

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CRIMINAL NO. 06 - 20582

v.

HONORABLE JOHN CORBETT O'MEARA

D-1 MICHAEL BURT,

Defendant.

_____ /

GOVERNMENT'S MOTION FOR CONTINUANCE

NOW COMES the United States of America, by and through its attorneys, Stephen J. Murphy, United States Attorney, and Richard L. Delonis, Assistant United States Attorney, both for the Eastern District of Michigan, Southern Division, and respectfully states as follows:

That defendant MICHAEL BURT has been indicted by a federal grand jury which has charged him with four counts of federal income tax evasion in violation of 26 U.S.C. 7201.

That the defendant was arraigned on these charges on March 1, 2007 and that the trial of this cause is set for April 24, 2007.

That the parties have not been able to engage in the discovery process.

That, on March 14, 2007, defendant MICHAEL BURT filed a Motion for Bill of Particulars; that motion has not yet been answered and is still pending.

That on March 12, 2007, Government's counsel sustained an injury which, days later, led to his emergency admission to the hospital. He spent two days in the intensive care unit, underwent orthopedic surgery, and was hospitalized until March 28, 2007. A period of recuperation and rehabilitation of more than six weeks duration is anticipated, followed by a lengthy period of outpatient physical therapy.

That this case is complex, due to the nature of the prosecution, and that the pretrial discovery process needs to be undertaken by the parties to this cause. Thus the denial of a continuance would unreasonably deny the defendant both the effective assistance of counsel and the reasonable time necessary for effective preparation, taking in account the exercise of due diligence. A denial of a continuance would be likely to make a continuation of such proceeding impossible or result in a miscarriage of justice.

That due to the medical status of Government's counsel, the denial of a continuance would unreasonably deny the Government both the continuity of counsel and the reasonable time necessary for effective preparation, taking in account the exercise of due diligence.

That neither party has previously sought a continuance in this cause.

That Government's counsel inquired whether defendant would agree to seeking a continuance and was advised by defendant's counsel that defendant was unwilling to waive his rights under the Speedy Trial Act.

That, for all of the foregoing reasons, the ends of justice served by the granting of a continuance of the trial of this cause outweigh the best interest of the public and of the defendant in a speedy trial

Wherefore, the United States of America respectfully moves that the dates for the filing of pretrial motions, the responses thereto, and the date for hearing motions be extended and, further, that the trial of this cause be continued from the currently scheduled date of April 24, 2007 for a period of one hundred twenty (120) days.

Respectfully submitted,

s/ Richard L. Delonis
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Dated: April 14, 2007

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BRIEF IN SUPPORT OF GOVERNMENT'S MOTION FOR CONTINUANCE

On November 14, 2006, a federal grand jury returned an indictment against the defendant in this cause, charging him with four counts of income tax evasion, in violation of 26 U.S.C. §7201. Defendant MICHAEL BURT was arraigned before a United States Magistrate Judge on those charges on March 1, 2007, and he is free on bond.

The Government has filed a motion a continuance of the trial of this cause for a period of one hundred twenty (120) days, citing the complexity of this case, the medical status of Government counsel, the need for counsel to conduct and complete the discovery process, and the reasonable time necessary for effective preparation, taking in account the exercise of due diligence.

A continuance would not cause any prejudice to the defendant. In fact, the continuance will afford the defendant with the

additional time required to complete discovery and to prepare his case for trial.

Under the provisions of 18 USC § 3161(h)(8)(A), the ends of justice served by the granting of a continuance of the trial of this cause outweigh the best interest of the public and of the defendant in a speedy trial.

In accord with 18 USC § 3161(h)(8)(B)(i)(ii) and (iv), a denial of a continuance would be likely to make a continuation of such proceeding impossible or result in a miscarriage of justice, because (1)the case is so complex, due to the nature of the prosecution, (2)the discovery process needs to be undertaken by the parties, and (3)the medical status of Government counsel. Therefore, it is unreasonable to expect adequate preparation by counsel for trial within the time limits established by the statute, and the denial of a continuance would unreasonably deny the defendant as well as the Government both continuity of counsel and the reasonable time necessary for effective preparation, taking in account the exercise of due diligence.

A continuance should be granted, and the intervening time period should be excluded in computing the time within which trial must commence pursuant to the Speedy Trial Act, 18 USC § 3161 et seq.

Respectfully submitted,

s/ Richard L. Delonis
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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2007, I electronically filed the foregoing Motion For Continuance and Brief in Support thereof with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF participants.

s/ Richard L. Delonis
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