

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

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) No. 08-00026-03-CR-W-FJG
)
TROY R. SOLOMON,)
)
Defendant.)

**GOVERNMENT'S RESPONSE TO DEFENDANT TROY SOLOMON'S
MOTION FOR RECONSIDERATION OF HIS MOTION TO CONTINUE**

The United States of America, by and through its undersigned counsel, respectfully submits the following response to defendant Troy Solomon's motion to reconsider this Court's Order denying his motion for a continuance and transfer. (Doc. No. 297).

I. DISCUSSION

A. Procedural Background

On February 6, 2008, a federal grand jury in the Western District of Missouri returned a 24-count indictment charging Troy R. Solomon ("defendant Solomon") and four other defendants with crimes related to the illegal distribution of controlled substances by The Medicine Shoppe pharmacy in Belton, Missouri to defendant Solomon in Houston, Texas. Count One charges all five named defendants with conspiring to distribute controlled substances. Count Two charges certain defendants, including Solomon, with conspiracy to commit money laundering. Counts Three through Twelve charge certain defendants with substantive counts of illegal distribution and dispensation of schedule III, IV, and V controlled substances. Two

defendants, Mary Lynn Rostie and Cynthia S. Martin, have pleaded guilty. The remaining defendants in this case are set for trial before this Court beginning June 21, 2010.

On May 4, 2010, a federal grand jury in Houston returned an indictment charging defendant Solomon and two other defendants with conspiracy to illegally dispense and distribute controlled substances. *See United States v. Peter Chukwuemeka Okose, et al.*, Criminal No. H-10-279 (May 4, 2010). According to court documents in that case, from approximately January, 2004, to approximately May 3, 2006, defendant Solomon, as the pharmacy owner of Ascensia Nutritional Pharmacy, used his pharmaceutical practice to fill prescriptions for various controlled drugs, including hydrocodone products, outside the course of professional practice and not for a legitimate medical purpose. *Id.*

On May 11, 2010, defendant Troy Solomon filed a motion to continue his trial before this Court because he was recently indicted in another case in the Southern District of Texas. (Doc. No. 292.)

On May 13, 2010, defendant Solomon appeared with his counsel, Chip Lewis, for arraignment on the charges in Houston. *See Case No. 10-cr-00279 (Doc. No. 21)*. Defendant Solomon chose not to execute a waiver of Speedy Trial regarding his case in Houston, resulting in the jury trial in that district being set to begin on June 28, 2010. Four days later, Solomon's co-defendants in the Houston case also elected not to waive their speedy trial limits. *See Case No. 10-cr-00279 (Doc. No. 22)*. All three defendants are scheduled for trial beginning on June 28 in Houston.

On May 24, 2010, defendant Solomon, having been informed that his motion for a continuance would be denied, filed a motion for this Court to reconsider its order denying his

motion for continuance and transfer. (Doc. No. 297.) On May 25, 2010, this Court ordered defendant Solomon's motion for a continuance be denied. (Doc. No. 299.)

B. Defendant Solomon's Motion for Reconsideration Should Be Denied as There Is Not a Speedy Trial Act Issue

Defendant Solomon has now moved for reconsideration of this Court's order denying his motion to continue the trial date and transfer. (Doc. No. 297.) In his motion for reconsideration, he now points out that his federal case in Houston requires him to be present there for the pretrial conference, which is the same date the jury trial in this matter is scheduled to begin. (Doc. No. 297.) He also states that his trial in Houston is set to begin on June 28, 2010, which will conflict with the trial in this case. Defendant Solomon also claims that he "lacks the resources" for his case to be tried in the Western District of Missouri. Thus, he concludes, the trial date in this matter should be postponed and transferred to the Southern District of Texas.

With regard to his motion for reconsideration of his motion to continue, the central issue appears to be whether defendant Solomon's scheduled trial date in this criminal prosecution violates his Sixth Amendment right to a speedy trial in another case. Stated differently, which takes precedence – the trial in this jurisdiction or the right to a speedy trial in the Southern District of Texas?

The Sixth Amendment to the Constitution guarantees that "the accused shall enjoy the right to a speedy and public trial." U.S. CONST. amend. VI. Under the Speedy Trial Act, 18 U.S.C. § 3161, a defendant's trial must commence within 70 days of the latter of (1) the filing of the indictment or (2) the defendant's arraignment. *See* 18 U.S.C. § 3161(c)(1); *United States v. McKay*, 431 F.3d 1085, 1091 (8th Cir. 2005). But, the Act excludes certain delays from the 70-

day time requirement, including those caused by other charges against the defendant. *See* § 3161(h)(1)(B).

On May 13, 2010, defendant Solomon appeared for arraignment in the Southern District of Texas. He was represented by his attorney at the arraignment. The attorney that represents defendant Solomon in his criminal prosecution in Houston is the same attorney who represents him in his criminal prosecution in Kansas City. Defendant Solomon, knowing that his trial in Kansas City was scheduled to begin in June, chose not to execute a waiver of his speedy trial. His decision to invoke his right to a speedy trial in the Southern District of Texas caused the conflicting jury trial dockets. Defendant Solomon could have sought to continue his trial date in Houston to avoid multiple trials at the same time. He chose not to do so. Arguably, defendant Solomon's decision not to waive his speedy trial in a case that was filed well after the present case is a tactical move to force a continuance in this case.

Defendant Solomon states that his pretrial conference in the Houston case is set on the first day of trial in this case. Defendant Solomon could easily request another date between now and June 21 for the pretrial conference in the Houston case. He has chosen not to do so.

Defendant Solomon further states that his trial date in the Houston case conflicts with his trial in the present case. That is true. However, the right to a speedy trial is not an issue of concern in this case; it very well may become an issue in his case in Houston. If the defendant is unable to appear for trial in Houston because of his trial in the present case, it could effectively cause a continuance in the Houston case, but arguably the Speedy Trial Act will not be violated because the time will toll during the period he is being tried in this jurisdiction. *See* 18 U.S.C. § 3161(h)(1)(B).

Defendant Solomon also claims that he lacks the financial resources to defend his case in Kansas City. That argument was made in his motion for continuance and summarily rejected. (See Doc. Nos. 292 and 299.)

Although there is no Speedy Trial Act issue in the Western District of Missouri, should this Court grant defendant Solomon's motion for a continuance, the Government would request that the trial setting for all three remaining defendants be on the criminal jury trial docket beginning August 16, 2010.

II. CONCLUSION

For the reasons stated above, Defendant Troy Solomon's motion for reconsideration of his motion for a continuance and transfer should be denied.

Respectfully submitted,

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By */s/ Rudolph R. Rhodes, IV*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered on May 28, 2010, to the CM-ECF system of the United States District Court for the Western District of Missouri for electronic delivery to all counsel of record.

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/s/ Rudolph R. Rhodes, IV

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RRR/rp