

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

UNITED STATES OF AMERICA

vs.

- 1) BOBBY LEE MEDFORD
- 2) JOHN HARRISON
- 3) RONNIE EUGENE DAVIS
- 4) GUY KENNETH PENLAND

DOCKET NO. 1:07CR122-TSE

**GOVERNMENT'S MOTION REGARDING
THE SPEEDY TRIAL ACT**

NOW COMES the United States of America, by and through Gretchen C. F. Shappert, United States Attorney for the Western District of North Carolina, and respectfully submits this Motion Regarding the Speedy Trial Act. The Government seeks an order from this Court finding that under the facts of this case a trial date of March 25, 2008, comports with the requirements of the Speedy Trial Act.

On December 11, 2007, a sealed 10-count indictment was returned against the four defendants in this case. On December 13, 2007, the indictment was unscaled, all four defendants were arrested, and all had their initial appearances. On December 17, 2007, defendants Medford, Harrison, and Davis were arraigned. Defendant Penland was arraigned the next day. On January 15, 2008, the Court informed the parties that trial in this case was set for March 25, 2008. On January 30, 2008, the grand jury returned a superseding indictment correcting the date in Count 7 and adding Count 11, which charges all four defendants with a conspiracy to commit a violation of Title 18, United States Code, Section 1955. All four defendants have filed written waivers of arraignment as to the superseding indictment.

All of the defendants were in pretrial detention from their initial appearances on December 13 through shortly after this Court ordered their release on conditions on January 15, 2008. In the case of the defendants who are being detained, the Speedy Trial Act requires that trial commence not

later than 90 days following the beginning of their continuous detention, although the Act allows for certain exclusions from computing this time limitation. 18 U.S.C. § 3164(b). As to those defendants who are not detained, the Act requires that trial shall commence within 70 days from the filing date and making public of the indictment, or from the date the defendant has appeared before a judicial officer of the court in which the charge is pending, whichever date last occurs, with certain exclusions from this time computation. 18 U.S.C. § 3161(c)(1). In this case, therefore, the Speedy Trial Act's time limits began to run on December 13, 2007.

Among the periods of delay which are excluded from the Act's time computation are delays resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing or prompt disposition of such motion. 18 U.S.C. § 3161(h)(1)(F). *Henderson v. United States*, 476 U.S. 321, 326-30 (1986). In this case, all four defendants filed pretrial motions in which they sought review by this Court of the magistrate judge's pretrial detention orders. The first such motion was filed on December 26, 2007, with the other three defendants' filing similar motions on December 28 and 31, 2007, and January 3, 2008. These were all resolved by this Court at a hearing on January 15, 2008.

The Act also provides for the exclusion of a reasonable period of time as to any defendant joined for trial with a co-defendant as to whom the time has not yet run, where no motion for severance has been granted. 18 U.S.C. § 3161(h)(7). Thus, a reasonable period of time excluded from computation as to one defendant is excluded as to all defendants. See *United States v. Feurtado*, 191 F.3d 420, 426 (4th Cir. 1999); *United States v. Jarrell*, 147 F. 3d 315, 316 (4th Cir. 1998). Therefore, the time from December 26 through January 15 is properly excluded from the Act's computations as to all four defendants.

Section 3161(h)(8)(A) of the Act, however, is also applicable in this case. That section excludes any period of delay resulting from a continuance on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. The Act requires the Court to set forth in the record its reasons for

making such a finding, and also provides in Section 3161(h)(8)(B) a partial list of factors for the Court to consider in making its determination. The Government submits that this case is "so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits" established by the Act. 18 U.S.C. 3161(h)(8)(B)(i).

This case is the result of more than two years of investigation by the Federal Bureau of Investigation, the Internal Revenue Service, the State Bureau of Investigation, North Carolina Alcohol Law Enforcement, local law enforcement authorities, the United States Attorney's Office, and the federal grand jury. It grows out of a series of investigations and prosecutions of various companies and individuals involved in the video poker machine business, many of whom have pled guilty and will be testifying at the March 25 trial. Therefore, it is appropriate for the Court to consider those cases, and the discovery arising out of those cases, in its consideration of the complexity of the instant case, since much of the discovery in those cases is relevant here as well. Those cases, plus the instant case, involve the execution of more than 30 search warrants in North Carolina and South Carolina, the seizure of more than 65 bankers boxes of documents, *ex parte* orders authorizing the obtaining of tax returns for more than ten persons, transcripts of more than 100 grand jury witnesses, video and audio recordings of bribe payments made to one sheriff and discussions of payments made to multiple other sheriffs in the Western District of North Carolina, and audio recordings of the defendant Davis. The acts charged in the indictment span more than six years. The evidence in this case is of such volume that an entire room within the courthouse has been converted into the discovery room, and even that room does not contain the bulkier items of evidence (such as video poker machines and computers), which are catalogued in lists within the discovery room, in order to inform defense counsel of their nature should counsel wish to examine them. Given the number of charges as well as the voluminous and complex nature of the evidence,

it would be unreasonable to expect adequate preparation for trial or pretrial proceedings within the time set forth in the Speedy Trial Act.

In addition, although the Act specifically provides that no continuance shall be granted because of "general congestion of a court's calendar," 18 U.S.C. § 3161(h)(8)(C), here the special judicial situation also militates in favor of a continuance and exclusion of time. This case has been specially assigned by the Fourth Circuit to Judge T. S. Ellis, III, of the Eastern District of Virginia, following the recusal by all the judges of the Western District of North Carolina and the withdrawal by Judge Osteen of the Middle District of North Carolina. Judge Ellis therefore must deal with his regular case load in the Eastern District of Virginia, involving several extremely complex cases, as well as this case. By taking the specially designated trial judge's availability into consideration, the Court is not basing a continuance upon the type of general congestion of a court's calendar forbidden by the Act.

In conclusion, the Government submits that for the reasons stated above, this Court should enter an order finding that the ends of justice served by setting a trial date of March 25, 2008, outweigh the best interests of the public and the defendants in having a trial within the time set forth in the Speedy Trial Act.

Respectfully submitted, this 11th day of February, 2008.

GRETCHEN C. F. SHAPPERT
UNITED STATES ATTORNEY

/s/ Richard Lee Edwards

RICHARD LEE EDWARDS
ASSISTANT UNITED STATES ATTORNEY
N.C. Bar Number 30205
100 Otis Street
Asheville, NC 28801
Telephone: (828) 271-4661
Fax: (828) 271-4670
E-mail: Richard.Edwards2@usdoj.gov

CERTIFICATE OF SERVICE

This is to certify that I have, this 11th day of February, 2008, served by electronic notification a copy of this pleading on all attorneys of record in this matter, at: persuasionist@msn.com; wmedowallatty@charter.net; crboffice@aol.com; and bidwellaw@bellsouth.net.

/s/ Richard Lee Edwards

RICHARD LEE EDWARDS
ASSISTANT UNITED STATES ATTORNEY