VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	CRIMINAL NUMBER 102500
VERSUS	)	
JOHN ALLEN MUHAMMAD A/K/A JOHN ALLEN WILLIAMS	)	INDICTMENT - CAPITAL MURDER (COUNT I and COUNT II) and USING A FIREARM IN THE COMMISION OF A FELONY (COUNT III)

On September 22, 2004, Robert F. Horan, Jr., the Commonwealth's Attorney, Raymond Morrogh, Deputy Commonwealth's Attorney, JOHN ALLEN MUHAMMAD a/k/a John Allen Williams, the Defendant, Peter D. Greenspun, Jonathan Shapiro and Christie A. Leary, Counsel for the Defendant, appeared before this Court. The Defendant is indicted for the felonies of CAPITAL MURDER (Count I and Count II) and USING A FIREARM IN THE COMMISSION OF A FELONY (Count III) and he appeared while in custody.

A hearing was held on the Defendant's Motion to Dismiss Due to Violation of Right to Speedy Trial.

For the reasons stated in the Court's opinion letter of this date, a copy of which is attached hereto and incorporated herein, the Motion to Dismiss Due to Violation of Right to Speedy Trial is **GRANTED** and the indictment in this case is hereby **DISMISSED.**

Entered on October 7, 2004.

JUDGE M. LANGHORNE KEITH

MLK/kwp
102500

NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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Re: *Commonwealth v. John Allen Muhammad,* Criminal No. 102500
(Motion to Dismiss Due to Violation of Right to Speedy Trial)

Dear Counsel:

This matter came on for a hearing on September 22, 2004 on Defendant's motion to dismiss due to violation of his right to a speedy trial and the Commonwealth's opposition to that motion. At the conclusion of the hearing I took the motion under advisement. I have now fully reviewed the memoranda submitted and fully considered the evidence and arguments of Counsel. For the reasons set forth below I find that the defendant's statutory right to a speedy trial was violated. Under controlling authority, the detainer filed against him on January 6, 2004 was an arrest for purposes of the speedy

trial statute. The statutory mandate was not met because a trial was not commenced in the Circuit Court of Fairfax within five months.

Facts

On November 6, 2002, the defendant, John Allen Muhammad ("Muhammad"), was indicted on two counts of capital murder and one count of using a firearm in the commission of a felony. The offenses charged in the indictment stem from the October 14, 2002 shooting death of Linda Franklin in Fairfax County.

Muhammad was arrested in October of 2002. He was brought by federal authorities to the City of Alexandria, Virginia on November 7, 2002. From there he was taken to the regional jail in Manassas, Virginia (the "Regional Jail") to face capital murder charges in Prince William County. He was tried on the Prince William charges commencing in October of 2003, convicted on November 24, 2003 and sentenced to death on March 9, 2004. (Commonwealth's Response to Motion to Dismiss Due to Violation of the Right to Speedy Trial; Defendant's Memorandum in Opposition to Response to Motion, *passim*). Muhammad has been continuously incarcerated in Virginia since November 7, 2002. (Transcript of September 22, 2004 hearing (hereinafter "Tr.") at 46).

About 1:00 pm on January 6, 2004, Detective Flanagan of the Fairfax County Police caused copies of the November 6, 2002 indictment and bench warrant to be faxed to the Regional Jail. (Tr. 18, 27). The fax transmittal used a standard Fairfax County Police warrant desk cover sheet that was completed by Detective Flanagan. (Tr. 18) In the "messages/comments" section of the cover sheet Detective Flanagan wrote: "Please accept the Bench Warrant & Indictment of John A. Muhammad as a detainer".[1] (Exhibit 3). At 3:21 pm on the same day, Detective Flanagan's fax was followed up with a teletype to the Regional Jail. The body of the teletype stated: "A copy of bench warrant/indictment has been faxed to your department on the above subject [Muhammad]. Please use this teletype as a detainer." (Exhibit 4).

On January 6, 2004, Corporal Taylor,[2] in the booking section of the Regional Jail, received the Fairfax indictment and warrant from Lieutenant Tinsley. (Tr. 55-57). Corporal Taylor asked the Manassas City Police to send an officer to serve the warrant. (Tr. 58). Corporal Taylor notified his watch commander that inmate Muhammad would have to leave his cell for service of the papers. (Tr. 60). The Regional Jail was put in "lock down" so Muhammad could be moved. (Tr. 60). Muhammad was never formally arrested and taken before a magistrate at the Regional Jail, (Tr. 32-34, 58, 61-63), because one or two hours after he sent the fax, Detective Flanagan, at the direction of

[1] The cover sheet is dated 01-06-03 but there is no question that the correct date is January 6, 2004.
[2] Regional Jail officers are sworn officers and have the same control and authority over prisoners as sheriffs. *Va. Code Ann.* § 53.1-95.8; (Tr. 44).

