UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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ORDER

August 18, 2026

Before

FRANK H. EASTERBROOK, *Circuit Judge*
THOMAS L. KIRSCH II, *Circuit Judge*
JOSHUA P. KOLAR, *Circuit Judge*

No. 25-2344	UNITED STATES OF AMERICA, Plaintiff - Appellee v. KIAR EVANS, Defendant - Appellant
Originating Case Information:	
District Court No: 1:21-cr-00396-1 Northern District of Illinois, Eastern Division District Judge Martha M. Pacold	

The following is before the court: **GOVERNMENT'S MOTION FOR SUMMARY AFFIRMANCE**, filed on August 12, 2026, by counsel for the appellee.

The issues presented in the appellant's opening brief have been resolved, adversely to appellant, by *United States v. Prince*, 171 F.4th 1009 (7th Cir. 2026), and *United States v. Watson*, 171 F.4th 1012 (7th Cir. 2026). Accordingly,

IT IS ORDERED that the government's motion is **GRANTED**, and the district court's judgment is summarily **AFFIRMED**.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

KIAR EVANS,

Defendant.

Case No. 21-cr-00396

Judge Martha M. Pacold

ORDER

Defendant Kiar Evans moves to dismiss the indictment in this case, No. 21-cr-396, for preindictment delay—delay between his initial arrest (in a different case based on the same incident) and the indictment in this case. [60].[1] Evans asserts two bases for this claim. First is the Speedy Trial Act, 18 U.S.C. § 3161(b). Second is Federal Rule of Criminal Procedure 48(b)(1). Neither of those authorities, nor the Seventh Circuit's cases interpreting them, warrants dismissing the indictment. Evans's motion is denied.

STATEMENT

Procedural History. The complaint initially filed (in a separate earlier case, as described below) summarized the government's allegations as follows: "As set forth more fully below, on or about May 20, 2021, EVANS, armed with a pistol, attempted to carjack a Chevrolet Impala in Chicago, Illinois. EVANS fired approximately two rounds into the Chevrolet. The Chevrolet drove away. EVANS then immediately ran up to a Nissan Altima with a pistol in hand and carjacked the Nissan. A CPD helicopter observed EVANS flee the scene in the stolen Nissan. EVANS was subsequently involved in a multi-vehicle traffic crash in the Nissan and apprehended by law enforcement shortly thereafter." No. 21-cr-326, Dkt. 1 at 2 ¶ 2; *see also* No. 21-cr-396, [1] at 2 ¶ 2 (complaint in this case, sworn by different agent, containing substantially similar allegations).

[1] Bracketed numbers refer to docket entries in this case (Case No. 21-cr-00396) and are followed by page and / or paragraph number citations. Page numbers refer to the CM/ECF page number.

The indictment in this case charges five counts: attempted carjacking, carjacking, two counts of use of a firearm during a crime of violence, and felon in possession of a firearm. [9].

The government initially filed, on May 21, 2021 (the day after the incident), a complaint in a different case in this district, No. 21-cr-326, Dkt. 1. The complaint in that case (sworn by an FBI agent) recounted the alleged circumstances of the offenses on May 20, culminating in Evans's arrest by the Chicago Police Department. Evans was taken into federal custody (his federal arrest occurred) on May 21, the same day the complaint was filed. Evans had his initial appearance on May 24, at which he waived his right to a preliminary examination hearing and a detention hearing without prejudice. No. 21-cr-326, Dkt. 2, 3.

On June 28, 2021, the government moved to dismiss the complaint (in No. 21-cr-326) without prejudice. No. 21-cr-326, Dkt. 7. (The government's brief explains that on June 28, after conferring with defendant's former counsel, the government realized it had miscalculated by seven days the Speedy Trial Act's 30-day deadline to indict on the complaint.)

On June 29, 2021, Judge Cummings held a hearing, heard argument, and granted the motion, dismissing the complaint in No. 21-cr-326 without prejudice. No. 21-cr-326, Dkt. 9; *see also* No. 21-cr-396, [69-1] (transcript of June 29, 2021 hearing in No. 21-cr-326).

