

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 16-10043-01-JWB

COBEN A. MCRAE,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the government's motion to continue (Doc. 108) and Defendant's amended motion to continue. (Doc. 109.) The motions are GRANTED for the following reasons.

A period of delay from a continuance may be excluded from the time limits of the Speedy Trial Act "if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(7)(A). Delays are excluded, however, only if the court granting such a continuance "sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial." *Id.*

In this instance, Defendant was initially charged in a 35-count indictment including one count of mail fraud, seventeen counts of wire fraud, one count of possession of fifteen counterfeit access devices, and fifteen counts of aggravated identity theft. Defendant's trial was scheduled to start on September 12, 2017. (Doc. 78.) On that date, the government was prepared to go to trial and had scheduled more than twenty-five witnesses, including those from outside of this district.

Defendant failed to appear. A bench warrant was issued for his arrest. On January 30, 2018, the grand jury returned a superseding indictment that included the original 35 counts and an additional count of failure to appear. (Doc. 89.) Defendant's first appearance occurred on February 19, 2020, and the trial is currently set for March 24th.

Both Defendant and the government move for a continuance of the trial date. The government states that it has been unable to contact and schedule all of its witnesses that are needed to prove the charges in the superseding indictment and needs additional time to do so. Defendant moves for a continuance as he has been unable to locate at least one witness and needs additional time to prepare for the trial. Defendant states that the case involves numerous documents and exhibits. Counsel for Defendant states that although Defendant is in custody, he has no objection to a continuance.

The court finds that the reasons set forth in the parties' motions are sufficient to satisfy the standards of § 3161(h)(7).

IT IS THEREFORE ORDERED that the government's motion to continue (Doc. 108) and Defendant's amended motion to continue (Doc. 109) are GRANTED. The jury trial is continued to June 2, 2020, at 9:00 a.m., U.S. Courthouse, Wichita, Kansas, Courtroom 238. Status Conference is scheduled for May 18, 2020, at 9:00 a.m., U.S. Courthouse, Wichita, Kansas, Room 232.

The Court further finds that the period of delay resulting from the continuance 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 granting such continuance outweigh the best interest of the public and Defendant in a speedy trial. Specifically the time from March 24, 2020, to June 2, 2020, is excluded.

s/ John W. Broomes
JOHN W. BROOMES
UNITED STATES DISTRICT JUDGE