

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

WAYDE McKELVY

CRIMINAL No. 15-398-3

**DEFENDANT WAYDE McKELVY'S MOTION FOR
CONTINUANCE OF THE SCHEDULING ORDER FOR TRIAL**

Defendant Wayde McKelvy ("McKelvy"), by and through his undersigned counsel, hereby moves this Honorable Court for a continuance of the scheduling order for trial in the above-captioned matter pursuant to Fed.R.Crim.P. 45(b), and in support thereof avers as follows:

1. The indictment was filed on September 2, 2015. On October 13, 2015, the Court granted the government's unopposed Motion for Complex Case and trial was set for March 30, 2016. (Dkt. #42)
2. McKelvy has filed several Unopposed Motions for Continuance of the Scheduling Order for Motions and for Trial. (Dkt. #s 46, 79, 89, and 107).
3. On June 28, 2017, the Court granted McKelvy's Motion to Continue and scheduled trial to begin November 13, 2017.
4. The indictment charges McKelvy and co-defendants, Wragg and Knorr, with conspiracy to commit securities fraud, wire fraud and securities fraud. The charges are based upon the defendants' alleged involvement in a Ponzi scheme. This case has qualified as a "mega case" because of the government's statement that it involves at least 1 million documents, over 300 investor victims, and about 25 other potential government witnesses. The alleged loss was \$54.5 million.

5. Defendant Wragg was the founder and CEO of Mantria, the company at the center of the alleged fraudulent scheme, and Knorr was a co-founder, president and COO of Mantria. McKelvy was the founder and operator of Speed of Wealth, a company that pooled investor money and invested in Mantria ventures. The indictment alleges that the defendants defrauded more than 300 investors of approximately \$54 million through misleading them into believing Mantria's business ventures – primarily a large real estate project in Tennessee and green energy projects utilizing technology referred to as “carbon diversion” – were hugely profitable when, as alleged in the indictment, they were losing money. The acts underlying the government's case took place over a wide geographic range, including but not limited to the states of Hawaii, New Mexico, Colorado, Tennessee, Nevada, Florida, and Pennsylvania, involved hundreds of people and business institutions, hundreds if not thousands of commercial transactions, and was extremely complex, as reflected in the Court's order designating the case as complex.

6. The discovery in this matter is immense. In its Complex Case Motion, the government represented that the underlying facts had been investigated by the FBI and SEC since October 2009, and that those agencies obtained voluminous financial, legal and business records from all entities involved that could exceed 1 million pages. (Dkt. #27, ¶ 2).

7. There are hundreds of witnesses in this case who reside throughout the United States. The witnesses include the numerous employees of Mantria and Speed of Wealth who were intimately involved in the operations of these companies, the many alleged victims of the alleged scheme, and the various fact witnesses with independent knowledge of the facts underlying the accusations set forth in the indictment. Some of these witnesses have testified before the grand jury, been interviewed by the government, completed 10 page questionnaires, provided independent information to the government, and/or been identified through hundreds of

pages of correspondence in this matter. Thus, there are thousands of pages of discovery just pertaining to witnesses.

8. The government recently identified 70 potential trial witnesses. Several of those potential witnesses were previously unknown to counsel for McKelvy. In addition, there are no 302s for several of those individuals.

9. Among the potential witnesses identified by the government is an analyst with the U.S. Attorney's Office who is analyzing various bank documents and preparing a report of the loss alleged by the government. The government's attorney advised yesterday that the analyst has not yet completed the report, which will be provided later to counsel for McKelvy.

10. Counsel for McKelvy needs more time to prepare defense witnesses for trial than expected. In addition, counsel for McKelvy must subpoena several witnesses for trial – some of whom reside outside the Commonwealth of Pennsylvania.

11. The government has continued to provide additional discovery to counsel for McKelvy. Recently, the government provided discovery to counsel for McKelvy including additional 302s for persons identified by the government as potential trial witnesses and emails for a potential trial witness. Moreover, the government provided additional discovery to counsel for McKelvy today. Counsel for McKelvy must review this additional discovery. Moreover, additional time is necessary for a paralegal to analyze mortgage documents utilized by Mantria Financial.

12. Over the past several weeks, counsel have become aware of the need for substantial additional development of several factual areas of their defense. In addition, counsel have started drafting a motion to strike certain phrases in the indictment, and will continue to

work on several other motions, which have taken more time than anticipated. These motions will be supported by memoranda which counsel anticipate will be ten pages or fewer in length.

13. McKelvy and his counsel have worked diligently to review the discovery in this case and otherwise develop his defense and prepare for trial. In order to effectively represent McKelvy, counsel for McKelvy require additional time to prepare for trial given the scope and complexity of this case and volume of discovery.

14. The government's attorney has informed counsel for McKelvy that he anticipates trial should take two to three weeks.

15. McKelvy requests that the Court continue trial for approximately 60 days. A continuance of the trial will permit counsel for McKelvy to have sufficient time to perform the trial preparation set forth above.

16. Assistant United States Attorney Robert J. Livermore informed counsel for McKelvy that the government opposes the motion for a continuance.

17. McKelvy respectfully submits that the ends of justice served by the granting of this continuance outweigh the best interests of the public and McKelvy in a speedy trial. McKelvy hereby waives his right to a speedy trial. A copy of McKelvy's Consent to a Continuance is attached hereto as Exhibit A.

WHEREFORE, Defendant, Wayde McKelvy requests that this Court issue an Order granting a continuance of the scheduling order for trial, and that the Court exclude this time from the Speedy Trial Act computation under 18 U.S.C. § 3161(h)(7)(B)(iv).

Dated: October 13, 2017

Respectfully submitted,

/s/ wjm 409

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

:

CRIMINAL

NO. 15-398-3

vs.

:

WAYDE McKELVY

:

I, Wayde McKelvy (Defendant), have consulted with my counsel concerning my right under the Speedy Trial Act and my right to a speedy trial under the Sixth Amendment to the U.S. Constitution. I do not oppose a continuance of my trial, now scheduled for November 13, 2017, and agree that the ends of justice served by a continuance outweigh the best interest of the public and myself in a speedy trial. I understand that the time between the filing of a motion to continue and the new trial date to be set by the Court will be excluded for purposes of computing the time within which my trial must commence under the Speedy Trial Act, and I also agree that this delay will not deprive me of my speedy trial rights under the Sixth Amendment. I understand that if I do not wish to sign this document, the Court will hold a hearing at which I will be present.



Witness signature



Defendant Signature

10/13/17

Date

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ORDER

AND NOW, this _____ day of October, 2017, upon consideration of Defendant Wayde McKelvy's Motion for Continuance of the Scheduling Order for Trial, and the Court finding that this case cannot proceed to trial because a failure to grant a continuance would deny Defendant Wayde McKelvy reasonable time necessary for adequate and effective preparation, taking into account the exercise of due diligence, and would likely make an orderly and fair proceeding impossible or result in a miscarriage of justice, and that the ends of justice served by granting this continuance outweigh the best interests of the public and the defendant in a speedy trial, it is hereby ORDERED that said Motion is GRANTED.

IT IS FURTHER ORDERED that the Scheduling Order filed June 28, 2017, is hereby AMENDED, and trial is continued until _____, 2018.

BY THE COURT:

THE HONORABLE JOEL H. SLOMSKY, J.