

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

UNITED STATES OF AMERICA

v.

WAYDE McKELVY

CRIMINAL No. 15-398-3

ORDER

AND NOW, this _____ day of July, 2018, 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 May 2, 2018, is hereby AMENDED, and trial is continued until _____, 2018.

BY THE COURT:

THE HONORABLE JOEL H. SLOMSKY, J.

**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 Motions for Continuance of the Scheduling Order for Motions and for Trial. (Dkt. #s 46, 79, 89, 107, 131, 142, and 158).
3. On May 2, 2018, the Court granted McKelvy's Motion to Continue and scheduled trial to begin September 24, 2018.
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 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 scores of potential 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 many

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

8. Specifically, as the Court and the government well know, the amount of documentation in this case is extraordinary. Counsel for McKelvy are continuing their review of the discovery produced by the government including the emails from Wragg and Knorr, which contain over 12 GB of data each and appear to include many thousands of emails. Counsel for McKelvy must review those emails before trial, a process which has already taken about six months and is expected to take at least six weeks more. In addition, the government provided counsel for McKelvy with documents from the hard drive of a laptop computer used by Daniel Rink, the former chief financial officer of Mantria. The Rink documents contain approximately 40GB of data and over 210,000 files. Despite our having mentioned this issue before, the government has not produced an inventory of the documents produced by Rink. While it appears that many of the documents from Rink's laptop are relevant to this matter, counsel for McKelvy, with the assistance of a paralegal, must review those documents before trial.

9. Counsel for McKelvy need more time to review the discovery referenced above, to convert the discovery into exhibits which will be understandable for the jury, and to otherwise prepare for trial.

10. McKelvy and his counsel have worked diligently to review the discovery in this case and otherwise develop his defense and prepare for trial. Inevitably, as counsel learned more about the case by reviewing more of the existing discovery, additional time needs to be spent to adequately understand the discovery and put it into the proper context. 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.

11. A second reason for seeking a continuance in the trial date is that counsel have found, within the past 7-8 weeks, an area of factual inquiry to which counsel have already devoted a considerable amount of time because it potentially exposes a substantial weakness in the government's case. This area of additional factual investigation will necessitate working with one of our current witnesses on new documents, as well as working with at least three potential witnesses with whom we have not spoken.

12. We cannot share the details of this area of additional factual investigation with the government. Suffice it to say that we did not fully appreciate, for several reasons, the substantiality of this issue until 7 or 8 weeks ago; we have already asked multiple questions of and obtained new documents from one of our current witnesses concerning this new line of investigation, but need to ask additional questions and obtain numerous additional documents from this current witness. We also need to go into substantial detail with three potential witnesses with whom we have not yet spoken.

13. A third reason for counsel's decision to seek a continuance comes as a result of our realization that we need to strengthen our case by seeking authorization from the Court to retain an expert on a set of issues which we had previously determined would be left to legal argument. This realization came about as a result of our reviewing and updating previously-completed legal research. On this point, counsel have determined that we would be remiss in our duties to our client if we did not pursue obtaining an expert opinion and to consider presenting such an expert to the Court and jury.

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

15. McKelvy requests that the Court continue trial for approximately 45 to 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 and counsel for McKelvy discussed the filing of a motion to continue trial before the government begins the process of making travel arrangements for the many government witnesses who will be traveling to Philadelphia for trial. AUSA Livermore informed counsel for McKelvy that the government cannot agree to 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: July 12, 2018

Respectfully submitted,

/s/ wjm 409

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Counsel for Defendant Wayde McKelvy

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 12, 2018, a true and correct copy of Defendant Wayde McKelvy's Motion for Continuance of the Scheduling Order for Trial was served via the Electronic Case Filing ("ECF") system upon the following:

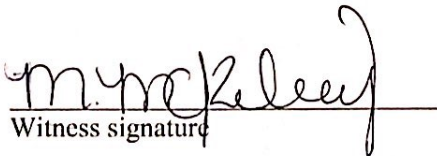
Robert J. Livermore, Esquire
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615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

/s/ wjm 409
William J. Murray, Jr., Esquire

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 September 24, 2018, 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

7-9-18
Date