

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

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. ) Case No. 08-00026-03/05-CR-W-FJG  
)  
TROY R. SOLOMON, )  
CHRISTOPHER L. ELDER, and )  
DELMON L. JOHNSON, )  
)  
Defendants. )

ORDER CONTINUING TRIAL

On February 6, 2008, the Grand Jury returned a twenty-four count indictment against defendants Mary Lynn Rostie, Cynthia S. Martin, Troy R. Solomon, Christopher L. Elder, and Delmon L. Johnson.<sup>1</sup> The indictment charges defendants Solomon, Elder and Johnson with conspiracy to distribute controlled substances and distribution of controlled substances. Defendants Solomon and Johnson are further charged with conspiracy to commit money laundering. The indictment also seeks criminal forfeiture.

On March 17, 2009, defendants filed a Joint Motion to Continue the Trial Setting to the July 20, 2009 Docket. The suggestions in support of the motion state that a voluminous amount of discovery has been produced by the government, which continues to be reviewed by defense counsel. Furthermore, defense counsel was notified earlier this month that government counsel intends to call a local physician and a representative from the National Association of Boards of Pharmacy as experts. Defense counsel has now been apprised of the nature and substance of their expected testimony. Defense counsel needs additional time to explore the need for rebuttal experts

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<sup>1</sup>Defendants Rostie and Martin have entered guilty pleas.

in both disciplines to address some of the issues raised by the testimony of these two experts. In addition, defense counsel has also been informed that government counsel will call a Houston police officer as an expert. Defense counsel notes they will likely file a request for a *Daubert* hearing with respect to the latter witness and additional time is needed by counsel to assess his testimony once details are provided by the government.

Defense counsel states that on March 17, 2009, the Texas Medical Board filed approximately 50 pages of information with the court for *in camera* review in response to a subpoena. After review and a ruling by the Court, defendants will need time to address any issues, do further investigation, or file motions with respect to this matter. In addition, a hearing on the issue of the representation of defendants Solomon and Johnson is scheduled for April 14, 2009. Counsel for the government and all defense counsel are in agreement to the requested continuance.

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 the attorney for the Government 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)(8)(A).

The Court finds that it would be unreasonable to expect defense counsel to prepare this case adequately for trial prior to July 20, 2009, 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 that 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 Defendants' Joint Motion to Continue (doc #194) is granted. This case is removed from the joint criminal jury trial docket which commences April 27, 2009. It is further

ORDERED that this case is set for trial on the joint criminal jury trial docket which commences July 20, 2009. It is further

ORDERED that, pursuant to 18 U.S.C. section 3161(h), the time between the date of this Order and July 31, 2009, the last day of the July 20, 2009 Joint Criminal Jury Trial Docket, shall be excluded in computing the time within which this trial must commence.

*/s/Fernando J. Gaitan, Jr.*

FERNANDO J. GAITAN, JR.  
CHIEF UNITED STATES DISTRICT JUDGE