ("STA") does not require that the pretrial motion actually cause delay, or expectation of the delay, of trial. Rather, pursuant to section 3161(h)(1)(D), the Speedy Trial clock is automatically stopped upon the filing of a pretrial motion until a hearing is held on the motion or the court otherwise disposes of the pending motion. The Court did, however, uphold the Sixth Circuit's dismissal of the indictment with prejudice. In reaching this conclusion, the Court held that the district court improperly excluded holidays and weekends from calculating the excludable time under section 3161(h)(1)(F) of the STA. This case arose out of a prosecution in the United States District Court for the Western District of Michigan.

Tinklenberg was charged in a two-count indictment: 1) felon in possession of a firearm; and, 2) possession of items used to manufacture a controlled substance. He made his initial appearance before a judicial officer on October 31, 2005. Pursuant to the STA, Tinklenberg had the right to a trial within 70 days. Of course, there are a number of exceptions in the STA. In this case, the Government argues that two exceptions apply: section 3161(h)(1)(D), which excludes any time from the Speedy Trial clock where a pretrial motion is pending before the court, and section 3161(h)(1)(F) which excludes up to 10 days for transportation of the defendant to a place of examination and/or hospitalization. Mr. Tiklenberg's trial began 287 days later, on August 14, 2006.

Before trial began, Tinklenberg filed a motion to dismiss the indictment arguing that the trial came too late. The District Court denied the motion and held that 218 of the 287 days fell within the above-referenced STA exclusions. Therefore, the defendant was brought to trial within 69 days. Tinklenberg was found guilty following a jury trial and was sentenced to serve 33 months imprisonment. He served his full prison sentence before the Sixth Circuit issued its opinion.

Tinklenberg appealed his conviction, arguing that the District Court miscalculated the days excluded from the Speedy Trial clock. The Sixth Circuit agreed with the defendant and dismissed the Indictment with prejudice. In reaching this holding, the Court concluded that the nine days during which three pre-motions were pending should not have been excluded from the Speedy Trial clock because the motions did not "actually cause a delay, or the expectation of delay, of trial." 579 F.3d 589, 598 (6th Cir. 2009).

In a unanimous opinion authored by Justice Breyer, the Supreme Court agreed with the Sixth Circuit's ultimate conclusion, but not with the reasoning behind it. The Court looked to the language of section 3161(h)(1)(D) and ruled that the word "delay" may ordinarily indicate a postponement, but it doesn't inevitably do so. In fact, since the STA was passed 37 years ago, every Court of Appeals has held that the exclusion found in 3161(h)(1)(D) does not require delay or the expectation of trial delay. If the Court adopted the Sixth Circuit's approach, it noted that district court judges would have to make

judgment calls regarding what type of pretrial motions delayed trial, or led the parties to reasonable expect delay. This type of ad hoc decision-making would hinder the STA's effort to secure fair and efficient criminal trial proceedings. Accordingly, the Court held that section 3161(h)(1)(D) of the STA does not require a court to find that the motion the exclusion described actually caused, or was expected to cause, a delay of the trial.

Although the Court disagreed with the Sixth Circuit's reasoning, it ruled that, in this case, Tinklenberg's STA rights had been violated. Under 3161(h)(1)(F), a court may exclude up to 10 days from the Speedy Trial clock for time spent transporting the defendant to hospitalizations and/or examinations. Here, a total of 20 transportation days elapsed. Under the statute, only 10 days may be excluded from the Speedy Trial clock. Although the District Court correctly recognized that only 10 days could be excluded, it improperly held that only 2 days should be added back on the Speedy Trial clock. Specifically, the District Court ruled that FRCP 45(a) should be read into the STA and any weekend or holiday time during this extra 10 day-period should be excluded. The Supreme Court disagreed. The Court explained that, on its face, FRCP 45(a) applies only to rules and orders—not statutes. Revisions are also made to FRCP 45(a) without regard to its effect on the STA. A total of 10 days should have been added back to the Speedy Trial clock. This results in 79 days between Tinklenberg's initial appearance and the trial. Therefore, the Sixth Circuit correctly dismissed the judgment and the indictment with prejudice.

Justice Kagan did not participate in the opinion. Justice Scalia, joined by Chief Justice Roberts and Justice Thomas, authored a partial concurring opinion. Justice Scalia stated that he agreed with the Court's ultimate conclusion, but wrote separately to note he believed the Court's conclusion that a pretrial motion need not actually postpone trial was clear from the text of the STA. He disagreed with the Court's decision to look beyond the statutory text to support its holding.