The same day, June 29, 2021, the government filed a substantially similar complaint in a new case (this case, No. 21-cr-396) regarding the May 20, 2021 incident. Evans was already in federal custody in the prior case (No. 21-cr-326, in which the complaint had been dismissed without prejudice), and was taken into federal custody in this case, No. 21-cr-396, on June 30, 2021. [7]. An initial appearance was held on June 30, 2021. [7]. Judge McShain held a preliminary hearing on July 1, 2021, finding probable cause to believe the defendant committed the offenses alleged in the complaint. [8]. Evans waived a detention hearing without prejudice, [8], and has remained in custody. A grand jury returned an indictment in this case on July 7, 2021. [9].

On July 21, 2022, Evans filed the current motion to dismiss the indictment due to preindictment delay. [60]. The parties agreed to a briefing schedule that concluded with a reply on October 18, 2022. [61], [67], [68]. On November 1, 2022, the court heard argument on the motion. [61], [68].

The court turns to the two grounds that Evans asserts in support of dismissal—first, the Speedy Trial Act, and second, Federal Rule of Criminal Procedure 48(b)(1).

Speedy Trial Act. Evans argues that he was first arrested on May 21, 2021 (in Case No. 21-cr-326), but the grand jury did not indict him in this second case

(Case No. 21-cr-396) until July 7, 2021, [9]. Thus, Evans contends, the government exceeded the Speedy Trial Act's 30-day limit on the time to indict.

Several provisions of the Speedy Trial Act are relevant here.

First, the Act sets a 30-day limit on the time to indict. As relevant here: "Any information or indictment charging an individual with the commission of an offense shall be filed within **thirty days** from the date on which such individual was arrested or served with a summons in connection with such charges. . . ." 18 U.S.C. § 3161(b) (emphasis added).

Second, if a complaint is dismissed and a new complaint is filed, the 30-day clock restarts with the filing of the new complaint:

> If any indictment or information is dismissed upon motion of the defendant, or **any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode**, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, **the provisions of subsections (b)** and (c) of this section **shall be applicable with respect to such subsequent complaint**, indictment, or information, as the case may be.

Id. § 3161(d)(1) (emphases added).

Third, if the government fails to comply with § 3161(b), the court must dismiss the charges, but Congress created two different sanctions—dismissal with prejudice and dismissal without prejudice—that the court must consider based on statutory factors:

> If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) as extended by section 3161(h) of this chapter, such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.

Id. § 3162(a)(1).

The indictment in this second case, Case No. 21-cr-396 (the only indictment that was ever filed, since there never was an indictment in the first case, No. 21-cr-396), was returned within 30 days of the complaint and arrest in this second case. The government filed the complaint in this case on June 29, 2021, the arrest in this case occurred (Evans was taken into federal custody for purposes of this case) on June 30, 2021, and the grand jury returned the indictment on July 7, 2021. Under § 3161(d)(1), the 30-day clock restarted with the filing of the second complaint (the complaint in this case). Thus, there was no Speedy Trial Act violation based solely on the procedural history of this case.

However, in effect, Evans's argument is a contention that the prior complaint (No. 21-cr-326) should have been dismissed with prejudice rather than without prejudice, and that this case (No. 21-cr-396) never should have been brought. This argument challenges Judge Cummings's original weighing of the Speedy Trial Act factors (from § 3162(a)(1)) when Judge Cummings (after hearing argument) chose to dismiss the prior complaint, No. 21-cr-326, without prejudice. No. 21-cr-326, Dkt. 9; *see also* No. 21-cr-396, [69-1] (transcript of June 29, 2021 hearing in No. 21-cr-326). But Judge Cummings correctly weighed and analyzed the statutory factors and applied the correct Seventh Circuit precedent. The court adopts his reasoning, adding some additional points.

As noted above, § 3162(a)(1) governs the decision whether to dismiss the case with or without prejudice. It provides, in relevant part:

> In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.

