UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Number 88-20015-BC
Honorable David M. Lawson

RONALD C. KNOP,

Defendants.
_____/

OPINION AND ORDER DENYING MOTION TO DISMISS

On March 16, 1988, the government filed an information charging the defendant, Ronald C. Knop, with three misdemeanor counts of failing to file income tax returns, one each for the tax years 1981 to 1983, contrary to 26 U.S.C. § 7203. The defendant was arrested for these charges fourteen years later in October 2002. The matter is before the Court on the defendant's motion, filed on March 28, 2003, to dismiss the information on the ground that the defendant's right to a speedy trial guaranteed by the Sixth Amendment has been violated. The Court promptly set the matter for a hearing, but it was postponed at the request of the defendant. On August 18, 2003, and again on August 21, 2003, the Court conducted an evidentiary hearing and the parties presented their arguments through counsel. The Court permitted the parties to submit supplemental briefs on or before August 28, 2003. The matter is now ready for decision.

The Court finds that, although the length of the delay is extraordinary, an evaluation of the relevant factors, set forth in the Supreme Court's seminal decision on the subject, *Barker v. Wingo*, 407 U.S. 514, 530 (1972), requires the conclusion that no constitutional violation occurred. The Court therefore will deny the defendant's motion to dismiss.

I.

In *Barker v. Wingo*, the Supreme Court identified four factors that must be considered when determining whether a violation of one's right to a speedy trial has occurred: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of his speedy trial right, and (4) the resulting prejudice to the defendant. 407 U.S. at 530. The Court will address each of these factors below; however, the main point of contention presented by this motion is the cause for the delay. The defendant argues that he was unaware of the outstanding arrest warrant, and he was not brought to justice promptly because the government was negligent in its effort to locate him. The government, on the other hand, insists that it utilized standard search protocol, which did not bear fruit for fourteen years because the defendant, who had been a dentist with a successful practice in Midland, Michigan, "dropped out" of society and intentionally avoided conventional locator triggers so that he could live the life of a recluse below the government's radar.

Nine witnesses testified at the hearing. The first three were called by the government. The government also offered several exhibits, including documents that came from the investigative file of the Internal Revenue Service. Among those documents are memoranda authored by Dennis Young, an IRS agent who is now retired, who wrote that he began his attempt to contact the defendant in November 1986, seventeen months before charges were filed. Gov't Ex. 2, 3. Young went twice to the defendant's home on Saginaw Road in Midland but did not find him there. On one visit on November 17, 1986, he encountered Chad Priest, a teenage boy, who confirmed that Knop lived there but said he was frequently away overnight. Young left a business card and requested that Knop be told to contact him. Young also sent letters to the defendant's street address and post office box informing him of the pending "investigation conducted by the Criminal Investigation Division

of the Internal Revenue Service regarding your failure to file U. S. Individual Income Tax Returns for the years 1981, 1982 and 1983." Gov't Ex. 4, 5. There is no evidence that Knop ever responded to Young.

Retired IRS Agent George Ziozios testified that he joined the investigation in 1988 after charges were filed, and he assisted Dennis Young in the attempt to locate the defendant. Ziozios said that he searched records at the Michigan secretary of state's office and Midland County, which yielded no evidence of Knop's current address or ownership of real or personal property. Ziozios also contacted Knop's former wife and colleagues from his dental practice, but these individuals were unable to provide any leads regarding Knop's whereabouts. He learned only that Knop had abandoned the practice and had sent letters to former patients informing them that he was no longer practicing dentistry. Knop did not receive any monies from the practice. Ziozios also went to Knop's former residence on Saginaw Road a number of times. He discovered that Knop had deeded the property to Linda Priest. *See* Gov't Ex. 1. During his first visit, shortly after the arrest warrant was obtained, he spoke to Priest, who told him that Knop picked up messages and mail there. She also stated that Knop was far away, maybe on the West Coast. Ziozios gave her his card and said that it was imperative that Knop contact him immediately. After several weeks passed, Ziozios returned to the Saginaw Road home. Priest told him: (1) that she had not spoken to Knop; (2) that she had no idea when he would be back; and (3) that she had no way to contact him.