Commonwealth's Attorney Horan, called the Regional Jail and asked them not to arrest Muhammad. (Tr. 29, 39). Corporal Taylor eventually placed the fax in Muhammad's Regional Jail folder "as a detainer." (Tr. 63).

On January 9, 2004,[3] Lieutenant Fullilove of the Regional Jail notified Muhammad that Fairfax had filed a detainer on charges of capital murder. (Exhibit 5; Tr. 67-70). Lieutenant Fullilove used the Regional Jail's standard form, (Exhibit 5), and orally informed Muhammad of the detainer. Muhammad refused to sign the form. (Tr. 70). The Regional Jail's Captain Webb testified that forms such as Exhibit 5 are used to let an inmate know that there is paperwork in his file "that hasn't been served" and "also as a failsafe so we don't release someone when there may be charges that another jurisdiction wants them." (Tr. 75). The Regional Jail's response to any detainer would be to contact the detaining jurisdiction to see what that jurisdiction wanted to do with the inmate. (Tr. 79).

In March of 2004, after Muhammad was sentenced on the Prince William charges, the Regional Jail staff or the Prince William County Commonwealth's Attorney called the Fairfax Commonwealth's Attorney to determine whether Fairfax was going to transport Muhammad to Fairfax. (Tr. 47-48). If not, he would be transported to the Department of Corrections. (Tr. 47-48). Fairfax responded that they did not want Muhammad "at that time," therefore, the Regional Jail sent him to the Department of Corrections on March 18, 2004. (Tr. 48, 54). Major Lan stated that Prince William called Fairfax before transporting Muhammad to the Department of Corrections because:

> [W]e knew that there was Fairfax County paperwork in his file and that there was possibly a pending trial in Fairfax. For the safety of the community and the staff involved, I was trying to find out if Fairfax was ready to receive him, rather than taking him to Sussex I and have to bring him back.

(Tr. 53).

Detective June Boyle of the Fairfax County Police formally arrested Muhammad on the Fairfax indictment on May 27, 2004. (Tr. 86, 90).

Defendant's Motion to Dismiss

Muhammad has moved to dismiss the subject charges against him on the ground that both his statutory and constitutional rights to a speedy trial have been violated. He contends that both rights were triggered when Muhammad was turned over to Virginia on

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[3] The notice is dated "1-9-04" at the top and "1/9/03" at the bottom. Again, there is no question that the correct date is January 9, 2004.

November 7, 2002. Alternatively, Muhammad claims that the measurement of his statutory right to a speedy trial began when the fax was sent to the Regional Jail as a detainer on January 6, 2004.

Muhammad's right to a speedy trial is grounded on the Sixth Amendment to the U.S. Constitution, Article I § 8 of the Virginia Constitution and Virginia's speedy trial statute found at *Va. Code. Ann.* § 19.2-243 (the "Speedy Trial Statute"). Analysis of claims of a constitutional deprivation of a defendant's speedy trial rights involve a difficult, sensitive and *ad hoc* balancing process with no bright-line test to determine the result. *See Barker v. Wingo,* 407 U.S. 514, 521 (1972); *Jefferson v. Commonwealth,* 23 Va. App. 652 (1996). In contrast the Speedy Trial Statute requires no such balancing. *Williams v. Commonwealth,* 2 Va. App. 566, 570 (1986). If that statute is triggered a time violation mandates the draconian dismissal of all charges unless the violation is excused by certain statutory exceptions or similar excuses. *See* John L. Costello, *Virginia Criminal Law and Procedure* § 52.3-4 (2d ed. 1991). None of the statutory excuses for failure to try Muhammad within five months has been asserted by the Commonwealth.

The Speedy Trial Statute provides that when there has been an indictment, the accused shall be forever discharged from prosecution for such offense if no trial is commenced within five months from the date the accused is arrested for the offense charged in the indictment. *Va. Code Ann.* § 19.2-243.

Muhammad relies on *Knott v. Commonwealth,* 215 Va. 531 (1975), in support of his position that the Speedy Trial Statute's clock began to run when he was transferred to, and incarcerated by, Virginia authorities. His reliance on *Knott* is misplaced. *Knott* did hold that under the then existing version of the Speedy Trial Statute, the statute's time period commenced when Knott was first incarcerated on any charge in Virginia. Subsequent to *Knott* the statute was amended. The applicable portion of the Speedy Trial Statute is now triggered only upon an arrest for the offense charged in an indictment. Thus the Speedy Trial Statute is not implicated until Muhammad was arrested on the November 6, 2002 indictment.

