

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>CRIMINAL ACTION</b>
<b>v.</b>	)	
	)	<b>No. 10-20053-01-KHV</b>
<b>JOHN CAVANAUGH,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**MEMORANDUM AND ORDER**

On April 22, 2010, the grand jury charged defendant with being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). This matter is before the Court on defendant's Motion For Additional Time To File Pretrial Motions (Doc. #11) filed June 7, 2010. Defendant seeks a two-week extension of the deadline to file pretrial motions, currently set for June 7, 2010.<sup>1</sup> Defendant is aware of this request and does not object to it. The government does not oppose the extension of time.

In support of his motion, defendant states that counsel received discovery on May 20, 2010 consisting of 166 pages and one CD and two DVD's. Further, one of the DVD's was defective and counsel requested a replacement disc which he received the week of June 1, 2010. Counsel has not had adequate time to review the discovery in full with his client.

In support of his motion, defendant cites United States v. Mobile Materials, Inc., 871 F.2d 902, 913-14 (10th Cir. 1989), in which the Tenth Circuit found that a defendant's extension of time to file pretrial motions automatically tolled the running of the Speedy Trial Act, 18 U.S.C. § 3161,

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<sup>1</sup> Defendant's motion erroneously states that the motion deadline was May 10, 2010. See Doc. #11 at 1.

et seq. In Mobile Materials, the Tenth Circuit reasoned that a defendant has a right to submit to an expeditious prosecution or to postpone trial to better formulate a defense. In Bloate v. United States, 130 S.Ct. 1345, 1357-58 (Mar. 8, 2010), however, the Supreme Court held that the time to prepare pretrial motions is not automatically excludable but excludable only upon an ends of justice continuance. See United States v. Stimatze, No. 10-40027-01-SAC, 2010 WL 864477, at \*1 (D. Kan. Mar. 10, 2010) (Bloate requirement ensures that district court considers relevant factors and provides appellate court with adequate record to review). Bloate reiterates that district courts must make recorded findings justifying an ends-of-justice exclusion under Section 3161(h)(7). Specifically, the Court must make a record of its reasons for finding that “the ends of justice served by granting of such a continuance outweigh the best interests of the public and the defendant in a speedy trial.” Bloate, 130 S.Ct. 1345 at 1358 (citing 18 U.S.C. § 3161(h)(7)(A)). The record must not only identify the circumstances or events offered for the continuance but it must explain how they have created the need for additional time. See United States v. Toombs, 574 F.3d 1262, 1269, 1273 (10th Cir. 2009) (“conclusory statements” are inadequate; court must inquire into nature, extent and quantity of evidence and into amount of time needed); Stimatze, 2010 WL 864477, at \*3-4 (providing examples of types of specific and detailed reasons and information required to sustain court findings for such continuances).

Here, the Court finds that the ends of justice served by granting this extension of time outweigh the interests of the public and defendant in a speedy trial. Specifically, the Court finds that the following points justify the continuance.

1) Counsel received discovery on May 20, 2010 consisting of 166 pages and one CD and two DVD's. One of the DVD's would not play a video and counsel requested a replacement disc which he received the week of June 1, 2010.

2) Counsel has reviewed the discovery, but has not had adequate time to review the discovery in full with his client.

3) This is defendant's first motion for an extension of time.

The Court further finds that the period from June 7, 2010 to June 21, 2010 is excludable under 18 U.S.C. § 3161(h)(7) because the ends of justice served by granting this continuance outweigh the interest of the public and defendant's interest in a speedy trial.

**IT IS THEREFORE ORDERED** that defendant's Motion For Additional Time To File Pretrial Motions (Doc. #11) filed June 7, 2010 be and hereby is **SUSTAINED**. **The deadline for filing pretrial motions is June 21, 2010. The response deadline is June 28, 2010. The Court will hold a hearing on pretrial motions at 1:30 p.m. on July 6, 2010.** Trial remains set for July 19, 2010 at 9:30 a.m.

Dated this 16th day of June, 2010 at Kansas City, Kansas.

s/ Kathryn H. Vratil  
KATHRYN H. VRATIL  
United States District Judge