

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

OCT 12 2016

BY ~~D. MARK JONES, CLERK~~
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

<p>UNITED STATES OF AMERICA, Plaintiff, vs. KEMP & ASSOCIATES, INC. AND DANIEL J. MANNIX Defendants.</p>	<p>Case No. 2:16-cr-00403-DS ORDER GRANTING STIPULATED MOTION TO CONTINUE TRIAL DATE AND EXCLUDE TIME FROM SPEEDY TRIAL ACT COMPUTATION U.S. District Court Judge David Sam Magistrate Judge Brooke C. Wells</p>
--	--

BASED UPON the Defendants' Stipulated Motion to Continue Trial Date in the above-entitled case, and for good cause appearing the Court makes the following findings:

1. On August 17, 2016, the defendants were charged by way of Indictment with one count of violating 15 U.S.C. § 1 (Antitrust).
2. On September 23, 2016, the defendants appeared for their Arraignment. At the Arraignment Magistrate Judge Brooke C. Wells set a two week trial to begin on November 28, 2016. Magistrate Judge Wells also set deadlines for discovery (October 14, 2016), plea agreements (November 7, 2016), motions (November 10, 2016), and proposed jury instructions (November 23, 2016).
3. On September 23, 2016, Magistrate Judge Wells ordered Mannix to remain on release pending trial.
4. A total of approximately six (6) days have passed under the Speedy Trial clock.

5. This is the first continuance motion filed in the case.

6. Counsel for both defendants have conferred with counsel for the United States, and the United States stipulates to this motion.

7. To date, the government has already produced over 192,000 pages of discovery, totaling over 14.4 gigabytes of records, which total will be further supplemented by the government by the October 14, 2016, discovery deadline. The discovery consists of business records, interview reports, electronic communications, and audio recordings.

8. This matter is complex in that it would be unreasonable to expect the defense to be ready for trial by November 28, 2016. *See* 18 U.S.C. § 3161(h)(7)(B)(ii). The government has alleged that the defendants have committed a conspiratorial crime that spanned over 13 years. The discovery materials consist of numerous pages of documents from multifarious sources and relate to a significant number of complex transactions. Because of the sheer quantity and complexity of the records, they cannot be reviewed within the time limitations of 18 U.S.C. § 3161. Thus, the case is complex as defined in 18 U.S.C. § 3161 and the delay resulting from the requested continuance is excludable under the Speedy Trial Act.

9. Defense needs at least an additional 210 days beyond November 28, 2016, to review the discovery material and conduct additional defense investigation. Additional time is needed by defense counsel to cull through the business records, interview reports, and other materials to conduct their own analysis of the alleged criminal conduct. Additional time is needed for defense counsel to conduct interviews of witnesses. The requested extension of time

will provide defense counsel with the time necessary to complete these actions and others necessary to provide the defendants with effective assistance of counsel.

10. Failure to grant the requested motion to continue would likely deny the defendants reasonable time necessary for effective preparation, taking into account the exercise of due diligence. 18 U.S.C. § 3161(h)(7)(B)(iv).

11. The defendants will not be prejudiced by the requested continuance in that they agree to waive their rights under the Speedy Trial Act and have all of the requested time excluded. The defendants agree that the time between this motion and the newly set trial date should be excluded under the Speedy Trial Act pursuant to 18 U.S.C. § 3161(h)(7)(A). The defendants assert that the ends of justice served by the granting of such continuance outweigh the best interests of the public and defendant in a Speedy Trial. 18 U.S.C. § 3161(h)(7)(A).

12. Given the voluminous amount of discovery, the complex nature of the case and the fact that a jury trial will take at least two weeks, trial should be scheduled no sooner than 210 days beyond November 28, 2016.

Based on the foregoing findings, it is hereby:

ORDERED

The trial in the above matter previously scheduled to begin on November 28, 2016, the plea agreements deadline of November 7, 2016, the motions deadline of November 10, 2016, and proposed jury instructions deadline of November 23, 2016, shall be and are hereby vacated.

Trial is set in this matter for the 2nd day of July, 2017 at 8:30 A.M.

13. Therefore, all delay between September 28, 2016, and the new trial date set by this order shall be excluded from any computation under the Speedy Trial Act pursuant to 18 U.S.C. §3161(h)(7)(A). The Court finds that the case is complex as to qualify under 18 U.S.C. § 3161(h)(7)(B)(ii). The Court also finds that under 18 U.S.C. § 3161(h)(7)(B)(iv) that failure to grant the requested continuance would deny defendants reasonable time necessary for effective preparation of their defense taking into account the exercise of due diligence.

14. Failure to grant this continuance will result in a miscarriage of justice and prevent a fair trial. The Court has balanced the need for the public and the defendants to have a speedy trial against the need for a fair trial and adequate preparation and finds that the scales tip in favor of granting a continuance. Accordingly, the time between September 28, 2016, and the new trial date set forth above is excluded from speedy trial computation for good cause.

Dated this 12th day of October, 2016.

BY THE COURT:



Judge David Sam
United States District Court Judge