

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

UNITED STATES OF AMERICA,            )  
  )  
                                  Plaintiff,    )  
  )  
                  v.                            )    Criminal Action No.  
  )    09-00362-01/02-CR-W-NKL  
JAMES J. STROBBE,                    )  
and                                        )  
STEVE ALLEN,                         )  
  )  
                                  Defendants.    )

ORDER CONTINUING CURRENT TRIAL SETTING

Before the court is a motion to continue filed by defendant James Strobbe. In support of the motion, defendant states as follows:

2. Undersigned counsel just finished a jury trial in federal court in Kansas City, Kansas last week that resulted in an acquittal. That trial, although short in duration, required considerable investigation and preparation during the months of April and May, prior to trial.

3. Counsel is a sole practitioner. Counsel is scheduled to commence trial in United States v. Rostie, et al, 08-00026-CR-W-FJG, in front of Judge Gaitan on June 21, 2010, a court designated complex prosecution. Undersigned counsel is retained counsel for one of three remaining defendants, Christopher Elder, MD. This prosecution has been pending since February 5, 2008 and Dr. Elder and his two co-defendants have been provided with nearly 30,000 pages of discovery. The government has indicated that it will call 55 witnesses and that the trial could take three weeks or more to try. Additionally, the Court has set a Daubert hearing in response to a motion filed by Dr. Elder which involves a government expert from Houston, Texas which will focus on issues of considerable significance to Defendant Elder. This hearing is to commence on June 4, 2010. Defendant Elder, a Houston, Texas resident, will call a number of defense witness from the Houston area and counsel needs to oversee service of process and do witness preparation for the defense case. Counsel is working nearly full time at this point on preparation for the Elder case.

4. Counsel must also file an application for certiorari with the United States Supreme Court in the case of United States v. Gary Eye, 05-CR-00344-W-ODS, a capital case tried in front of Judge Smith (non-death verdict) that has, in counsel's opinion, a significant and meritorious unresolved Bruton issue in which the 8th Circuit agreed with defendant's argument but determined the error to be harmless beyond a reasonable doubt. The petition is due on June 18, 2010.

5. Defendant Strobbe is presently free on bond and has no objection to this request for continuance. AUSA Charles Ambrose is aware of this request and does not object. The co-defendant in this case is represented by Mr. Ronald Hall. Mr. Hall does not oppose this motion or a September setting.

6. Mr. Strobbe's case involves charges of distribution of cocaine. Counsel previously represented Mr. Strobbe in a prior cocaine case in which he received probation by virtue of departure consideration. The former option is not available in this case and he has been certified as a prior offender and upon conviction in a contested trial will face a mandatory minimum of 20 years. Counsel is in negotiations with the government in an attempt to resolve this case and believes there is a substantial likelihood that there will be an eventual resolution short of trial; however, counsel needs additional time to work with the client. Obviously, if negotiations fail, even more time will be needed for final trial preparation.

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 June 7, 2010, and continuing the trial until the joint criminal jury trial docket which will commence September 20, 2010, outweigh the best interest of the public and the defendants in a speedy trial.

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 June 7, 2010.

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 June 7, 2010. It is further

ORDERED that this criminal action is set for trial on the joint criminal jury trial docket which will commence September 20, 2010. It is further

ORDERED that the pretrial conference set for May 26, 2010, is continued pending further order of the court. It is further

ORDERED that, pursuant to 18 U.S.C. § 3161(h)(7), the time between the date of this order and September 20, 2010, 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  
May 20, 2010