

manufacture a controlled substance. Count Three charges defendant Folsom with possession of a listed chemical, pseudoephedrine, with the intent to manufacture a controlled substance. The indictment also seeks criminal forfeiture.

Scheduling conferences were held before U.S. Magistrate Judge Sarah W. Hays on June 10, 17, and 18, 2009, during which the parties discussed a possible trial date. On July 28, 2009, the Court issued a Trial Order setting the case on the joint criminal jury trial docket commencing December 7, 2009.

On November 16, 2009, defendant Garland Hankins filed a Motion for Continuance of Trial Setting, with Suggestions in Support. The motion requests a continuance to the joint criminal jury trial docket commencing January 11, 2010. The suggestions in support of the motion state that defense counsel is the attorney in another case, *United States v. John Angell*, No. 09-00296-01/06-CR-W-FJG, in which he represents defendant Robert Stewart. During a status conference held on October 14, 2009, the parties generally agreed that all defendants in the Angell case who were not going to enter guilty pleas could be ready for trial on the December 2009 trial docket. On November 12, 2009, a motion to continue that case from the December trial docket was denied, largely due to objections by those defendants in custody who desired an early trial. Defense counsel advises his client, Robert Stewart, is definitely ready for trial. The trial is scheduled to commence December 7, 2009. Defense counsel advises defendant Hankins consents to this continuance and waives his rights under the Speedy Trial Act. Defense counsel notes that although plea discussions are ongoing, the parties have been unable thus far to resolve the case by plea agreement and, therefore, can be ready for trial by the next available trial docket.

On November 17, 2009, defendant Greathouse filed a Motion for Continuance. The motion

states that defense counsel is scheduled for an involuntary manslaughter in the first degree jury trial, *State of Missouri v. Dale L. Thomas*, No. 0816-CR06075-01, the week of November 30, 2009. Defense counsel needs additional time to review the discovery materials in this case, conduct relevant legal research, meet with the defendant, and adequately prepare for trial.

The Speedy Trial Act of 1974, as amended, mandates the commencement of the trial of a defendant within seventy days from the defendant's first appearance before a judicial officer of the court in which the charge is pending. In computing the seventy-day time period, the periods of delay set forth in 18 U.S.C. § 3161(h) are to be excluded. Any period of delay resulting from a continuance granted at the request of a defendant is excludable if the Court finds the ends of justice served by the taking of such action outweigh the best interests of the public and the defendants in a speedy trial, provided the Court sets forth the reason for such finding. See 18 U.S.C. § 3161(h)(7)(A).

The Court finds that it would be unreasonable to expect defense counsel to prepare this case adequately for trial prior to January 11, 2010, and that failure to grant a continuance would deny defense counsel the reasonable time necessary for effective preparation and, thus, would deny the defendants their right to effective assistance of counsel. The Court finds the ends of justice served by granting a continuance outweigh the best interests of the public and the defendants in a speedy trial.

Based on the foregoing, it is

ORDERED that defendant Garland Hankins' Motion for Continuance of Trial Setting (doc #137) and defendant Greathouse's Motion for Continuance (doc #142) are granted. This case is removed from the joint criminal jury trial docket which commences December 7, 2009. It is further

ORDERED that this case is set for trial on the joint criminal jury trial docket which commences January 11, 2010. It is further

ORDERED that, pursuant to 18 U.S.C. section 3161(h), the time between the date of this Order and January 22, 2010, the last day of the January 11, 2010 Joint Criminal Jury Trial Docket, shall be excluded in computing the time within which this trial must commence.

/s/ Scott O. Wright
SCOTT O. WRIGHT
UNITED STATES DISTRICT JUDGE

Dated: 12/7/2009