

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION
DIVISION D.J.K.**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Criminal Case Number
vs.)	09-00121-09-CR-S.J.-W-D.J.K.
)	
DUSTIN JOHN BENNY,)	
)	
Defendant.)	

**MOTION TO REMOVE DEFENDANT’S CASE FROM
THIS COURT’S CRIMINAL JURY TRIAL, DOCKET;
AND TO CONTINUE TRIAL DATE;
AND REASONS IN SUPPORT THEREOF.**

MOTION

COMES NOW the Defendant, DUSTIN JOHN BENNY, by his Appointed Counsel, Ronald L. Hall, in accordance with Rules 47(a) and (b), Fed. R. Crim. P., and Rules 7.1(b) & (c), L.R., and moves this Court, pursuant to 18 U.S.C.A. §§ 3161(h)(8)(A) and (B) (West, WESTLAW through 4/24/09, P.L. 111-15 (excluding P.L. 111-13)), to remove his Case from this Court’s Criminal Jury Trial Docket, commencing on Monday, June 8, 2009, at 9:00 a.m.

Specifically, Defendant Benny requests that his Case be placed upon the Trial Docket, which will begin at 9:00 a.m., on Monday, November 2, 2009.

REASONS

The Defendant states the following facts, and reasons, in support of his Motion:

Facts

(1) (a) On April 9, 2009, a Grand Jury returned a fifteen (15) count Indictment, in which it charged the Defendant, and ten (10) other Co-Defendants, in Count Two, with committing a violation of 21 U.S.C.A. § 846 (West, WESTLAW through 4/24/09, P.L. 111-15 (excluding P.L. 111-13)): Conspiring, between January 1, 2005, and December 30, 2006, to distribute five-hundred (500) grams, or more, of a substance, containing methamphetamine, a Schedule II Controlled Substance, in violation of 21 U.S.C.A. §§ 841 (a)(1), and 841 (b)(1)(A) (West, WESTLAW through 4/24/09, P.L. 111-15 (excluding P.L. 111-13)).

(b) In Count Thirteen, it charged the Defendant, and eleven (11) Co-Defendants, with committing violations of 18 U.S.C.A. § 1956 (a)(1)(A)(i), and (h) (West, WESTLAW through 4/24/09, P.L. 111-15 (excluding P.L. 111-13)): Conducting, between January 1, 2005, and December 30, 2006, financial transactions, involving the proceeds from the Conspiracy To Distribute Methamphetamine, charged in Count Two, of this Indictment, with the intent to promote the continuation of this conspiracy.

(c) On that same date, a Magistrate Judge issued an arrest warrant for the Defendant.

(d) The Clerk assigned the case to Division D.J.K., of the Western Division of the Court, the Honorable David G. Kays, Judge, presiding.

(2) On April 13, 2009, the Honorable John T. Maughmer, Magistrate Judge, issued a Writ of Habeas Corpus Ad Prosequendum to the Records Clerk, El Dorado Correctional Facility, El Dorado, Kansas; and to the U.S. Marshal, Western District of Missouri, directing the Clerk to release the Defendant to the custody of the U.S. Marshal; and directing the Marshal to transport the Defendant to this Court; for the purpose of answering the charges set out in Counts Two, and Thirteen, of the Indictment.

(3) During the week of April 13, 2009, the Marshal complied with the Writ, and executed the arrest warrant for the Defendant. On April 21, 2009, the Defendant had an Initial Appearance before the Honorable Robert E. Larsen, Magistrate Judge. At that Proceeding, Judge Larsen found that he was ineligible for Pre-Trial Release, because he had not completed service of the Kansas sentence, which he was serving at the time the Marshal executed the Writ, and the arrest warrant. Consequently, he directed the Marshal to maintain custody of the Defendant, while the case was pending. In addition, the Magistrate, inter alia, appointed the Undersigned to represent the Defendant.

