

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 10-40078-01-RDR

ALLEN S. BENSON,

Defendant.

ORDER

NOW on this 7th day of October, 2010, the above-entitled matter comes before the Court upon the motion of counsel for the accused, Allen S. Benson, for an order granting thirty (30) days' additional time, or until November 4, 2010, to file motions herein. The Court, after reviewing the motion and being fully advised in the premises finds that there exists good cause for the motion, and that the motion should therefore be sustained.

The Court finds that the defense has informally requested access to additional evidence pertaining to DNA testing and in-car video from the Topeka Police Department. Counsel has been informed that the DNA-related evidence probably will be disclosed, but further investigation is needed to determine the scope of such evidence. Defense counsel believes that with some additional time, the parties will probably be able to resolve the DNA discovery issue without intervention by the Court. Defense counsel has been informed that the in-car video appears to have been lost, but additional investigation is warranted, and this investigation may lead to a defense motion regarding the loss of this evidence.

Failure to grant the extension would result in a miscarriage of justice and deny the defendant due process.

The Court finds that the period of delay resulting from the additional time granted pursuant to this Order shall be excludable time as provided for in 18 U.S.C. 3161(h)(7) in that the ends of justice served by the granting of such motion outweigh the best interest of the public and the defendant in a speedy trial.

IT IS THEREFORE ORDERED that the accused, Allen S. Benson, have thirty (30) days' additional time up to and including November 4, 2010 to file motions in the above-entitled action, and the government shall have until November 12, 2010 to file responses. The hearing on said motions is hereby rescheduled to November 19, 2010 at 10:00 a.m. The period of delay resulting from such continuance shall be excludable time as provided for by the Speedy Trial Act, 18 U.S.C. 3161(h)(7).

s/Richard D. Rogers
United States District Judge