

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.¹ 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 June 29, 2009, defendants Solomon and Johnson filed a joint Motion for Continuance. The suggestions in support of the motion state that counsel for defendants Solomon and Johnson have recently been informed that additional discovery material exists for review at the Houston DEA office² and that they need additional time to investigate matters contained in the newly disclosed

¹Defendants Rostie and Martin have entered guilty pleas.

²Unbeknownst to defense counsel, material was being copied for the prosecution when defense counsel came to review the documents maintained by the Houston DEA office. Only recently was it discovered that some of the documents maintained by the Houston DEA office and intended to be used by the government in this case had not been produced to defense counsel.

discovery. In addition, counsel for Solomon and Johnson have indicated that they are still trying to examine and review electronic evidence seized by the government from Ascencia Nutritional Pharmacy. Finally, further interview reports have been recently disclosed that mention approximately 46 additional witnesses. Since the motion to continue was filed, defendant Solomon has filed a motion asking the Court to reconsider its prior order denying transfer of venue to the Southern District of Texas.

The motion for continuance was filed prior to the Court's conference with the parties on June 30, 2009. During that conference, it became apparent that all parties have considerable work to do in organizing the documents for use at trial. In addition, counsel for defendants Solomon and Johnson indicated that they have requested copies of certain documents they have reviewed at the Houston DEA office, but those copies have yet to be provided. Amendments are also anticipated to the witness and exhibit lists. Proposed stipulations have not yet been presented to defense counsel. Issues were also discussed concerning possible depositions of witnesses located in Houston.

On June 29, 2009, defendant Elder filed a motion for a Daubert hearing. The government's response to that motion is not due until July 14, 2009. If the Court grants the request for a hearing, additional time will be required to schedule the hearing and issue a ruling. Although defendant Elder indicated that he was opposed to a continuance of this matter, the extended discussion of trial issues between the Court and counsel on June 30, 2009, convinces this Court that the case is not ready to be tried and that considerable work must be done by all parties before the case can be tried to a jury in an efficient manner that does not require the Court to take frequent recesses to address unresolved issues outside the presence of the jury.

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)(8)(A).

Given the issues outlined above, the Court finds that it would be unreasonable to expect defense counsel to prepare this case adequately for trial prior to November 2, 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 Troy Solomon and Delmon Johnson's Motion for Continuance (doc #239) is granted. This case is removed from the joint criminal jury trial docket which commences July 20, 2009. It is further

ORDERED that this case is set for trial on the joint criminal jury trial docket which commences November 2, 2009. It is further

ORDERED that, pursuant to 18 U.S.C. section 3161(h), the time between the date of this

Order and November 13, 2009, the last day of the November 2, 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