In the mean time, the IRS had seized Knop's personal property, including an airplane in which he owned an interest, and conducted an auction at Midland's Barstow Airport. Ziozios attended the tax levy sale of Knop's property, where he spoke to Knop's daughter who claimed that

she had no information regarding her father's present location. However, the daughter retrieved an automobile from the auction, which the defendant had transferred to her on an earlier occasion.

Ziozios also learned that Knop had belonged to the Carroll Stream Hunt Club and pursued a lead that Knop might have been living in a cabin there. When he investigated, he came across some of Knop's possessions, but Knop was nowhere to be found. Ziozios also contacted the Midland police in his search for the defendant.

Ziozios acknowledged that most of his investigation activities occurred in 1988 and for approximately two years thereafter. He explained: "you can only check the system and get negative results for so long." After a period of time he began to believe that Knop was dead because it appeared he had "fallen off the face of the earth." Ziozios stated that after 1988, he continued to drive by the Saginaw Road home to see if any strange cars were parked there, and he still performed periodic record searches in the hopes of finding Knop, but he never went to the door during these spot checks. Certain IRS checks were utilized to find Knop, which Dennis Young put in place.

Ziozios also admitted that he did not check water records or local banks during his investigation of Knop. He also could not remember if he ran a search to determine if Knop was ever issued a state identification card. After 1988, he estimates that he drove by the home on Saginaw Road on average four to six times per year. Ziozios continued to work at the Saginaw, Michigan IRS office until he retired in 2000.

IRS agent Craig Georgeff testified that he became involved in the case when Agent Ziozios requested his assistance investigating Knop's possible presence at the Carroll Stream Hunt Club and the Saginaw Road home. He accompanied Ziozios when he spoke with Linda Priest and confirmed that Priest stated that Knop was living far away, perhaps on the West Coast. Based upon his

recollection of the conversation, it was clear to him that Knop was not living in Michigan. Georgeff also accompanied Ziozios to the Carroll Stream Hunt Club. Here, he learned that Knop had been living at the Club but had failed to pay dues and was no longer there.

Georgeff explained that the standard procedure for the IRS's criminal investigation division is to record arrest warrants in a number of computer databases. He stated that when an individual is indicted, a letter goes out; next, an arrest warrant is issued; at that point, entries are made into the National Crime Information Center (NCIC) and the Treasury Enforcement Communication System (TECS) computers. These entries alert other law enforcement agencies of the outstanding warrant and provoke notification in the event an individual is arrested for an unrelated matter. The TECS computer conducts periodic searches of other records for any financial activity related to identifying data associated with a person, such as a Social Security number. The hope, of course, is that the individual will leave a paper trail of his whereabouts and eventually be located. Georgeff admitted, however, that he could not recall searching the Michigan secretary of state's records or local utility records. He did at one point check to see if Knop had an account with Chemical Bank in Midland because of a lead he received, although he was unsure of when that occurred. He stated that he was concerned about Knop's mental state and attitude towards the government due to the fact that Knop had just dropped out of society, while leaving behind a lucrative dental practice.

IRS Agent Carla Suchoski testified that she was assigned Knop's case in 1996, when Agent Young retired. She explained that the NCIC and TECS computer systems periodically ran numerous searches in several databases including the IRS, Secret Service, Customs, ATF, the Border Patrol, and INS. If an individual has any contact with any of these agencies, the system will alert the criminal investigations division. From 1988 to 2002, Knop filed no tax returns and could not be

found through the use of these searches. Knop was finally located in 2002 after an IRS Form 1099 was issued to him for Social Security income. Suchoski stated that the database entries were maintained on active status throughout the period of Knop's pending case, and that when she worked the case, she routinely checked the records to determine any changes in status. She also examined other databases, including motor vehicle records, Nexis/Lexis, and telephone locator records, searching for the name "Ronald Carl Knop" and the defendant's date of birth. However, the record that led to the defendant's discovery indicated that a payment was made using the defendant's Social Security number but on a different name: Carl R. Knop.

