

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
NORTHERN DIVISION
at COVINGTON**

CRIMINAL ACTION NO. 11-70-DCR

UNITED STATES OF AMERICA

PLAINTIFF

V. DEFENDANT'S SECOND MOTION TO CONTINUE TRIAL

RONALD E. WEINLAND

DEFENDANT

* * * * *

MOTION

Defendant Ronald E. Weinland, through undersigned counsel, respectfully moves this Court, pursuant to Local Criminal Rule 12.1(b) and 18 U.S.C. § 3161(h)(7), and with sufficient cause, for an Order continuing the trial date in this matter, currently set for March 20, 2012, at 10:00 a.m., for at least seventy-five (75) days to such dates that are convenient to the Court. Mr. Weinland continues to work diligently with defense counsel to review and analyze the government's substantial discovery in preparation for trial. The government's discovery includes the government's examination of the complete financial history by individual transaction of both Mr. Weinland and the Church of God – PKG (“COG-PKG”) over a five year period.

Additionally, Mr. Weinland continues to work with defense counsel to identify appropriate documents to provide to the government consistent with his reciprocal discovery obligations under Rule 16 of the Federal Rules of Criminal Procedure. Mr. Weinland has already provided approximately 600 pages of documents to the government as reciprocal discovery, much of which the government had never seen before. Defense counsel anticipates

providing considerably more documents to the government as defense counsel continues to review and analyze additional documents related to this case.

Further, defense counsel has had discussions with the government regarding the possibility of a resolution in this matter. At this time, there is no agreement regarding a resolution and Mr. Weinland has made no indication that he would agree to any specific terms of resolution. In fact, no specific terms of resolution have been discussed or proposed. The government and defense counsel agree that the issue of “tax loss” is a critical factor that has to be addressed before any discussions to resolve the matter would be possible. A continuance in this matter would permit defense counsel adequate time to complete its review and evaluation of the government’s discovery, which would allow defense counsel sufficient time to evaluate the alleged tax loss at issue in this case. Then, Mr. Weinland would be in a position to fully explore the potential for resolution with the government. As it is, the current trial date effectively precludes defense counsel from devoting any significant time to address the possibility of a resolution in this matter.

Finally, the government’s significant discovery and the difficult tax issues addressed therein have underscored the unusual and complex nature of this case. Therefore, Mr. Weinland respectfully renews his request that the Court designate this case as complex pursuant to 18 U.S.C. § 3161(h)(7)(B)(ii). As the Court is aware, counsel for the government previously indicated that it does not object to designating this case as complex.

Defense counsel has communicated with counsel for the United States with regard to this request for continuance and the government has stated that it has no objection to a sufficient continuance to allow defense counsel adequate time to prepare for trial.

FACTUAL BACKGROUND

The government's discovery in this case consists of approximately 5,200 pages and includes five years of transaction and account activity for 24 bank accounts and 11 credit card accounts associated with either Mr. Weinland or COG-PKG. Based upon defense counsel's ongoing review of the government's voluminous discovery, it appears that much of the government's allegation of unreported income stems from the government's detailed analysis of five years of transaction and account activity that occurred through these church and personal accounts. Specifically, the detailed financial records contained in the government's discovery evidence that church expenses were incurred on personal credit cards and later reimbursed out of church funds.

In analyzing this reimbursement process, the government reviewed approximately 10,500 individual credit card transactions over a five year period and then independently determined the nature and character of each specific transaction (i.e., whether the transaction was a church expense or a personal expense). For example, in 2008, the government characterized over \$1.8 million of credit card transactions as legitimate church expenses.

However, there are other expenses that were incurred on personal credit cards and later reimbursed out of church funds that the government has characterized as personal (i.e., not church related). These "disallowed" expenses constitute a substantial portion of the government's calculation of alleged unreported income for the years at issue. As a result, defense counsel is working to review all of the individual transactions that the government has re-characterized as personal. This time-consuming and fact-intensive process includes developing the facts surrounding the individual transactions, conducting witness interviews regarding the transactions or any church events and functions related to the transactions, and

reviewing any additional documents evidencing, or in any way relating to, the transactions at issue (e.g., receipts, personal calendars, accounting records, etc.). After completing this factual development process for approximately 10,500 credit card transactions over a five year period, defense counsel then has the added complexity of analyzing each transaction consistent with the numerous tax considerations under the Internal Revenue Code and related Treasury regulations in order to evaluate the appropriate tax treatment of each individual transaction.