(4) On April 28, 2009, the Defendant appeared before Judge Maughmer for an Arraignment. At that Proceeding, he entered not guilty pleas to Counts Two, and Thirteen, of the Indictment. The Magistrate placed the Case upon the Trial Docket, scheduled to begin on June 8, 2009, at 9:00 a.m.

Reasons

(1) The Undersigned needs additional time within which to examine the information, contained in the Plaintiff's Investigation File; and to conduct an independent investigation of this information. He also represents the Defendant in U.S. v. Benny, U.S. Dist. Ct., W.D.-Mo., Crim. Case No. 09-00117-01-CR-W-D.W.-D.G.K., in which

the Grand Jury charged the Defendant with committing another violation of 21 U.S.C.A. § 846: Conspiring, between September 16, 2006, and January 8, 2009, to distribute fifty (50) grams, or more, of a substance, containing methamphetamine, a Schedule II Controlled Substance, in violation of 21 U.S.C.A. §§ 841 (a)(1), and 841 (b)(1)(B). This conspiracy charge is related to the two conspiracy charges in this Case. Consequently, the Undersigned is seeking a “global disposition” of both Cases. By removing the Defendant’s Case from the Trial Docket which begins on June 8, 2009, and placing it upon the Docket scheduled to begin on November 2, 2009, this Court will enable the Undersigned to conduct that examination, and investigation, of this information; to arrange an appropriate “global” disposition of both Cases; and, to provide the Defendant with the effective assistance of counsel, required by the Assistance of Counsel clause of the Sixth Amendment to the U.S. Constitution.

(2) Bruce A. Rhoades, Drug Unit, A.U.S.A, W.D.-Mo., Counsel for Plaintiff, has advised the Undersigned that he has no objections to this Court granting a continuance of the trial date for the above stated reasons.

(3) In accordance with 18 U.S.C.A. §§ 3161(h)(8)(B)(iv) and (h)(8)(A) (West, WESTLAW through 4/24/09, P.L. 111-15 (excluding P.L. 111-13)), it is hereby submitted that the above request for additional time is necessary for the effective preparation, and disposition, of the Defendant’s Case; and that, that reason outweighs the best interests of the Public, and the Defendant, to a speedy trial, required by 18 U.S.C.A. § 3161(c) (West, WESTLAW through 4/24/09, P.L. 111-15 (excluding P.L. 111-13)). Consequently, the ends of justice will be served by granting the requested continuance.

WHEREFORE, the Defendant respectfully requests this Court, pursuant to 18 U.S.C.A. §§3161(h)(8)(A) and (B), to remove his Case from this Court's Criminal Jury Trial Docket, which will begin on June 8, 2009, at 9:00 a.m.; and to place it upon the Trial Docket, which will begin on Monday, November 2, 2009, at 9:00 a.m.

Respectfully submitted,

/s/ Ronald L. Hall

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CERTIFICATES OF FILING AND SERVICE

In accordance with Rules 49(d), (a) and (b), and 57, Fed. R. Crim. P.; Rules 5(e), (a), (b) (1) (2) (D), (b) (3), and (d), and 83, Fed. R. Civ. P.; Rules 7.1 (b) and (c), L.R.; and the W.D.-Mo.: C.M./E.C.F. Civ. And Crim. Adm. Procedures Man. (Revised 5/6/05), it is hereby certified that the original of the foregoing Motion To Remove Defendant's Case From This Court's Criminal Jury Trial, Docket; And To Continue Trial Date; And Reasons In Support Thereof, was filed, by using the C.M./E.C.F. System, with the Clerk, U.S. District Court, Western District of Missouri; and, E-Mail Notifications of this filing, were sent, by the C.M./E.C.F. System, to Counsel for Plaintiff, and Counsel for Co-Defendants, all Registered Participants in the C.M./E.C.F. System, on the 11th day of May, 2009.

/s/ Ronald L. Hall

RONALD L. HALL

Counsel For Defendant