

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

UNITED STATES OF AMERICA

v.

Case No.: 3:07CR192-NBB-SAA

RICHARD F. SCRUGGS,
DAVID ZACHARY SCRUGGS,
SIDNEY A. BACKSTROM,
STEVEN A. PATTERSON,
TIMOTHY R. BALDUCCI

MOTION FOR CONTINUANCE OF CRIMINAL CASE

COME NOW, Defendants Richard F. Scruggs, David Zachary Scruggs, Sidney A. Backstrom, and Steven A. Patterson (collectively, “Defendants”) to move for a continuance of the dates for the completion of pretrial motions, for the submission of plea agreements, and for trial for 90-120 days to dates convenient to the Court. Defendants respectfully request this continuance in order to permit them to obtain and inspect adequately all discovery materials that will be produced by the government, to ensure counsel’s proper attention to the preparation of pretrial motions, and to allow for effective preparation for trial.¹

BACKGROUND

On November 28, 2007, the government filed a six-count indictment against Defendants. The indictment charges Defendants with criminal conspiracy in violation of 18 U.S.C. § 371; bribery of an agent of a state government in violation of 18 U.S.C. § 666(a)(2); and wire fraud in violation of 18 U.S.C. §§ 2, 1343, 1346. Defendants were arraigned and entered pleas of not guilty to each count of the indictment. Defendants have all been released on bond. They have not been designated as posing any danger to themselves or others in the community.

¹ Anthony L. Farese, counsel for defendant David Zachary Scruggs, also wishes to inform the Court that he currently has a trial before Chief Judge Michael Mills set for February 11, 2008, in the matter captioned *United States v. Todd Fulwood, et al.*, 2:07CR183-M-B.

On December 5, 2007, the Court issued a scheduling order setting this case for trial on January 22, 2008. The scheduling order also requires that discovery be completed by December 27, 2007 and that pretrial motions and plea agreements be submitted to the Court by January 7, 2008.

On December 7, 2007, the government provided Defendants with initial discovery in this matter. The government provided defendants with a copy of a single consensual recording made in the course of its investigation. The recording, which is approximately 90 minutes long, contains statements by four defendants. The government has agreed to make the original of this recording available for inspection by defendants and their experts.

On December 12, 2007, the government provided Defendants with additional discovery. Pursuant to this Court's order of December 10, 2007, the government provided Defendants with the applications and affidavits for the November 26, 2007 search warrant for the Scruggs Law Firm and three sets of applications and affidavits for authority to intercept wire communications under Title III. The government also provided Defendants with one cassette containing a consensual recording and two CDs containing intercepted telephone communications. The CDs contain a total of 124 recorded telephone conversations.

There is more discovery that the government has not yet produced. The government has not yet provided defendants any audio or video recordings made in Judge Henry Lackey's chambers; any of the telephone records referenced in the affidavits provided to Defendants; any transcripts of the recordings produced to date; any photographs or other evidence obtained through physical surveillance.

The government has also not yet provided Defendants with any material seized during the November 27, 2007 search of the offices of The Scruggs Law Firm, P.A., where attorney-defendants Richard F. Scruggs, David Zachary Scruggs, and Sidney A. Backstrom work. During that search, the government seized various electronic materials. Counsel for Defendants understand that the materials seized are currently being reviewed by an FBI "taint team" and that

the Assistant United States Attorneys handling this case have not yet received any materials seized during the November 27, 2007 search.

Similarly, Defendants have not yet received any material seized during the December 10, 2007 search of the offices of one of the Defendants' counsel pursuant to a search warrant issued by another District Judge of this Court. During this search, the government seized various paper and electronic files. Counsel for Defendants understand that the same "taint team" that is reviewing the material seized from the offices of The Scruggs Law Firm is responsible for reviewing the material seized on December 10, 2007.

ARGUMENT

Defendants now move for a continuance in order to permit them sufficient time to obtain and inspect adequately all discovery material, to brief pretrial motions, and to prepare effectively for trial. Under the Speedy Trial Act, the Court has the discretion to grant a continuance where the "ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C.A. § 3161(h)(8)(A). In particular, the Court may grant a continuance where "the failure to [do so] ... would deny counsel for the defendant[s] ... the reasonable time necessary for effective preparation ...," 18 U.S.C.A. § 3161(h)(8)(b)(iv), and where the "case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section," 18 U.S.C.A. § 3161(h)(8)(b)(ii).