Considering the statutory factors:

Evans is charged with serious offenses. The indictment in this case charges five counts: attempted carjacking, carjacking, two counts of use of a firearm during a crime of violence, and felon in possession of a firearm. [9]. As noted above, the complaint in the first case summarized the government's allegations as follows (and the complaint in this second case contains substantially similar allegations): "As set forth more fully below, on or about May 20, 2021, EVANS, armed with a pistol, attempted to carjack a Chevrolet Impala in Chicago, Illinois. EVANS fired approximately two rounds into the Chevrolet. The Chevrolet drove away. EVANS then immediately ran up to a Nissan Altima with a pistol in hand and carjacked the Nissan. A CPD helicopter observed EVANS flee the scene in the stolen Nissan. EVANS was subsequently involved in a multi-vehicle traffic crash in the Nissan and apprehended by law enforcement shortly thereafter." No. 21-cr-326, Dkt. 1 at 2

¶ 2; *see also* No. 21-cr-396, [1] at 2 ¶ 2 (complaint in this case). The seriousness of the offenses charged weighs in favor of dismissal without prejudice.

The next factor ("the facts and circumstances of the case which led to the dismissal") also weighs in favor of a without-prejudice dismissal. As in *United States v. Hawthorne*, 705 F.2d 258 (7th Cir. 1983) (per curiam), the delay in securing the indictment (in the first case) resulted from a clerical error, not any intentional delay for tactical advantage. The government asserts that the delay resulted from a calendaring error, and the relatively short length of the delay (eight days) is consistent with that explanation. No one contends that the delay was intentional, as the discussion before Judge Cummings bears out. [69-1] at 8. *Hawthorne* also adopted district-court reasoning that looked to whether the delay was "serious." 705 F.2d at 260. The delay in that case was nine days; here it was eight. [69-1] at 11. The court agrees with Judge Cummings's reasoning that under all the circumstances here, a delay of just over one week does not amount to a "serious" delay within the meaning of *Hawthorne*. Defendant was in custody during that time, but the Seventh Circuit has explained (in the context of § 3162(a)(2); § 3162(a)(1) applies here, not (a)(2), but the two provisions contain the same statutory factors and the same reasoning holds):

> [W]hether a defendant is detained pending trial is not an explicit factor of § 3162(a)(2), much less its primary focus. If the fact that a defendant is detained during the period of delay were to dictate the nature of the dismissal, all pretrial detainees whose rights were violated under the Speedy Trial Act would receive a dismissal with prejudice. This would render Congress's designation of two types of dismissal largely irrelevant.

United States v. Killingsworth, 507 F.3d 1087, 1091 (7th Cir. 2007).

Even if that were a factor, Judge Cummings correctly observed that at the time of the arrest, Evans was on parole for a conviction for being a felon in possession of a weapon; the current allegations include, in addition to the other serious allegations in the complaint, being a felon in possession of a firearm; and thus, although this was hypothetical, even absent the federal criminal complaint, Evans might well have been in state custody, either through a parole violation or on state charges, during the eight-day delay caused by the government's calendaring error. [69-1] at 12.

During oral argument before this court, defendant contended that he was prejudiced because, during the first case, he waived the preliminary hearing in exchange for the government's agreement to provide early discovery, but the government never provided early discovery. Defendant contends that the government's actions led him to waive the right to a preliminary hearing in the first case, and that at a preliminary hearing, he could have contested probable cause in

connection with the first complaint and, if successful, obtained dismissal of the case. (Defendant did have a prompt preliminary hearing in this second case; that hearing resulted in a finding of probable cause to believe the defendant committed the offenses alleged in the complaint.)

