UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

vs. CASE NO.: 3:18-cr-89-J-34JRK

REGINALD BROWN
_____/

DEFENDANT REGINALD BROWN'S MOTION TO DISMISS
THE INDICTMENT (SPEEDY TRIAL) AND MEMORANDUM OF LAW

The Defendant, Reginald Brown, by and through the undersigned attorney, pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure, the Sixth Amendment of the U.S. Constitution, and 18 U.S.C. §3161, respectfully moves this Honorable Court to dismiss the Indictment because the case has not been tried within the seventy-day window required by law. As grounds for this motion, Defendant states as follows:

1. Reginald Brown and Katrina Brown are charged in a multi-count Indictment returned May 23, 2018. Count One charges each with conspiracy to commit wire fraud in violation of Section 18 U.S.C. §1349. Counts Two through Fourteen charge each with substantive counts of mail fraud in violation of U.S.C. §1341 and §2. Counts Fifteen through Twenty-seven charge each with substantive counts of wire fraud in violation of 18 U.S.C. §1343 and §2. Counts Twenty-eight through Thirty-three charge each with substantive counts of money laundering in violation of 18 U.S.C. §1957 and §2. Mr. Brown alone is charged with a failure to file a 1040 tax form in Count 38.

2. The essence of the wire fraud, mail fraud, and money laundering allegations is that Reginald Brown and Katrina Brown concocted a scheme to defraud certain lenders

of funds intended to finance a separate business venture of Katrina Brown and her parents. The business venture was the production and distribution of a highly regarded barbeque sauce, perfected by Katrina's Brown's father.

3. The Indictment is returned on May 23, 2018. Mr. Brown first appears in court on May 31st. (Doc 10). On June 14, Mr. Brown moves for the appointment of an attorney. The motion is granted on June 15. (Doc.32). Arraignment occurs on June 25, 2018. (Doc.40). An *ore tenus* joint motion to continue the trial is made by Mr. Brown and co-defendant Katrina Brown at arraignment. (Doc. 40). The United States does not oppose the motion. (Doc.45). Trial is scheduled for the September term with a status hearing set for August 20, 2018. A special status hearing is later set for August 14, 2018. On August 14, 2018, the trial is re-set for the term beginning February 4, 2019 after another unopposed joint motion to continue. (Doc. 55). Mr. Brown does not dispute the time from arraignment (June 25, 2018) through the trial date in February, 2019 is "excludable time" for purposes of 18 U.S.C. §3161.

4. On December 21, 2018, counsel for Katrina Brown files a motion to withdraw. (Doc.87). New counsel is quickly appointed. (Doc 96). However, given the complexity of the case, the Court grants Katrina Brown's motion to continue the trial at the January 17, 2019 status conference. (Doc.96). The United States does not oppose the motion. However, Mr. Brown, anxious to have his good name and reputation vindicated, objects to any further delay. Id. This Court specifically finds "the ends of justice [were] served by granting such a continuance outweigh the best interest of the public and the Defendant[s] in a speedy trial." It sets the case for trial beginning with jury selection on August 15, 2019. It is now re-set for August 14, 2019. Id. This Court further directs that in the event it grants Mr. Brown's

pending motion to sever (Doc. 59), it will set a new trial date for him. Id.

5. There were several motions pending as of the January 17, 2019 hearing date. The Court denied two of those motions (Doc. 58 and 64) at the hearing. Id. The remaining outstanding motions, including Mr. Brown's motion to sever, were denied on April 3, 2019 in two orders. (Doc. 114 and 115).

6. The seventy-day speedy trial window mandated by 18 U.S.C. §3161 begins to run again on April 4, 2019. On May 29, 2019, Mr. Brown moves to modify the conditions of release. (Doc. 117). The motion is granted by order dated June 12. (Doc. 120). Mr. Brown files a motion in limine which remains pending on June 19th. (Doc. 123). A total of more than seventy non-excludable days have elapsed since Mr. Brown first appeared in court. No other exceptions or events that would constitute excludable time under the Speedy Trial Act have occurred. The Indictment as to Mr. Brown should be dismissed.

MEMORANDUM OF LAW

"A citizen accused of a crime "shall enjoy a right to a speedy… trial…" U.S. Constitution Amendment VI, *Doggett v. United States,* 505 U.S. 647, 112 S. Ct. 2686, 120 L. Ed. 2d 520 (1992). There is a four-part test for analyzing a constitutional speedy trial claim which is "length of the delay, the reason for the delay, the Defendant's assertion of his right, and prejudice to the Defendant." *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182, 33 L. Ed 2d 101 (1972).

The federal Speedy Trial Act, 18 U.S.C. §3161 was passed to strengthen the constitutional mandate. *US v. Ammar*, 842 F.3d 1203 (11th Cir. 2016). Generally, the accused must be tried within seventy days of the dates provided for in the statute or "the

district court must dismiss the indictment." Id. The statute provides a number of reasons to toll the running of the seventy-day period. One of those reasons is the "ends of justice" exception. 18 U.S.C. §3161(h).

