Does the Speedy Trial Act Exclude from Its Trial Deadline the Time During Which a District Court Resolves Any Pretrial Motion, Even When the Motions Do Not Delay Trial?

CASE AT A GLANCE

Jason Louis Tinklenberg was convicted of firearm and drug manufacturing offenses. Prior to trial, Tinklenberg moved to dismiss, arguing that the government violated the Speedy Trial Act by not trying him within seventy days. The district court denied Tinklenberg's motion, and he was convicted. The U.S. Court of Appeals for the Sixth Circuit reversed, finding that the Speedy Trial Act's seventy-day trial deadline included the time during which the district court resolved three pretrial motions because those motions did not delay trial. The government argues that the Speedy Trial Act excluded this time as "delay resulting from any pretrial motion," regardless of whether the motions delayed trial.

United States v. Tinklenberg
Docket No. 09-1498

Argument Date: February 22, 2011
From: The Sixth Circuit

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ISSUE

Does the Speedy Trial Act exclude from its seventy-day trial deadline the time during which a district court resolves any pretrial motion or only motion time that delays trial or is expected to delay trial?

FACTS

In January 2005, police officers in Kalamazoo County, Michigan, received a tip that Jason Louis Tinklenberg had purchased materials commonly used to prepare methamphetamine. The police subsequently stopped Tinklenberg for driving his camper with an open rear door and an expired registration tag. The police searched Tinklenberg and his camper, finding a .22 caliber pistol and magazine, a large volume of Sudafed, and other materials used to manufacture methamphetamine. The police also searched Tinklenberg's residence, where they discovered a shotgun and more methamphetamine manufacturing materials.

In October 2005, a federal grand jury indicted Tinklenberg for possession of firearms as a convicted felon, in violation of 18 U.S.C. § 922(g)(1), and possession of materials used to manufacture methamphetamine, in violation of 21 U.S.C. § 843(a). Tinklenberg first appeared before a magistrate judge on October 31, 2005. A series of adjournments followed.

On November 2, 2005, the magistrate judge granted Tinklenberg's request for a mental competency examination. On November 10, 2005, Tinklenberg was assigned to a Chicago facility for examination, and he arrived there 20 days later. The competency examination was not completed for almost four months. The magistrate judge found Tinklenberg competent to stand trial on March 23, 2006, but later permitted Tinklenberg to pursue an independent examination. On June 9, 2006, the magistrate judge again declared Tinklenberg competent. In July 2006, the district court set a trial date of August 14, 2006.

On August 1, 2006, the government moved to depose a witness who would be unavailable at the time of trial. The district court granted this unopposed motion on August 3, 2006. The district court ordered that "[t]he parties shall schedule the deposition posthaste, so as not to delay the trial." On August 8, 2006, the government requested permission to bring the firearms into the courtroom as evidence. On August 10, 2006, the district court granted this unopposed motion.

On August 11, 2006, Tinklenberg moved to dismiss the indictment for a violation of the Speedy Trial Act (the Act), see 18 U.S.C. § 3161, arguing that more than seventy includable days of delay had elapsed prior to trial. The district court denied Tinklenberg's motion on August 14, 2006, finding 69 includable days of pretrial delay—one day short of the Act's seventy-day deadline. See *United States v. Tinklenberg,* 2006 WL 2358274 (W.D. Mich. 2006).

The trial began as scheduled on August 14, 2006. The jury convicted Tinklenberg of all charges. The district court subsequently sentenced Tinklenberg to 33 months of imprisonment to be followed by three years of supervised release.

Tinklenberg appealed, and the U.S. Court of Appeals for the Sixth Circuit reversed. See *United States v. Tinklenberg,* 579 F.3d 589 (6th Cir. 2009). The Sixth Circuit agreed with the government that by July 31, 2006, only sixty includable days had elapsed under the Act. The Sixth

Circuit, however, concluded that the full period between August 1 and August 14, 2006, remained includable, even though over nine of those days, the district court disposed of three pretrial motions.

The Sixth Circuit acknowledged that "[e]very circuit court to have addressed the issue appears to have held the filing of a pretrial motion stops the Speedy Trial clock, regardless of whether the motion has any impact on the trial's start date." Rejecting this consensus, the Sixth Circuit held that "a pretrial motion must actually cause a delay, or the expectation of a delay, of trial in order to create excludable time." The Sixth Circuit consequently found 73 includable days. The court remanded with instructions that the district court dismiss Tinklenberg's indictment with prejudice.

The government petitioned for a writ of certiorari on June 8, 2010.

CASE ANALYSIS

The government's petition for certiorari presents a single, fairly narrow question: "Whether the time between the filing of a pretrial motion and its disposition is automatically excluded from the deadline for commencing trial under the Speedy Trial Act … or is instead excluded only if the motion actually causes a postponement, or the expectation of a postponement, of the trial." The Act provides that "the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days." 18 U.S.C. § 3161(c)(1). The Act, however, excludes various time periods from this seventy-day deadline. See, e.g., 18 U.S.C. § 3161(h)(1). In § 3161(h)(1)(D), the Act specifically excludes "delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion."