This argument (that the waiver of the preliminary hearing establishes prejudice) is not persuasive. First, this argument was not raised in the briefs. Second, even if it had been, the parties discussed this issue before Judge Cummings. Defense counsel noted that Evans had agreed to waive the preliminary hearing in exchange for early discovery, and that Evans had not received that discovery, [69-1] at 6; the government acknowledged that conversation with defense counsel, but noted that discovery was quite extensive and the government had been diligently working to prepare the discovery and planned to produce it on a rolling basis upon return of the indictment, [69-1] at 9–10. Judge Cummings ordered the government to start producing discovery on a rolling basis, [69-1] at 13, but dismissed the complaint without prejudice (correctly, for the reasons discussed in this order). Third, it is not clear how the waiver of a preliminary hearing in the first case in exchange for early discovery falls within the relevant statutory factor—"the facts and circumstances of the case **which led to the dismissal**," § 3162(a)(1) (emphasis added)). The waiver and the associated agreement did not lead to the dismissal. It is true that the statutory factors are not exclusive (since the statute says "among others"). Thus, the fact that the waiver does not fit neatly within any particular factor does not necessarily mean that the waiver is wholly irrelevant to the analysis. But ultimately, the deadline for a preliminary hearing, Fed. R. Crim. P. 5.1(c), and the 30-day Speedy Trial Act deadline for indictment, § 3161(b), are separate deadlines, and it is not clear how the waiver of one deadline warrants a dismissal with prejudice based on the other.

The last statutory factor under § 3162(a)(1) is the impact of a reprosecution on the administration of this chapter and on the administration of justice. This factor weighs in favor of dismissal without prejudice. Given the lack of prejudice to Evans and the improbability of any deterrent effect from a with-prejudice dismissal in this case, *cf. Herring v. United States*, 555 U.S. 135, 141–43 (2009), the administration of the Speedy Trial Act would not have been served by dismissing the previous complaint with prejudice. As the Seventh Circuit discussed in *Killingsworth*, the seriousness of the offense, the minor delay, and lack of bad faith all show that the Speedy Trial Act's purposes would not have been served by a with-prejudice dismissal. 507 F.3d at 1091. As *Hawthorne* put it: "the purpose of the Act would not be served by requiring the court to impose the maximum sanction for a minimum violation." 705 F.2d at 261. Nor would the administration of justice have been served by a with-prejudice dismissal given the gravity of the offenses alleged in the complaint and indictment. [1] ¶¶ 6–16; [9].

Judge Cummings correctly dismissed the complaint in the prior case without prejudice. The Speedy Trial Act does not require or warrant dismissal of the indictment in this case.

Federal Rule of Criminal Procedure 48(b). Rule 48(b)(1) gives courts discretion to "dismiss an indictment . . . if unnecessary delay occurs in[] presenting a charge to a grand jury." To decide whether delay was unnecessary and requires dismissal, courts look to the same factors as they do when analyzing a Sixth Amendment speedy trial issue. *See United States v. Ward*, 211 F.3d 356, 362 (7th Cir. 2000) (incorporating a Speedy Trial Act and Sixth Amendment analysis into a Rule 48(b) analysis). Those factors are "whether delay before trial was uncommonly long, whether the government or the criminal defendant is more to blame for that delay, whether, in due course, the defendant asserted his right to a speedy trial, and whether he suffered prejudice as the delay's result." *Id.* at 361 (quoting *Doggett v. United States*, 505 U.S. 647, 651 (1992)).

For largely the same reasons as discussed in the previous section, Evans has not shown that the delay here requires dismissal. Though the delay was the government's fault and Evans has timely asserted his rights, there is no evidence of an intentional delay in securing the indictment, the delay of eight days was not uncommonly long, and Evans did not suffer any prejudice. *See id.* at 362 ("In general dismissal under Rule 48(b) is appropriate only where there is delay that is purposeful or oppressive." (Citation omitted).). Given the allegations, Evans likely would have been in state custody absent the federal prosecution, and there is no basis to conclude that the eight-day delay has or will have an adverse impact on his ability to present his defense. *See Barker v. Wingo*, 407 U.S. 514, 530–36 (1972) (setting out and applying factors for Sixth Amendment speedy trial analysis and declining to dismiss indictment with a five-year delay and a ten-month pretrial incarceration period).

On the record here, the court thus concludes in its discretion that the indictment should not be dismissed due to "unnecessary delay" under Rule 48(b)(1).

*

Defendant's motion [60] is denied.

Date: November 4, 2022 /s/ Martha M. Pacold