



U.S. Department of Justice

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October 13, 2017

The Honorable Joel H. Slomsky
United States District Court
Eastern District of Pennsylvania

**Re: United States v. Wayde McKelvy
15-CR-398-3
Government's Opposition to
Defendant's Motion to Continue**

Dear Judge Slomsky:

This morning the defendant filed a motion to continue the trial in this matter which is currently scheduled to begin on November 13, 2017. For the following reasons, the government opposes the defendant's motion and requests that the Court order the trial to proceed as scheduled. The government notes that the defendant has had two years to prepare for this trial. The government further requests that the Court schedule a telephone conference on this motion as soon as possible.

The government primarily objects because the victims and the public in general have a right to a speedy trial. The defendant has had more than adequate time to prepare for trial. The government has not opposed prior motions to continue the trial date because the defendant certainly needed a significant amount of time to prepare. However, two years is more than sufficient time to prepare in a case of this nature.

Secondarily, the government objects to the defendant's motion because of the undue burden it would place on the victims of the defendant's fraud scheme and other government witnesses. The government notes that almost all of the government's witnesses, including the victims of this fraud scheme, live out of district. Making travel arrangements for all of those witnesses and victims to appear at trial has been a very challenging task.

Over the past year, the parties have engaged in extensive plea negotiations. In light of huge logistical undertaking required to produce these witnesses, the government gave the defendant a firm deadline of September 22, 2017 to accept the government's final plea offer. The defendant rejected that offer and indicated that he wished to proceed

to trial. As recently as a phone conversation between counsel on Tuesday, October 10, the defendant, through counsel, indicated that he planned to go forward with trial on November 13.

Since the deadline passed on September 22, the government has been making flight, hotel, and other travel arrangements for victims and other witnesses. Victims and other witnesses have been scheduling time off work, rearranging holiday travel plans, making child care arrangements, and canceling other commitments in order to appear at trial. To postpone the trial at this juncture would be a tremendous burden on the victims and other witnesses. Many plans they have made to accommodate the current trial schedule simply cannot be undone. Furthermore, the victims and other witnesses would have to take additional time off work and spend additional time rescheduling their lives in order to appear at whatever new trial date the Court ordered.

In his motion, the defendant has not provided any reason why the interest of justice requires the trial to be continued. To be sure, discovery in this matter is quite large. However, as the defendant noted in his motion, the defendant was indicted more than two years ago. Counsel for the defendant was appointed on October 5, 2015. Discovery was provided shortly thereafter and supplemented as additional material became available. Therefore, defense counsel has had two full years to prepare for this trial. This is more than enough time to prepare for trial.

During the past two years, both defense counsel have immersed themselves deeply into the evidence and legal issues in this case. The parties have discussed these factual and legal issues at length on numerous occasions. I can report to the Court that in my 17 years as a prosecutor, no defense attorneys in any case have studied the evidence and prepared themselves more thoroughly than Mr. McKelvy's current attorneys. This fact can be evidenced from the defendant's motions to dismiss the indictment which contain an exceedingly detailed review of the government's evidence.

In his motion, the defendant cited to several reasons why the trial should be continued. None of these reasons justify continuing the trial.

1. First, the defendant stated that he needs to continue the trial because the government recently identified "70 potential trial witnesses." This argument does not take into context that the government also identified which of those witnesses were likely to be called and which of those witnesses were not likely to be called. Well in advance of trial, the government will provide to the defense not only a firm witness list, but a firm witness schedule identifying which witnesses will be testifying on which days. The government has no intention of trying this case by ambush and the defendant will be fully appraised of the identity of the witnesses and the substance of their expected testimony.

2. Second, the defendant argues that the government only recently identified an analyst who will be summarizing certain bank records. However, this summary will not contain information new to the defendant and his testimony will be very brief. The analyst will simply recreate the SEC's financial summary of the total amount of money

