

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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<b>UNITED STATES OF AMERICA</b>	)	
	)	
v.	)	Criminal No. 21-cr-00198 (TSC)
	)	
<b>TROY ANTHONY SMOCKS,</b>	)	
	)	
Defendant.	)	

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**ORDER**

On May 7, 2021, the court signed an Order and accompanying Memorandum Opinion finding that twenty-nine of the fifty-three days that elapsed between Troy Anthony Smocks’ arrest and his indictment were properly excluded and that no violation of the Speedy Trial Act had occurred. ECF No. 32; ECF No. 33, May 7 Mem. Op. The court therefore denied Smocks’ Motion to Dismiss. Also on that date, Smocks moved to file additional documents and to reopen the hearing on his Motion to Dismiss for Violation of the Speedy Trial Act. ECF No. 30, May 7 Mot; ECF No. 31. For the reasons discussed below, the court DENIES Smocks’s Motion for Leave to File Documents and to Reopen the Hearing on his Motion to Dismiss (the “May 7 Motion”), which it construes as a motion for reconsideration.

In his motion, Smocks seeks leave to supplement his prior filings on the Motion to Dismiss through the introduction of several new exhibits, which fall into two categories. First, Smocks provides statements from other inmates who were being held at Grady County Jail at the time that Smocks was located there, which purport to support Smocks’ claim that the medical diagnosis that prevented his transport from the jail on March 8, 2021 was fabricated as an excuse to limit the number of inmates to be transported. Second, Smocks provides information obtained from the website of the Will Rogers World Airport (“WRWA”) regarding cancellation of

commercial flights departing that airport during the period of February 12–20, 2021 as a result of the winter storms conditions at that time. None of these materials alters the court’s finding on the Motion to Dismiss.

In its May 7 Memorandum Opinion, the court relied upon the sworn affidavit of Kevin Wykert, Assistant Chief of Administration for the United States Marshals Service, who attests that Smocks [REDACTED]

[REDACTED] three days were appropriately excluded from Speedy Trial Calculations for purposes of the motion.<sup>1</sup> May 7 Mem. Op. at 8–9. In his May 7 Motion, Smocks provides the signed statements of three Grady County Jail inmates, which purportedly support the contention that Smocks “was provided with a false diagnosis of an illness so that he would be excluded from the flight.” May 7 Mot. ¶¶ 5–6. However, the statements provide no such support. Rather, each of the three individuals testify only to the crowded conditions of the jail and transport vehicles. While Smocks argues that such descriptions of crowding “support Mr. Smock’s argument” regarding his “false diagnosis” and that “it was common knowledge at the Grady County Jail that incorrect medical diagnoses were provided to justify exclusion of prisoners on flights when there were too many inmates to transport,” these assertions amount to no more than bare speculation that the government has provided false sworn testimony. May 7 Mot. ¶¶ 5–6. Such speculation is not sufficient to alter the court’s finding.

In its May 7 Memorandum Opinion, the court further found that the delay from February 12 through February 20, 2021 was reasonable given the severe winter weather in Oklahoma during that period. May 7 Mem. Op. at 7–8. In making this finding, the court relied on both

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<sup>1</sup> The court considered only whether March 7 through March 9, 2021 should be excluded, rather than the full fourteen-day quarantine period, because an indictment was filed in this case on March 9, terminating the relevant period under the Speedy Trial Act.

Wykert's affidavit and on a series of press releases from the office of the Governor of Oklahoma.

*Id.* This period was therefore likewise excluded from Speedy Trial Act calculations. Smocks argues in the May 7 Motion that this exclusion should be limited only to February 17, 2021.

May 7 Mot. ¶ 8. In support, he proffers two sets of winter weather updates issued by the Will Rogers World Airport ("WRWA") in Oklahoma City, OK. ECF No. 30-4, WRWA Update #1; ECF No. 30-5, WRWA Update #2. These updates provide information regarding the cancellation of commercial flights out of that airport between February 12–18.<sup>2</sup>

As an initial matter, the court is not convinced that weather-related flight cancellations—or the absence thereof—out of a major, international, commercial airport, which on February 12 was prepared with airport maintenance crews "stand[ing] ready to treat runways, taxiways, roadways and walking surfaces to maintain airport operations" around the clock, is an appropriate metric for the "reasonableness" of the United States Marshals' decisions regarding the necessity of its own flight cancellations. As another court in this district has made clear, simply because "the adoption of another approach might have been faster and more desirable, it was not [necessarily] unreasonable" for officials to make a different policy decision in order to ensure the safety of those in their charge. *See United States v. Phinizy*, No. CR 18-0323 (ABJ), 2019 WL 2570038, at \*5 (D.D.C. June 21, 2019).

Ultimately, however, it is unnecessary for the court to make any finding on the appropriateness of this metric. As reported by WRWA, a significant portion of flights were

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<sup>2</sup> No updates are provided by the airport for the days of February 19 or 20, 2021, nor was the court able to find any updates for those days in the public record. For the reasons discussed herein, any cancellation or resumption of flights on those two days does not bear on the court's finding.

cancelled during, at a minimum, the period of February 14 through February 17, or four days.<sup>3</sup> See WRWA Update #1, at 3 (“UPDATE #5 – 8:30AM, 2/14/2021 . . . a majority of the outbound flights have been cancelled for today”); *id.* at 2 (“UPDATE #6 – 3:30PM, 2/14/2021 . . . [airlines] have cancelled a total 66 arrivals and departures for 2/14/2021. . . . 33 arrivals and departures are listed as cancelled for Monday, 2/15. That number is expected to increase”); *id.* at 1–2 (“UPDATE #7 – 7:30PM, 2/14/2021 . . . 35 arrivals and departures are listed as cancelled for Monday, 2/15. That number is expected to increase.”); WRWA Update #2, at 2 (“UPDATE #1 – 10:00PM, 2/16/2021 . . . Another round of cancellations are disrupting air travel at OKC Tuesday evening and Wednesday morning . . . Temperatures are holding well below freezing, allowing snow to continue to accumulate”); *id.* at 1–2 (“UPDATE #2 – 6:30AM, 2/17/2021 . . . For Wednesday, another round of cancellations will slow air travel at WRWA”).

Based upon the Parties’ initial briefing, the court found that twenty-nine out of the fifty-three total days that elapsed between Smocks’ arrest and his indictment were appropriately excluded. Of these, nine days were excluded on the basis that the delays were reasonable in light of the severe winter storm. Even were the court to find that only the four days from February 14 through February 17 could properly be excluded as reasonable based on the information received from WRWA, this would still result in a total exclusion of twenty-four out of the fifty-three elapsed days. That would leave twenty-nine days included under the Speedy Trial Act Calculation pursuant to section 3161(h)(1)(F), which would still fall shy of the thirty-day statutory cap.

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<sup>3</sup> For purposes of this Order, the court assumes that the absence of reported cancellations is indicative of substantially normal flight operations.

Because Smocks has failed to submit any additional evidence or argument to alter the court's ultimate determination on the Motion to Dismiss, the court hereby DENIES the Motion for Leave to File Documents and to Reopen the Hearing, ECF No. 30, ECF No. 31, as futile.

Date: July 2, 2021

*Tanya S. Chutkan*  
TANYA S. CHUTKAN  
United States District Judge