This analysis is critical to the effective and adequate preparation of Mr. Weinland's defense. The government has charged Mr. Weinland with attempting to evade the payment of tax related to allegedly unreported income. To that end, even though defense counsel has not yet completed its review of the transactions at issue, defense counsel has already identified certain expenses that the government re-characterized as personal that, based on the facts, should be excluded from income under federal tax law. As a result, this request for a continuance is essential in order to provide defense counsel with the reasonable time necessary to review and analyze each individual transaction that serves as the basis for the government's calculation of unreported income.

At this time, defense counsel is diligently working with Mr. Weinland to review the government's lengthy discovery, including the approximately 10,500 individual credit card transactions that occurred over a five year period. Although defense counsel has made significant progress in that regard, defense counsel estimates that it needs at least seventy-five (75) more days to complete this analysis and prepare for trial.

Further complicating defense counsel's ongoing review and analysis of the government's discovery is the fact that the defense expert assisting counsel is a CPA and a partner in a small local accounting firm. The expert's firm specializes in providing accounting and return

preparation services for small businesses and individuals. As the Court is aware, the current period through April 15 is the busiest time of year for accountants and return preparers. The time pressures and limitations of “tax season” make it increasingly difficult for the expert to dedicate significant time to this case. Moreover, these time limitations make it almost impossible for the expert to be available for the entirety of trial under the current trial date.

Defense counsel is concerned that any further discussion of the status of specific defense work product or expert analysis in this pleading would provide the government with insight into counsel’s defense strategies and theories. However, in order to address any concerns that the Court may have regarding the need for a continuance in this matter, defense counsel will happily submit ex parte correspondence to the Court outlining the specifics of the work that defense counsel has completed to date and the work that defense counsel has left to complete in order to adequately prepare for trial. In addition to an ex parte submission, defense counsel will happily meet ex parte and in camera with the Court to discuss these issues in detail. Defense counsel has discussed the possibility of ex parte correspondence or an ex parte and in camera meeting with the government and the government has indicated that it has no objection to any ex parte communications regarding defense counsel’s request for a continuance.

Finally, defense counsel continues to review additional documents that the government has never seen, in order to determine whether the documents are relevant to Mr. Weinland’s defense and whether Mr. Weinland has a duty to provide the documents to the government as part of his reciprocal discovery obligations under Fed. R. Crim. P. 16. Defense counsel has already provided the government with approximately 600 pages of reciprocal discovery. Defense counsel anticipates providing substantially more documents to the government consistent with its reciprocal discovery obligation as defense counsel works to complete its

review of these additional documents. A continuance in this matter would provide defense counsel with adequate time to finalize its review of these documents and would also provide the government with sufficient time to review the documents in preparation for trial.

LEGAL ARGUMENT

In making this request for a continuance, Mr. Weinland acknowledges and understands that he has a right to a speedy and public trial in this matter and that this right has been guaranteed to Mr. Weinland by the Sixth Amendment to the United States Constitution and the Speedy Trial Act (18 U.S.C. § 3161 et seq.). However, Mr. Weinland now moves for a continuance in order to permit both Mr. Weinland and defense counsel the reasonable time necessary to adequately review the government's substantial discovery material in this case, analyze any relevant legal issues, prepare and address any pretrial proceedings, review and produce any additional reciprocal discovery, explore a possible resolution of the matter, and otherwise effectively prepare for trial.

As this Court is aware, the Court has the discretion to grant a continuance where the “ends of justice serviced by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A); See Also United States v. Howard, 218 F.3d 556, 563 (6th Cir. 2000) (discussing that the decision of whether to grant an “ends of justice” continuance under the Speedy Trial Act is within the sound discretion of the district court). The factors that the Court must consider in determining whether to grant a continuance under 18 U.S.C. § 3161(h)(7)(A) are set forth in 18 U.S.C. § 3161(h)(7)(B). With respect to specific factors under 18 U.S.C. § 3161(h)(7)(B) that are relevant to Mr. Weinland's request for a continuance, the Court may grant a continuance where: (i) the failure to grant the motion to continue would be likely to result in a miscarriage of justice (18 U.S.C. § 3161 (h)(7)(B)(i)); (ii)

the case is complex due to the nature of the prosecution and it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself (18 U.S.C. § 3161 (h)(7)(B)(ii)); and/or (iii) the failure to grant the motion to continue would unreasonably deny counsel for the parties reasonable time necessary for effective preparation (18 U.S.C. § 3161 (h)(7)(B)(iv)).