The "hit" came on August 22, 2002. On investigation, Suchoski learned that money was directly deposited into an account at Chemical Bank. The account had been opened in 1997 in the name of Carl R. Knop and Linda M. Priest, listing the Saginaw Road address. *See* Def.'s Ex. 504. However, the account did not bear interest, so no government records of financial activity were generated by the bank. It was not until October 17, 2002, almost two months after the Social Security "hit," that Suchoski and another agent went to the Saginaw Road house to look for the defendant. On her first trip, she found no one there, and learned that mail was delivered in the name of "Priest." Suchoski saw that Knop had deeded the house to Linda Priest of Coleman, Michigan in 1986, so Suchoski traveled there to interview her. Suchoski returned to the Saginaw Road address later that day and saw the door open and a dog in the yard, and shortly thereafter the defendant emerged with a video camera. Suchoski called for back-up assistance and the defendant was arrested.

Suchoski admitted that during her investigation, she did not contact the U.S. Marshal's service for assistance prior to October 15, 2002, nor did she ever surveil the Saginaw Road house

before 2002, nor did she ever go to the door to see if anyone was home. The defendant had obtained a state identification card, and Suchoski acknowledged she had not seen it before the hearing. The card was obtained on May 30, 1997 and renewed on October 20, 2000. However, the card was issued in the name of "Carl Ronald Knop," although the Saginaw Road address was listed as his residence. *See* Def.'s Ex. 501, 502. Suchoski explained that it is not possible to search the state's database using only a last name, and she never ran a search using "Carl Knop," or "C. Knop."

The defendant called several witnesses who testified that Knop had maintained his residence at the Saginaw Road address since the late 1970's. James Branson, a Midland city attorney, said that he had known the defendant since then (Knop had been Branson's dentist), that the house was located within a couple miles of the city law enforcement complex, and that there were no fences or guard dogs at the house. Branson said that he attended the IRS auction of the defendant's property at Barstow Airport in 1989; Knop was not present. Branson said that he had assisted federal authorities in locating individuals in other cases, but he never was requested to look for Knop. He had no contact with Knop after 1993; the defendant became a recluse after that.

Branson also testified that in 1993 he checked federal court records to see if there was an open warrant for Knop, upon the request of a Donald Rickert, who was another dentist and friend of Knop. He learned that indeed a warrant was outstanding, but he insisted that he never informed Knop. Nor did he ever inform authorities of Knop's whereabouts, although Branson testified that he regularly drove by the Saginaw Road residence and saw Knop three to four times per month. He also said, however, that he never knew Knop to go by the name "Carl."

James E. Johnson, a developer, testified that he had know the defendant since 1985, when they were both members of the Carroll Stream Hunt Club. He knew that the defendant had lived in

the upper room of a garage there for four to six months, ending in November 1987. The room had no heat, plumbing or electricity, and was furnished with one chair and a mattress on the floor. He did not know why the defendant chose to live there, but later the defendant resumed his residence on Saginaw Road. Johnson saw him there two to four times per year, and dropped off Christmas baskets prepared by the Elks Club for him each year through December 2001. Knop never told Johnson he had trouble with the IRS. Knop had no vehicle after 1989, he had no job, and no visible means of support.

Linda Thering, formerly Linda Priest, also testified at the hearing. She said that she met the defendant in 1976 when she worked in his dental office, and that she began living with him, along with her son, Chad, at the Saginaw Road house beginning in 1985. The defendant's daughter also lived there for a time. Thering moved out in 1990 to Coleman, Michigan, where she now lives with her current husband, whom she married in 1999. Knop deeded the house on Saginaw Road to Thering in 1986, and she still is the record owner. She testified that she assumed the payments on the defendant's mortgage and paid it off in 1992. However, she also testified that she last worked in 1987. The defendant wrote checks to her and she cashed them. She said that she did not know the defendant's source of funds prior to his receipt of Social Security payments.

Thering testified that Knop lived openly at the house in Midland. He left the house often, went places with people, and rode his bicycle around the neighborhood until he suffered a stroke in 1997. He also opened a bank account in his and her name in 1997 and wrote checks from the account. However, when confronted with the bank record that showed the defendant identified as "Carl R. Knop," Thering said that the defendant was always known as "Ronald."