The Commonwealth asserts that there was no such arrest until Detective Boyle went to Sussex I on May 27, 2004 and served Muhammad with the November 6, 2002 warrant. I find that there was no *formal* arrest on the subject charges until then. Muhammad was never taken before a magistrate in the Regional Jail and Detective Flanagan asked the Regional Jail not to arrest Muhammad after Corporal Taylor initiated arrest procedures. I also find that Fairfax lodged a detainer against Muhammad on the Fairfax charges on January 6, 2004. Muhammad argues that under the cases interpreting the Speedy Trial Statute a detainer constitutes an arrest for speedy trial purposes even if no formal arrest has been made. I agree.

In *Funk v. Commonwealth,* 16 Va. App. 694 (1993), the defendant, Funk, was incarcerated in the Hanover County jail on charges unrelated to escape charges pending in Fauquier County. On January 4, 1991, the day after he was arrested in Hanover County, Fauquier County sent a teletype stating Funk's name, the crime with which he was charged and requesting his detention. *Id.* at 695. On April 9, 1991, he was formally served with the original arrest warrant for escape. Funk remained in custody continuously from January 3, 1991 until his trial on August 28, 1991, a date within five months of his formal arrest. The Court of Appeals held that Fauquier's "teletype constituted authority for the Hanover County Sheriff's office to arrest the defendant. *See* Code § 19.2-81. Thus the defendant's detention pursuant to that authority was an arrest on the escape charge." *Id.* The Court of Appeals noted that at anytime before the five-month period expired, Fauquier could have obtained Funk and brought him to trial. 16 Va. App. at 695-96. Because Funk's trial was not commenced within five months of the detention, his conviction was reversed and the escape charge was dismissed. 16 Va. App. at 696.

The Commonwealth attempts to distinguish *Funk* by (1) arguing that the officers in the Regional Jail do not have the power to arrest, and (2) that a detainer is not a detainer until a defendant is formally arrested on the strength of the detainer. Thus the Commonwealth argues the January 6, 2004 detainer served only as an administrative request to the Regional Jail to let Fairfax know before they released Muhammad.

I find that Virginia jail officers have the power to arrest. Under Virginia law:

> During the term of their appointment, the superintendent and jail officers are hereby vested with the powers and authority of a conservator of the peace (i) within the limits of such correctional facility and within one mile thereof; (ii) for the purpose of conveying prisoners to and from such facility; (iii) for the purpose of enforcing the provisions of alternative incarceration and treatment programs pursuant to [citations omitted]; (iv) for the purpose of providing security and supervision of prisoners taken to a medical, dental, or psychiatric facility; and (v) for the purpose of providing a security escort and supervision of prisoners transported to a funeral or graveside service.

Va. Code Ann. § 53.1-95.8. Pursuant to *Va. Code Ann.* § 19.2-18 "every conservator of the peace shall have authority to arrest without a warrant in such instances as are set out in §§ 19.2-19 and 19.2-81." Thus the Regional Jail officers have the same authority as the sheriffs had in *Funk.*

The Commonwealth argues that paragraphs (ii) through (v) of *Va. Code Ann.* § 53.1-95.8 limit the powers of jail officers as conservators to the activities set forth in those subsections. I disagree. If statutory provisions conflict and cannot be harmonized

the general provision must yield to the specific provision. *Frederick County School Board v. Hannah,* 267 Va. 231, 236 (2004). But under well established statutory construction precepts the court must give effect to every provision of a statute unless they cannot be reconciled. *Commonwealth v. Zamani,* 256 Va. 391, 395 (1998). The court must also apply the plain language of a statute "unless a literal construction would involve a manifest absurdity." *Halifax Corp. v. First Union National Bank,* 262 Va. 91, 100 (2001). I do not find any conflict between the applicable provisions of § 53.1-95.8 and its plain language that makes jail officers conservators of the peace within the limits of a correctional facility. In addition, Major Lan, the acting superintendent of the Regional Jail, testified that he had made arrests within and around the Regional Jail facility. (Tr. 44, 46).

In certain circumstances a detainer may be nothing more than an administrative device whereby a jurisdiction advises a sister state that an inmate is wanted to face criminal or probation violation charges. *Rease v. Commonwealth,* 227 Va. 289, 294 n* (1984); *Ford v. Commonwealth,* 33 Va. App. 682, 691-92 (2000). It is otherwise when one Virginia jurisdiction files a detainer with another Virginia jurisdiction. Because the filing jurisdiction can at any time obtain the subject of the detainer for trial and the holding jurisdiction has the power of arrest, the filing of the detainer is considered an arrest in the context of a speedy trial analysis. *Funk, supra.*

