

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action No.
	)	10-00320-01/19-CR-W-DGK
JUAN MARRON, et al.,	)	
	)	
Defendants.	)	

ORDER CONTINUING CURRENT TRIAL SETTING

Before the court is a motion to continue filed by defendant John Gasca. In support of the motion, defendant states in part as follows:

1. Mr. Gasca and his co-defendants all face serious felony charges that could result in substantial incarceration including life in prison upon conviction. As of this filing, defense counsel have been provided well in excess of 1000 pages of discovery consisting of witness statements; search warrant information; records of court authorizations of GPS tracking of cell phone calls; confidential informant reports; grand jury transcripts; laboratory reports; telephone record print outs; wire tap interception orders and evidence gathered as a result of those taps; and other information which is and continues to be under review and study. The case is by any criteria exceedingly complex.

2. Undersigned counsel for defendant Gasca has discussed a continuance with AUSA Rhodes and he is not opposed to this continuance and is agreeable to and would prefer the March 2012 regular trial docket setting. Mr. Gasca is indicted with 18 other co-defendants. As of this filing, no defendant has entered a guilty plea and it is therefore presumed at this point that all are for trial. In the event a multi-defendant trial were to be conducted, even assuming one-half or more of the defendants were to ultimately negotiate a settlement, the trial preparation time alone of marshaling witnesses and exhibits and filing motions in limine would likely consume several weeks or more. Moreover, final trial preparation could not begin in earnest until each defendant has thoroughly reviewed the voluminous discovery in the case.

3. In accordance with local rules, counsel has contacted counsel who represent the co-defendants in the case to determine their respective views as to whether they object to or are in agreement with a continuance and to determine preferable dates. This effort was commenced on July 24, 2011, by email. As of close of business on this filing date, more than one-half have responded. . . .

Counsel for codefendants Juan Marron, David Hernandez-Montoya, Mario Marron, Peter Adam Flores, Anthony Francis Alvarez, Benito Castillo Gutierrez, Marco Antonio Mursia,

Armando Mendez, Joseph Michael Lopez, Gilbert Lupercio, and Muhammad Ibrahim Rollie indicated they have no objection to a continuance to the March 2012 trial docket. I entered an order directing the other defendants to respond by August 3, 2012. As of this date, counsel for Robert Joseph Olvera, Jason Richardson, Maria Marron, Rafael Zamora, and Margot Charlene Davidson indicated they have no objection to the continuance request. Counsel for DeShaun Ceruti objects because defendant is in custody and does not want to remain in custody another six months. Defendant Frank Alvarez, who is representing himself, has not responded to movant's letter, any requests by his stand-by counsel, or my order. Therefore, I will assume Mr. Alvarez has no objection to the requested continuance.

The Speedy Trial Act of 1974, as amended, mandates the commencement of the trial of a defendant within 70 days from the defendant's first appearance before a judicial officer of the court in which the charge is pending. In computing the 70-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 taking such action outweigh the best interest of the public and the defendant in a speedy trial, provided the court sets forth the reason for such finding.

In light of the circumstances described above, I find that the ends of justice served by removing this criminal action from the joint criminal jury trial docket which will commence September 12, 2011, and continuing the trial until the joint criminal jury trial docket which will commence March 19, 2012, outweigh the best interest of the public and the defendant in a speedy trial. Trial delay due to an ends-of-justice continuance granted to a defendant applies to all of the codefendants as excludable time. United States v. Fogarty, 692 F.2d 542, 546 (8th Cir. 1982), cert. denied, 460 U.S. 1040 (1983). In Fogarty, the court stated:

. . . The Act specifically addresses the application of exclusions to multiple defendant cases such as this one. Section 3161(h)(7) provides that a court shall exclude:

A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

We agree with the D.C. Circuit's view that "[this provision] is crucial in a case involving multiple defendants because it provides that an exclusion applicable to one defendant applies to all codefendants." United States v. Edwards, 627 F.2d 460, 461 (D.C. Cir.), cert. denied, 449 U.S. 872 (1980); accord, United States v. Manbeck, 514 F. Supp. 152, 154-55 (D.D.C. 1981). Applying this provision here, we note that: (1) Fogarty's severance motion was never granted and he was to be tried along with his coconspirator/codefendants; (2) the January 6, 1981 trial date was clearly timely as to Fogarty's codefendants who successfully sought continuances; (3) the district court properly determined that the delay resulting from the granting of the continuance motions was reasonable.

Therefore, despite Mr. Ceruti's objection to the continuance, the time excluded from the Speedy Trial Act computation due to this ends-of-justice continuance will apply to him as well.

In accordance with § 3161(h)(7)(C), congestion of the court's calendar was not considered in deciding to remove this case from the joint criminal jury trial docket which will commence September 12, 2011.

In light of the circumstances described above, it is

ORDERED that this criminal action is removed from the joint criminal jury trial docket which will commence September 12, 2011. It is further

ORDERED that this criminal action is set for trial on the joint criminal jury trial docket which will commence March 19, 2012. It is further

ORDERED that, pursuant to 18 U.S.C. § 3161(h)(7), the time between the date of this order and March 19, 2012, shall be excluded in computing the time within which the trial of this criminal action must commence.

/s/ Robert E. Larsen  
ROBERT E. LARSEN  
United States Magistrate Judge

Kansas City, Missouri  
August 4, 2011