The government contends that "'[t]he plain terms of the statute appear to exclude all time between the filing of and the hearing on a motion' without further factual inquiry or findings." According to the government, this interpretation reflects the common meaning of the words "delay" and "resulting from" because they refer to an interval of time between two events triggered by a designated event: the filing of a pretrial motion.

This interpretation, the government adds, also conforms to the statutory structure of the Act. The motion-time exclusion appears in the statute's list of nondiscretionary grounds for exclusion of time in § 3161(h)(1). The Act places discretionary, fact-dependent criteria for time exclusions elsewhere, in distinct provisions. For example, in § 3161(h)(7), the Act excludes delays "if the judge granted such continuance on the basis of his [or her] findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." In the government's view, these factors confirm its categorical interpretation of the Act's motion-time exclusion provision.

The government observes that eleven circuit courts have construed § 3161(h)(1)(D) consistent with its position. The government also argues that two Supreme Court decisions support this interpretation. In *Henderson v. United States,* 476 U.S. 321 (1986), the Supreme Court held that pretrial motion time was "automatically excludable," regardless of whether the delay was "reasonably necessary." In *Bloate v. United States,* 130 S.Ct. 1345 (2010), the Supreme Court limited the "automatic" exclusion of motion time to the post-filing interval identified in the statute. This precedent, the government argues, validates its position that pretrial motions automatically are excluded under the Act, from filing to disposition, regardless of whether they delay trial.

Tinklenberg responds that the statutory language in § 3161(h)(1)(D) "plainly denotes something more than an interval of time; it indicates a postponement or hindrance concerning when an event can begin." Tinklenberg further contends, "[t]he phrase 'resulting from' underscores that [§ 3161(h)(1)(D)] excludes periods of delay that occur as a consequence of pretrial motions, not merely the time during which such motions are pending." Indeed, the statute's use of the indefinite article "any" preceding "delay," instead of the definite article "the," indicates that Congress did not expect pretrial motions always to cause delay. Thus, Tinklenberg argues, "the point of the [statute] is to identify a particular type of 'other proceeding[]' … that gives rise to excludable time when it causes delay."

The government reads *Henderson* and *Bloate* too broadly, according to Tinklenberg. Tinklenberg notes that neither decision addressed the question of whether a pretrial motion must delay trial to exclude time under the Act. When the Supreme Court in these decisions characterized motion time as "automatically" excludable, "[t]he word 'automatic' is merely 'a useful shorthand' to denote that once a pretrial motion has caused delay, a court must exclude the time during which it was pending."

The government buttresses its statutory analysis by highlighting legislative history in Senate and House reports that "indicates that Congress used the phrase 'delay resulting from' to refer to the time consumed by a proceeding or an event that triggers an exclusion, not the time during which the trial might be postponed." The government additionally asserts that its view of the motion-time exclusion provision furthers the purposes of the Act by identifying clear time limits that balance the Act's goals of avoiding "both delay and haste in the processing of criminal cases."

Tinklenberg counters that the Supreme Court "previously has recognized that the Act's legislative history is a poor guide to the statute's meaning." To the extent this history does guide the analysis, "it suggests that Section 3161(h)(1) excludes periods of time during which other proceedings are taking place only if those proceedings hinder pretrial preparation or postpone when the subsequent trial can begin."

Tinklenberg additionally argues that "the Government's categorical rule would frustrate the Act" because "[t]he exclusion of time during which pretrial motions are pending that everyone knows will not postpone preparations for trial would frustrate the Act's true purpose" of efficient case disposition. Even worse, Tinklenberg suggests, "it would invite the Government to manipulate the speedy trial clock." Tinklenberg opines that dismissals without prejudice, which the Act permits, adequately would protect the government's interests when it unwittingly exceeds the Act's deadline.

Tinklenberg further defends the Sixth Circuit's judgment by arguing beyond the question presented. The Sixth Circuit, Tinklenberg asserts, erroneously excluded two periods of time distinct from the isputed motion time. If included, each of these time periods

independently would support affirmance, even if the Sixth Circuit incorrectly included the disputed motion time.

First, the Sixth Circuit concluded that the twenty-day delay to transport Tinklenberg to Chicago for his mental competency examination exceeded the ten-day presumptive time limit for transport of a defendant. See 18 U.S.C. § 3161(h)(1)(F). The Sixth Circuit, however, counted only the business days beyond the ten-day time limit, not weekends and holidays. This counting method resulted in two includable days during the twenty-day transport time period. Tinklenberg argues that the Sixth Circuit should have counted calendar days, not business days, for a total of ten includable days.

