

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

CASE NO. 3:13-CR-105-WKW

BRADFORD LAMAR DALY,

TERRIL YARHAM,

DEFENDANTS.

UNOPPOSED RENEWED MOTION TO CONTINUE

Comes now Defendant Bradford Lamar Daly, by counsel, and files this request that the presently set trial of November 18, 2013 be continued and in support thereof states the following:

1. Mr. Daly previously filed a motion to continue (Doc. 36) which was denied on September 18, 2013 (Doc. 37). The order denying the motion to continue was denied without prejudice with leave to refile. More specifically the order stated that Mr. Daly failed to inform the Court whether the co-defendant opposed the motion to continue. Mr. Daly now refiles his motion to continue and states that the co-defendant in addition to the government does not oppose the motion to continue trial.

2. Mr. Daly and the co-defendant are presently released on bond. The trial of this case has been set for the November 18 trial term.

3. Undersigned counsel Susan G. James is scheduled in a previously set

matter, *United States v. Mark Elliott*, Case No. 12cr221, Middle District of Alabama during the same trial term. While it is highly likely that the Elliott matter may settle, the necessity for a continuance of this trial still exist.

4. The undersigned attorneys have been involved since the Daley indictment in a capital murder case, *State of Alabama v. David Nash* case number CC-12-806, Montgomery County Circuit Court. The trial resulted in a guilty verdict on August 16, 2013. Very detailed and serious post trial motions are being prepared. Nash was convicted of capital murder and if the conviction stands will receive life in the penitentiary without parole. Counsel sought an extension in the Nash matter so that these important motions may be completed and filed.

5. Further, the undersigned attorneys were involved in a federal drug prosecution in the matter of *United States of America v. Daniel Bernard*, Case No. 1:11-cr-00025, Middle District of Georgia. The case began on September 9, 2013 and settled.

6. Prior to the Daly matter, the undersigned Attorneys will also be involved in a lengthy and complicated federal trial involving *United States of America v. Edmund McCall, et al*, Case No. 12cr204, Middle District of Alabama. That trial is set to begin on October 7, 2013 and could last more than a week.

7. More specifically, however, the Daly discovery is voluminous. It involves complicated factual issues and legal issues. The undersigned simply cannot devote the necessary time to the preparation for the Daley case based on all of the above matters.

8. The matter of continuance is within the discretion of the trial judge and

“requires a delicate balance between the defendant’s right to adequate representation by counsel of his choice and the general interest in the prompt and efficient administration of justice.” *United States v. Baker*, 432 F.3d 1189, 1248 (11th Cir. 2005), citing *Gandy v. Alabama*, 569 F.2d 1318, 1321 (5th Cir. 1978).

9. To aid in this balancing of interests, 18 U.S.C. §3161 provides a number of factors to be considered by the Court in determining whether the ends of justice served by granting a continuance outweigh the best interests of the public and the defendant in a speedy trial.

10. A factor to be considered is whether the failure to grant a continuance would result in a miscarriage of justice. See 18 U.S.C. §3161(h)(7)(B)(I). Also, any “delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on or other prompt disposition of, such motion” is excluded from the Speedy Trial Act time limitations. 18 U.S.C. 1361(h)(I)(D). Also, “any period of delay resulting from a continuance granted by a judge” is excluded from the time limitations. 18 U.S.C. 3161(h)(7)(A).

11. The nature of this case, including its complexity, the lengthy list of potential out of town witnesses, and the novel questions of both fact and law, make it difficult to adequately prepare for and conduct the trial itself during the November 2013 setting. See 18 U.S.C. 3161(h)(7)(B)(ii). For these reasons, among others, the ends of justice would be served by granting a continuance of the presently set trial date and a continuance outweighs the best interests of the public and the defendant in a speedy trial.

12. Defense counsel have discussed this motion with the Government and the co-defendant's counsel and both the Government and the co-defendant do not oppose a continuance.

13. Defendant Daly respectfully submits that the granting of the present motion is an appropriate exercise of this Honorable Court's discretion for the reasons set forth herein, and that a continuance best serves the ends of justice and upholds one of the Sixth Amendment's essential safeguards.

14. Wherefore, Defendant Daly respectfully requests that the Court continue the trial to a date in 2014.

Respectfully submitted,

s/Jeffery C. Duffey
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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2013 I filed the foregoing with the Clerk of the Court and sent notification of such filing to: United States Attorney, U.S. Attorney's Office, Montgomery, Alabama.

/s/Jeffery C. Duffey