Other defense witnesses also testified that the defendant lived openly at the house on Saginaw Road. Chad Priest testified that he lived there with his mother and the defendant between 1985 and 1990, when he was twelve to seventeen years old. He said that Knop often walked outside and went places. He also remembers a visit by federal agents, but he places the time at around the fall of 1988. One agent left a business card, which Chad passed along to his mother and the defendant. He testified that both of them saw it. Chad had very little contact with the defendant after 1990. Cathy Kotter testified that she saw the defendant at his house nearly every day between 1988 and 1993; he watched her dog at his house. Kotter also took Knop to the hospital in 1997 when he had a stroke, and she took him to therapy sessions thereafter.

Additional testimony by Thering was more revealing. She acknowledged that she was contacted by federal agents on at least two occasions. She estimated that the first contact occurred in 1985, before she moved into the house on Saginaw Road. The second time was at that house in 1987 or 1988. She told the agent that the defendant was not at home, and claims that there were no follow-up questions. She does not remember if she was told that there was a warrant for the defendant's arrest. However, Thering also said that she frequently retrieved the defendant's mail from his post office box. On one occasion after 1990, she brought home twenty letters from the IRS that told the defendant he owed no tax liability. The letters were eventually offered in evidence, *see* Def.'s Ex 518; all are dated May 19, 1993, they are addressed to "Ronald C. Knop DDS," list a business taxpayer identification number (i.e., one other than the defendant's Social Security number), and they refer to employer withholding returns (IRS Form 941) covering periods from June 1985 through March 1989. Thering remembers opening these letters and discussing them with the defendant, who, she says, believed then that his troubles with the IRS were over. Thering also said,

however, that shortly after Knop received these letters, she saw another piece of correspondence that had been in Knop's possession, and that originated from the federal building in Bay City, Michigan. The letter informed Knop that he was charged with failure to file income tax returns. After receiving the twenty letters (Def.'s Ex. 518), an inquiry was made, at the request of Donald Rickert, to determine if there was an outstanding arrest warrant. Thering said that another friend, Cathy Kotter, picked up something about that inquiry. Thering testified, however, that she never asked anyone about a warrant herself.

The defendant also offered in evidence photographs of the house on Saginaw Road, which showed heavy foliage obstructing a clear view of the yard from the street. Def.'s Ex 506-517.

II.

Individuals charged with federal crimes "shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. However, the mere passage of time does not necessarily signal the denial of that right. For instance, courts have held that a delay of 5-1/2 years between the filing of charges and trial abridged the right, *see United States v. Brown*, 169 F.3d 344 (6th Cir. 1999), while a delay of twenty-two years did not. *See Wilson v. Mitchell*, 250 F.3d 388 (6th Cir. 2001). In *Barker v. Wingo*, it was observed that the speedy trial right was "vague," "amorphous," and "slippery," and that it was not possible to ascertain with precision the time that the right was violated. *Barker*, 407 U.S. at 521-22. *See also United States v. Schreane*, 331 F.3d 548, 553 (6th Cir. 2003) (holding that "no one factor constitutes a 'necessary or sufficient condition to the finding of a deprivation of the right of speedy trial'") (quoting *Barker*, 407 U.S. at 553). The Court therefore counseled against a "rigid approach[]" and established instead a functional, four-factor test intended to account for all relevant facts, and to be applied "on an *ad hoc* basis." *Barker*, 407 U.S. at 530. As noted above,

the four factors identified by the Court are: "Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant." *Ibid.* In *Doggett v. United States*, 505 U.S. 647, 651 (1992), the Court stated the test slightly differently: "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."

In this case, it has been fourteen years since the criminal information was filed and trial has not yet occurred. That delay is uncommonly long, and plainly crosses the threshold separating those cases that warrant further examination because of presumptive prejudice. *See id.* at 651-52 ("Simply to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay."); *Schreane*, 331 F.3d at 553 ("[I]f the delay is not uncommonly long, judicial examination ceases."); *Wilson*, 250 F.3d at 394 ("Twenty-two years is an extraordinary delay that far exceeds this court's guideline that a delay longer than a year is presumptively prejudicial.").

