

DN S20N-CR11-0128328S

SUPERIOR COURT

STATE OF CONNECTICUT

GA #20

V.

AT NORWALK

DUANE T. DOUTEL

JULY 19, 2012

MEMORANDUM OF DECISION
RE-MOTION TO DISMISS SECOND SUBSTITUTE INFORMATION

This matter comes before the court on the defendant's motion to dismiss the second substitute information, charging a violation of a criminal infraction of Creating a Public Disturbance [CGS Section 53a-181].

The defendant moves to dismiss based upon:

1. Denial of a Speedy Trial; and
2. Lack of Subject Matter Jurisdiction; and
3. Statute of Limitations

SUPERIOR COURT
 NORWALK
 2012 JUL 19 P 5:03

The state argues that the right to a speedy trial does not apply to a criminal infraction. The defendant has not responded to that issue. Without reaching that issue, the court notes that any motion to dismiss based upon a speedy trial claim is premature at this time, as the case has been scheduled for a date within the time frame triggered by the filing of a speedy trial motion. Any such motion to dismiss must be filed in accordance with Section 43-41 of the Connecticut Practice Book.

The defendant claims lack of subject matter jurisdiction based upon Connecticut General Statutes Section 51-193u(b), as the defendant has not entered a plea of not guilty to the infraction charge. This section of the statute refers to motor vehicle matters as indicated by the reference to subsection (a). Pursuant to Section 51-193u(c), magistrates have the authority to accept pleas of guilty or not guilty, and to accept pleas of nolo contendere. As an infraction, this matter has been transferred to the magistrate docket, by the court (Hudock, J.). In that venue, the defendant may elect his plea of not guilty and be afforded his trial on the next date, or may otherwise resolve the case.

The defendant's last claim is a claim of a violation of the statute of limitations. "At the core of the limitations doctrine is notice to the defendant. . . . Its principal purpose is to ensure that a defendant receives notice, within a prescribed time, of the acts with which he is charged, so that he and his lawyers can assemble the relevant evidence [to prepare a defense] before documents are lost [and] memor[ies] fade" (Citation omitted; internal quotation marks omitted.) *State v. Almeda*, 211 Conn. 441, 446, 560 A.2d 389 (1989).

Practice Book § 36-17 provides in relevant part: "If the trial has not commenced, the prosecuting authority may amend the information, or add additional counts, or file a substitute information." Our Appellate Court has admonished, however, that "the broad authority of a prosecutor to amend an information prior to trial is tempered by the applicable statute of limitations." *State v. Jennings*, 101 Conn. App. 810, 817, 928 A.2d 541 (2007). "When . . . the state files an amended or substitute information after the

limitations period has passed, the first [timely filed] information will toll the statute if the amended or substitute information does not broaden or substantially amend the charges made in the first information. See *United States v. Grady*, 544 F.2d 598, 601-602 (2d Cir. 1976); *State v. Almeda*, supra, 221 Conn. 447-48 (prosecution on substitute information charging assault in first degree was not time barred where factual allegations were identical to those underlying original information charging attempted murder); *State v. Saraceno*, 15 Conn. App. 222, 238-40, 545 A.2d 116, cert. denied, 209 Conn. 823, 552 A.2d 431 (1988). Although notice is the 'touchstone' of the analysis in determining whether an amended or substitute information substantially broadens or amends the original charges; *United States v. Gengo*, 808 F.2d 1, 3 (2d Cir. 1986); some factors to assist in this determination are 'whether the additional pleadings allege violations of a different statute, contain different elements, rely on different evidence, or expose the defendant to a potentially greater sentence.' *United States v. Salmonese*, 352 F.3d 608, 622 (2d Cir. 2003)." (Emphasis added.) *Id.*, 818-19.

The current information charging the criminal infraction of creating a public disturbance, a substantially lesser charge, does not substantially broaden or amend the prior timely filed information[s]. The evidence is the same, the elements are similar, and the defendant is exposed to a substantially lesser penalty. Accordingly, the court finds that the prior timely filed information[s] tolled any statute of limitations in this case.

The motion to dismiss the second substitute information is denied, and the case is continued, pursuant to the prior order of the court, (Hudock, J.) to the magistrate docket for July 30, 2012.

Dennis, J.

Dennis, J.

"DECISION ENTERED IN ACCORDANCE WITH THE FOREGOING"

7-19-12

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DENIED

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MESSAGE:

Number of copies including fax cover: 5