Second, the Sixth Circuit excluded the several months during which Tinklenberg's mental competency was examined. The Act excludes "delay resulting from any proceeding, including examinations, to determine the mental competency … of the defendant." 18 U.S.C. § 31616(h)(1)(A). Tinklenberg, however, contends that this exclusion provision should be construed in harmony with the Insanity Defense Reform Act, which limits mental competency examination commitments to thirty days, absent good cause. See 18 U.S.C. § 4247(b). Thus, Tinklenberg argues, several additional months should have been included in the Act's seventy-day deadline because the government did not justify a delay beyond thirty days to determine Tinklenberg's competency.

The government did not petition for review of these two alternative issues pressed by Tinklenberg, nor did the government address them in its opening brief. As of the date of this article, moreover, the government has not replied to Tinklenberg's merits brief. Nevertheless, Tinklenberg asserts that the Supreme Court may entertain these issues because "the court of appeals reached them; they supply alternate grounds for affirmance; and [Tinklenberg] preserved them in his brief in opposition [to the certiorari petition] pursuant to [Supreme Court] Rule 15.2."

SIGNIFICANCE

This case does not present the Supreme Court with the kind of blockbuster question that generates significant anticipatory commentary and analysis. Nonetheless, the Court's decision may answer one or more questions under the Act that meaningfully may affect routine federal criminal practice and case management. Reversal will favor the government by vacating the Sixth Circuit's dismissal order; affirmance will maintain the Sixth Circuit's order dismissing Tinklenberg's indictment.

The Sixth Circuit's decision to include motion time that does not delay trial created a circuit split that previously did not exist. If the Supreme Court adopts the Sixth Circuit's analysis and affirms, the Supreme Court will upset a fairly uniform body of case law outside of the Sixth Circuit on which judges and lawyers have relied for some time. The government predicts that this change would disrupt existing practice—and not for the better. The Sixth Circuit's ruling, the government indicates, already has forced "district courts applying the Sixth Circuit's rule … to make findings whether 'motions are complex' or otherwise 'cause[ ] a delay of the trial.'"

A ruling in favor of Tinklenberg, however, may not upset existing practice as much as the government forecasts. Surveying practice in the Sixth Circuit following the court of appeals' decision, an amicus brief from the National Association of Criminal Defense Lawyers reports that "judges and their clerks have developed user-friendly systems to ensure that both parties are informed 'at the time that a motion is filed whether the motion has stopped the speedy trial clock.'" Tinklenberg's brief similarly contends: "Since the Sixth Circuit decided this case, district courts have shown themselves willing and able to make such prospective determinations." Oral argument may reveal whether these practical considerations will influence the Supreme Court's judgment of how to construe the Act.

If the Supreme Court sides with the government on the motion-time question accepted for review, the prevailing practice in lower courts will continue: the filing of a motion will stop the "speedy trial clock" until that motion is resolved, regardless of whether it delays trial. The Supreme Court, however, still could affirm the Sixth Circuit's decision if it agrees to consider Tinklenberg's two alternative arguments.

Tinklenberg first asks the Supreme Court to count calendar days, not business days, when including the government's delay in transporting Tinklenberg for his mental competency examination. As the Sixth Circuit's decision illustrates, a decision that only business days count toward the speedy trial clock can extend the Act's deadline significantly: the Sixth Circuit counted only two days from the includable ten-day transport delay because of the number of intervening weekend days and holidays.

The Supreme Court, however, would avoid this issue if it rejects the underlying premise to Tinklenberg's argument: that the ten-day time limit for transporting defendants expressed in § 3161(h)(1)(F) applies during mental competency examinations, which separately are excluded under § 3161(h)(1)(A). The Sixth Circuit held that this limitation does apply, but the question has split other circuit courts. See *United States v. Noone, 9*13 F.2d 20 (1st Cir. 1990); *United States v. Castle,* 906 F.2d 134 (5th Cir. 1990) (both including transport delay); but see *United States v. Vasquez,* 918 F.2d 329 (2nd Cir. 1990) (excluding transport delay).

Tinklenberg's other backup argument concerns delays resulting from mental competency examinations themselves, a common proceeding in criminal cases. Tinklenberg contends that the thirty-day time limit on commitments for these examinations contained in the Insanity Defense Reform Act should govern the examination time excluded from the speedy trial clock under § 3161(h)(1)(A). If the Supreme Court accepts this argument, trial courts would need to manage more closely any delays resulting from competency examinations, and the government would need to justify delays beyond thirty days to prevent competency examinations from becoming includable time under the Act.

The government's appeal of Tinklenberg's successful speedy trial motion presents anywhere from one to four potential issues on which the Supreme Court may rule. Whatever the decision, and however numerous the issues resolved by that decision, lower courts and federal criminal law practitioners will understand more clearly the demands of the Speedy Trial Act.

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PREVIEW of United States Supreme Court Cases, pages 220–223.

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