A continuance is needed to allow Defendants to obtain the discovery to which they are entitled with sufficient time to review it and to prepare for pretrial briefing and trial. While the government has begun to produce discovery to Defendants, as noted above, the government has not yet produced any audio or video recordings made in Judge Lackey's chambers; any telephone records; any transcripts of the recordings produced to date; any photographs or other evidence obtained through physical surveillance; or any of the documents seized in either the November 27, 2007 search of the Scruggs Law Firm or the December 10, 2007 search of defense

counsel's office. In addition, the government has not produced any exculpatory material pursuant to *Brady*. Thus, given that discovery has essentially only begun, a January 7, 2008 deadline for pretrial briefs and a January 22, 2008 trial date will not permit Defendants to prepare effectively, particularly in light of the approaching holiday season.

Defense counsel also need additional time to retain experts and to allow their experts to analyze the discovery materials produced by the government. Much of the discovery provided to date consists of audio surveillance. Indeed, the government has produced over 125 audio recordings, and Defendants anticipate that the government will produce additional audio and video recordings. Not only will counsel need to review this media, but appropriate experts will also have to review the original audio and visual recordings. Indeed, given the government's likely reliance on this evidence, expert analysis may be critical to the defense. Thus, even once all discovery material has been produced, there will still be substantial work to be done to review the materials provided. The current trial setting of January 22, 2008 will not provide sufficient time for this expert analysis.

Defendants also request a continuance so that they can effectively prepare pretrial motions. While Defendants have only begun to analyze the discovery provided to date, Defendants anticipate the possibility of filing suppression motions directed to the November 26, 2007 search, motions directed to the applications for, and the request for extension of, the Title III wiretaps, motions to dismiss some or all of the counts in the indictment, and discovery motions. In addition, Defendants anticipate that there may be motion practice related to the "taint team's" review of the material seized from The Scruggs Law Firm as well as motion practice regarding jury selection and *voir dire*. In addition, these motions may well necessitate that the Court schedule pretrial hearings, including possible evidentiary hearings. The current motion deadline of January 7, 2008 does not provide counsel for Defendants with sufficient time to analyze these issues, conduct factual and legal research, and prepare briefing. Accordingly, Defendants respectfully request that the Court grant the requested continuance so that counsel have adequate time to prepare pretrial motions.

Finally, Defendants' requested continuance will serve the "ends of justice," and the interest in permitting Defendants to prepare their defense of this matter adequately "outweigh[s] the best interest of the public and the defendant[s] in a speedy trial." 18 U.S.C.A. § 3161(h)(8)(A). This case has been pending for less than three weeks, and this is Defendants' first request for a continuance. Thus, the public's—and the Defendants'—undeniable interest in the speedy trial of criminal cases will not be significantly burdened by this request. Furthermore, none of the Defendants is being detained, and the government has not designated any of the Defendants as posing a danger to themselves or others in the community.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully request that the Court grant their motion for a continuance and continue the dates in the scheduling order for 90-120 days to dates convenient to the Court.

Respectfully submitted, this the 17th day of December, 2007.

Dated: December 17, 2007

By: /s/ John W. Kecker

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CERTIFICATE OF SERVICE

I, Brook Dooley, do hereby certify that I have electronically filed the foregoing **Motion for Continuance of Criminal Case** with the Clerk of the Court using the ECF system, which sent notification for such filing to Thomas W. Dawson, Assistant United States Attorney, Robert H. Norman, Assistant United States Attorney, David Anthony Sanders, Assistant United States Attorney, Joseph C. Langston, William M. Quin, II, Anthony L. Farese, Frank W. Trapp, J. Rhea Tannehill, Jr., Timothy R. Balducci, and Hiram Eastland, Jr.

This, the 17th day of December, 2007.

/s/ Brook Dooley
Brook Dooley