In analyzing what amount of time is necessary to ensure effective preparation, courts have recognized that “no absolute rule can be articulated as to the minimum amount of time required for an adequate preparation for trial of a criminal case.” United States v. Faulkner, 538 F.2d 724, 729 (6th Cir. 1976). That being said, the denial of a motion for a continuance can amount to a violation of a defendant’s Sixth Amendment right to effective assistance of counsel where “there is an unreasoning and arbitrary ‘insistence upon expeditiousness in the face of a justifiable request for delay.’” United States v. Gallo, 763 F.2d 1504, 1523 (6th Cir. 1985) quoting United States v. Mitchell, 744 F.2d 701, 704 (9th Cir. 1984). Such a violation occurs when the defendant can show that the denial “resulted in actual prejudice to his defense.” Id. A defendant “demonstrates ‘actual prejudice’ by showing that a continuance would have made relevant witnesses available or added something to the defense.” United States v. King, 127 F.3d 483, 487 (6th Cir. 1997).

Mr. Weinland respectfully submits that the requested continuance of the trial date is justified under 18 U.S.C. § 3161(h)(7)(A) and is supported by the identified factors set forth in 18 U.S.C. § 3161(h)(7)(B). The requested continuance is necessary to provide defense counsel with sufficient time to review the government’s financial analysis and to analyze tax issues related to that analysis, including, but not limited to, the government’s characterization of certain expenses and the unique tax issues associated with churches and minister compensation (e.g., a housing allowance being excluded from gross income for income tax purposes, exemption from

self-employment tax, etc.). Given the substantial financial discovery and the unique tax issues in this matter, a continuance would permit defense counsel, working with the defense expert, the necessary time to complete its review and analysis of the government's discovery and prepare for the trial itself. This analysis would include defense counsel's continued factual development with respect to the financial transactions at issue. Under the current trial date, defense counsel believes that it does not have sufficient time to complete this analysis and adequately prepare for trial. As stated above, defense counsel, if necessary, will happily provide the Court with an ex parte explanation of the current status of its financial analysis and preparation.

More specifically, the denial of Mr. Weinland's request for a continuance will result in actual prejudice to the preparation of Mr. Weinland's defense in the following ways:

- Defense counsel will not have adequate time to effectively complete the necessary analysis of the government's discovery and evaluate related federal tax issues.
- Defense counsel will not have adequate time to effectively prepare defense experts.
- Defense counsel will not have adequate time to prepare effective cross examination of the IRS Special Agent or the government's expert witness.
- Defense counsel will not have adequate time to review and produce any additional reciprocal discovery to the government, which will limit the government's ability to review such documents.
- Defense counsel will not have adequate time to develop the facts surrounding the approximately 10,500 credit card transactions at issue and identify relevant witnesses who can testify about the specific transactions; and

- Defense counsel will not have adequate time to prepare necessary exhibits and summary charts for trial.

This actual prejudice significantly jeopardizes defense counsel's ability to effectively prepare a defense to the pending charges. Such prejudice violates Mr. Weinland's Sixth Amendment right to effective assistance of counsel. In comparison, the granting of Mr. Weinland's request for a continuance presents no demonstrated prejudice to the government. In fact, as stated above, the government stated that it has no objection to a sufficient continuance to allow defense counsel adequate time to prepare for trial. Furthermore, the significant risk to Mr. Weinland's defense and constitutional rights outweigh the best interest of the public and the defendant in a speedy trial.

Accordingly, Mr. Weinland respectfully submits that there is a basis for the Court to find that the period of time from February 16, 2012, until the new date set for trial is excludable from computing the time period in which trial must occur under the Speedy Trial Act. Permitting Mr. Weinland and his counsel the reasonable time necessary to adequately and effectively prepare a defense against the pending charges serves the "ends of justice" and "outweigh[s] the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). The ends of justice served by granting the instant motion for continuance outweigh the best interests of the public and Mr. Weinland in a speedy trial, because (i) the failure to grant the motion would be likely to result in a miscarriage of justice (18 U.S.C. § 3161(h)(7)(B)(i)); (ii) it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself because the case is complex due to the nature of the prosecution (18 U.S.C. § 3161(h)(7)(B)(ii)); and (iii) the failure to grant the motion would deny defense counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence (18 U.S.C. § 3161(h)(7)(B)(iv)).

CONCLUSION

WHEREFORE, for reasons set forth above, the Defendant respectfully moves the Court to grant his motion for a continuance and to enter an order continuing the current trial date in this matter, and any dates in any related scheduling order, for at least seventy-five (75) days to such dates that are convenient to the Court.

Respectfully submitted,

/s/ Robert C. Webb _____

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CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2012, I electronically filed this document with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to Robert K. McBride, Robert.McBride@usdoj.gov.

By: /s/ Robert C. Webb
ROBERT C. WEBB
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