Skipping forward to the last factor, in *Barker*, the Supreme Court recognized that several different forms of prejudice can result from delay: loss of liberty that comes from lengthy pretrial incarceration; "anxiety" that stems from the uncertainty of a pending criminal charge; and the impairment of one's ability to mount a defense due to fading memories and other loss of exculpatory evidence. *See Barker*, 407 U.S. at 532. The third of these reasons is the most pernicious, because it "skews the fairness of the entire system." *Ibid.* In this case, as in *Doggett*, Knop can claim only the third form of prejudice since he certainly was never detained during the period between being

charged and arrested, and he professes a lack of knowledge of the charges during this period, thus eliminating it as a cause of anxiety.

Knop has made no effort to demonstrate that this lengthy delay has caused any specific prejudice to his defense, but he says that according to *Doggett* he need not do so. Indeed, in that case the Court observed that "affirmative proof of particularized prejudice is not essential to every speedy trial claim," since it had been "recognize[d] that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify." *Doggett*, 505 U.S. at 655. The delay in this case is extraordinarily long, although the nature of the charge – failure to file income tax returns for three years – does not suggest a degree of complexity or difficulty of defense that necessarily is compounded by delay. Moreover, the presumption of prejudice, whose indulgence here is justified by the length of the delay, does not alone establish a Sixth Amendment violation. Rather, it is but one factor that is stirred into "the mix of relevant facts" to be considered with "the other *Barker* criteria." *Id*. at 656.

This brings us to the remaining two factors – the reason for the delay and the vigor with which the defendant asserted his speedy trial right – and to the heart of this dispute. In *Doggett*, the Court established a continuum on which to measure delay attributable to the government (which is charged with the duty to bring the defendant to trial, *see Brown*, 169 F.3d at 349), bounded on one end by bad faith delays, and the other by delays that are "wholly justifiable." *Id.* at 656-57. An example of the former is an intentional procrastination by the government for the purpose of gaining a tactical advantage. *See Wilson*, 250 F.3d at 395 ("If . . . the state's pursuit was intentionally dilatory, these bad-faith tactics weigh heavily in favor of the defendant's speedy-trial claim."). On the other hand, "[t]he government may need time to collect witnesses against the accused, oppose

his pretrial motions, or, if he goes into hiding, track him down." *Doggett*, 505 U.S. at 656. In the case of pre-arrest delay, "if the government . . . pursue[s a defendant] with reasonable diligence from his indictment to his arrest, his speedy trial claim would fail." *Ibid.*

In this case, the Court finds that the government did not do all that it could to locate and arrest Knop. In fact, the government's effort after 1990 consisted of little more than hoping that Knop would reveal himself by stumbling over the trip wires put in place through the computer detection programs. It is evident that some of the agents had the case in mind, inasmuch as they testified that they continued to observe the house on Saginaw Road when they drove by. However, as revealed by the photographs of the residence, Def.'s Ex. 506-517, the house was likely not visible from the road during half the year that the trees were in full foliage. The added effort of stopping occasionally and knocking on the door hardly seems an unreasonable measure, since the agents were in the neighborhood. Knop's witnesses attested to his continuing presence there, and the Court finds this testimony to be credible. It is likely that added effort by the government would have yielded positive results.

Negligent pursuit by the government is not tantamount to bad faith, however. Rather, "official negligence . . . occupies a middle ground." *Doggett*, 505 U.S. at 656. It must also be assessed in conjunction with the defendant's conduct. "The inquiry . . . is not a search for a blameless party," but rather the factor is to be judged on the basis of relative fault. *Wilson*, 250 F.3d at 395. *See also Schreane*, 331 F.3d at 554. Thus, where the government fails to use reasonable diligence to apprehend the defendant, and the defendant is unaware that he is wanted by the law and does not intentionally hide from pursuit, the presumption of prejudice may be sufficient to establish a violation of the speedy trial right. *See Brown*, 169 F.3d at 349-50. However, if the defendant