The case of *Ford* v. *Commonwealth, supra,* nicely sets forth the distinction. In *Ford* the defendant was arrested in Charlottesville on state charges and was then arrested by the federal authorities who held him until his trial in Charlottesville more than five months after he was taken into federal custody. Ford acknowledged that *Williamson v. Commonwealth*, 13 Va. App. 655 (1992), held that the speedy trial period did not begin when a defendant was held in North Carolina on a Virginia Beach detainer, but argued that as *Funk* and *Williamson* were inconsistent, *Funk* should prevail as it was decided after *Williamson.* The *Ford* court opined:

> We disagree with appellant and do not view the holding in these two decisions as inconsistent. Indeed, they are consistent.
>
> In both decisions, we determined when the local jurisdiction obtained custody and rights over the defendant. In *Williamson*, the local jurisdiction obtained custody and rights over the defendant when he was turned over to the Virginia Beach authorities and arrested. In *Funk,* the local jurisdiction obtained custody and rights over the defendant when Fauquier County teletyped Hanover County, requesting that Hanover County detain the defendant on the Fauquier County charges. We also determined what jurisdiction held the defendant. In *Funk,* it was another political subdivision of the Commonwealth of Virginia. In *Williamson,* it was the State of North Carolina, a separate sovereign. We also examined

> the charge upon which the defendant was held. In *Funk,* after Hanover County received the teletype form Fauquier County the defendant was being held on the Hanover and Fauquier charges. In *Williamson,* the defendant was being held solely on North Carolina charges in North Carolina.

Ford v. Williamson, supra at 692.

Captain Webb testified that but for Muhammad's Prince William conviction, the Regional Jail would have let Muhammad walk out the door because he had not been formally arrested on the Fairfax detainer. (Tr. 80). I do not find this testimony credible for several reasons. First, it is simply not believable that a Virginia jail would release an inmate that it knows is wanted for charges in another jurisdiction. Second, Captain Webb's testimony is inconsistent with his earlier testimony that one purpose of a detainer is "as a failsafe so we don't release someone when there may be charges that another jurisdiction wants them." (Tr. 75). It is also inconsistent with the testimony of Corporal Taylor. Before a detained inmate would be released, Taylor testified, the Regional Jail would call the detaining jurisdiction to "see if they still wanted him held or not." (Tr. 63). This was done on the Fairfax detainer. The Regional Jail was informed that Fairfax did not want Muhammad at that time. (Tr.47-48, 52, 54).

It is not clear whether Fairfax's decision not to transport Muhammad in effect withdrew its detainer and if so whether the time Muhammad spent in the Department of Corrections should be excluded from the calculation of the speedy trial period.[4] *Compare Knott v. Commonwealth,* 215 Va. 531 (1975)(any incarceration in Virginia must be counted) *with Ford v. Commonwealth*, 33 Va. App. 682, 689 (2000)(incarceration must be for the subject offense). If the time Muhammad spent with the Department of Corrections is excluded, the five-month statutory period expired no later than August 17, 2004. *Pittman v. Commonwealth,* 10 Va. App. 693, 695 (five-month period is computed as 153 days)(dismissing murder conviction).[5]

At Muhammad's arraignment on June 22, 2004, counsel immediately asserted his constitutional and statutory speedy trial rights. Counsel objected to the setting of any trial date until speedy trial issues were resolved. Trial was set for October 4, 2004, on the assumption that the speedy trial period commenced with Muhammad's arrest on May 27, 2004. On June 22, 2004, the court had none of the chronology before it that was later brought out by Muhammad's written speedy trial motion and in the hearing held on September 22, 2004. (Transcript of June 22, 2004 hearing at 7-9). However, that does not preclude Muhammad's assertion of his speedy trial rights or constitute a waiver of

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[4] There is no evidence that Fairfax filed a detainer on Muhammad with the Department of Corrections.

[5] January 7-31 (25days); February 29 days; March 1-17 (17 days); May 28-31 (4 days); June 30 days; July 31 days and 17 days in August equal 153 days. If the Department of Corrections time is not excluded then the statutory period ran on June 7, 2004.

those rights. *Moten v. Commonwealth,* 7 Va. App. 438, 441-42 (1988). The October 4, 2004 trial date was outside of the five-month period required by the Speedy Trial Statute.[6]

Because Muhammad's trial on the instant charges was not commenced within the statutory period, the Speedy Trial Statute requires that the charges against Muhammad be dismissed.[7] A copy of an order reflecting the court's ruling is enclosed.

Very truly yours,

M. Langhorne Keith

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[6] Muhammad waived his speedy trial rights for any period subsequent to September 8, 2004 through January 10, 2005, while specifically preserving his objection to any violations occurring on or before September 8, 2004. Transcript of September 8, 2004 hearing at 4. Order entered September 16, 2004.

[7] Because this ruling disposes of the case, I do not reach the constitutional speedy trial issues raised by Muhammad.