knowingly evades detection, the scale tips in favor of the government. For instance, in *Wilson*, the court employed a tort law analogy, viewing the state's failure to exercise reasonable diligence in pursuit and detection as passive wrongdoing, and the defendant's intentional evasion attempts – consisting of frequent changes of name, identity, appearance and location for twenty-two years – as active wrongdoing. *See Wilson*, 250 F.3d at 395. The court concluded: "because Wilson actively evaded discovery, and the state was, at worst, passive in its pursuit of him, we cannot attribute the primary responsibility for the delay to the state. Indeed, even if the police made mistakes in their search for Wilson, he is not entitled to relief on this ground so long as his active evasion is more to blame for that delay." *Ibid.* (internal quotes omitted).

In this case, the Court finds that the defendant was aware of the fact that criminal charges were pending against him. Linda Thering testified that Knop had in his possession a letter so informing him. Knop argues, however, that he reasonably believed that the government withdrew the charges when he received the twenty letters in 1993 from the IRS stating that he had no tax liability. The Court does not accept that conclusion because it is contradicted by the evidence. The testimony establishes that in 1993, attorney James Branson inquired about an outstanding warrant against Knop and confirmed that it still existed. Linda Thering's testimony put that evidence in context. The inquiry was instigated, the Court believes, by Knop's receipt of the letters declaring no tax liability in connection with his business. Those letters, however, did not absolve him of liability for failure to file personal income tax returns for earlier years. Knop required confirmation, so inquiry was made, and the Court infers from Linda Thering's testimony that Branson's report was passed on to Knop through Donald Rickert, to whom both Knop and Branson were speaking. The

resulting conclusion to Knop was that the charges that had been filed against him in 1988 were still alive.

Moreover, Knop's lifestyle change was plainly designed to avoid detection. The evidence establishes that Knop (1) used an alias, (2) abandoned his dental practice, (3) abstained from having a driver's license, holding property in his own name, or registering vehicles, (3) quit-claimed his home to Linda (Priest) Thering, (4) lived for a period of time in an unheated cabin during the Michigan fall season, and (5) refused to pursue any activities that would generate IRS W-2 or 1099 forms. The Court believes that this conduct was motivated at least in part by Knop's knowledge of the pendency of federal tax charges.

In the relative assessment of fault, the Court finds that the defendant was a greater cause for the delay in this case, and therefore cannot attribute the primary cause for delay to the government. *See id.*

The defendant did not assert his right to a speedy trial at any time before his arrest. "Although a defendant does not waive the right to a speedy trial by failing to assert it, the degree to which the defendant has asserted the right is one of the factors to be considered in the balance." *Brown*, 169 F.3d at 350. Of course, if a defendant is not aware that he has been charged, he cannot be held accountable for the failure to demand a speedy trial. *Ibid.* In this case, however, for the reasons stated earlier, the defendant cannot plead ignorance of the pendency of criminal charges. The failure to seek an official resolution for the greater part of the fourteen-year period weighs heavily against the defendant in this case.

The defendant has not demonstrated any specific prejudice to his case resulting from the delay. Because the defendant was the primary cause for the delay, the presumption of prejudice

alone will not carry the day for him. *See Doggett*, 505 U.S. at 658 (stating that unspecified prejudice will entitle a defendant to relief only when it is unrebutted or not extenuated); *Wilson*, 250 F.3d at 396 ("Where, however, as in Wilson's case, the delay is overwhelmingly due to his own evasion, he is not entitled to a presumption of prejudice. He instead must produce evidence showing that he was actually prejudiced by the delay.").

The Court finds, therefore, that a proper assessment of the four *Barker* factors requires the conclusion that no speedy-trial violation has occurred in this case, despite the extraordinary delay of fourteen years between charge filing and arrest.

III.

The Court finds that the defendant has not suffered the denial of his right to a speedy trial as guaranteed by the Sixth Amendment.

Accordingly, it is **ORDERED** that the defendant's motion to dismiss the information [dkt #25] is **DENIED**.

_____/s/_____
DAVID M. LAWSON
United States District Judge

Dated: October 6, 2003

Copies sent to: Janet Parker, Esquire
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U.S. Pretrial Services
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