Section 3161(h) of the Speedy Trial Act – the ends of justice exception "was plainly meant to cover many of these requests" such as defense continuances. *Zedner v. US,* 547 U.S. 489, 126 S. Ct. 1976, 164 L. Ed. 2d 749 (2006). However, "the purposes of the act also cut against extensions on the grounds of mere consent or waiver." Id. In short, the Defendant cannot waive the operation of the Speedy Trial Act. Id. Ultimately, the Supreme Court concluded, "the act requires when a District Court grants an ends of justice continuance, it must set forth, on the record, either orally or in writing, it's reasons." Id. at 767, citing statute.

Mr. Brown acknowledges this Court made an interest of justice finding when it continued this case in January. (Doc. 96) Among other things, it found the complexity in the case, the appearance of new counsel and the judicial economy of a joint trial satisfied the standard. (Doc. 96) Mr. Brown respectfully contends the Court erred in finding the interest of justice of a joint trial outweighed Mr. Brown's constitutional and statutory right to a speedy trial over his specific objection at the January 17, 2019 status conference.

One recognized exception to the speedy trial provisions of §3163 is pretrial motions. "The 11th Circuit has repeatedly held that pretrial motions filed by one Defendant tolled the speedy trial clock for all co-defendants." *US v. Al-Arian,* 267 F. Supp. 2d 1258 (M.D. Fla. 2003), citing *United States v. Schlei, 122 F.3d 944, 985 n.15 (11th Cir. 1997)*. A second exception to the general rule a trial must at least start within seventy days of arraignment which may be applicable to this case is the interest of judicial economy of a

joint trial. In sum, the efficiency of a joint trial outweighs severing the trial of individual defendants and conducting multiple trials in multi-defendant cases. Id. citing *United States v. Schlei*, 122 F.3d 987, 985 n 15, *United States v. Varella*, 692 F.2d 1352, 1359 (11th Cir. 1982), *United States v Twitty*, 107 F.3d 1482, 1488 (11th Cir. 1987).

Mr. Brown notes the principal outstanding motions were resolved on April 3, 2019. (Doc. 114-115). He contends the speedy trial clock of seventy-days started again on April 4, 2019. Counting the non-excludable days which occurred between his first appearance and arraignment with the non-excludable days since April 4, 2019 produces a total of more than seventy days.

Mr. Brown submits in this case his right to a speedy trial, statutory and constitutional, outweighs the convenience of a joint trial. To the extent, the law of the 11th Circuit has been that the convenience of a joint trial outweighs a single defendant's right to a speedy trial, he maintains two recently decided cases suggest that interpretation of the Speedy Trial Act does not control the outcome, if it ever did.

One relatively recently decided case is *US v. Tinklenberg*, 131 S. Ct. 2007, 563 U.S. 647, 179 L. Ed. 2d 1080 (2011). Here the question was "whether this provision [filing a pretrial motion] stops the speedy trial clock from running automatically upon the filing of pretrial motions, irrespective of whether the motion has any impact on when the trial begins." Id. at 653. The Court after reviewing the statute, concluded the answer was yes, the time is tolled. Id. Ultimately, it ruled, "the act contains no such requirement that a pretrial motion may effect or cause delay." Id. at 660. However, despite rejecting the 6th Circuit's interpretation of the tolling provision of the Speedy Trial Act, the Supreme Court concluded the Sixth Circuit's "ultimate conclusion that *Tinklenberg's* trial failed to comply

with the Speedy Trial Act and affirmed the dismissal of the Indictment on remand. Id. at 663. The relevance of *Tinklenberg* to Mr. Brown's this case is one of the reasons the Supreme Court concluded the Sixth Circuit's analysis of the Act was incorrect, was "we think Congress intended sub paragraph (D) to apply automatically." Id. at 656. In other words, if Congress had intended to mean the tolling provisions of the statute depended on the effect a particular motion might have on the likelihood a case would be ready for trial, it could have said so.

The logic of the Supreme Court decision in *Tinklenberg* applies to the circumstances in Mr. Brown's case. In short, if the joint trial of an admittedly complex case always constituted the best interest of justice and warranted a continuance over the speedy trial demand of a single co-defendant, congress could have said so in the Speedy Trial Act. It did not. Therefore, this Court cannot find the judicial economy of a joint trial alone warrants a continuance over the speedy trial demand of a defendant where there is a readily available solution, severance.

A recent 11th Circuit decision *United States v. Ammar* supports this position. *US v. Ammar*, 843 F.3d 1203 at 1093. In *Ammar*, the Eleventh Circuit "vacated Ammar's conviction, reversed and remanded with instructions to dismiss the charge and determine after consideration of the statutory factors enumerated in the Act, whether the dismissal should be with or without prejudice." Id. At 1213. Ammar and four others were indicted on multiple charges. The most significant charge was murder. Id. at 1207. One or more of the co-defendants were considered eligible for death penalty prosecution. Id. at 1208.

Over Ammar's objections, the trial was continued on multiple occasions. It appears all parties but Ammar agreed to the continuances. Applying the analysis from the Supreme

Court's holding in *Zedner*, and rejecting the notion that "magic words" were procedurally required, the Eleventh Circuit found the "District Court did not make the proper ends of justice findings to permit the tolling of the seventy-day period." Id. at 1213. While the Court did not expressly find the trial court erred in continuing the case for reasons of judicial economy, Mr. Brown contends it is fair to infer that the Court concluded a trial court must make a more explicit finding of best interests where one defendant objects to the delay.

The Court noted, in conclusion, "a criminal Defendant's right to a speedy trial is one of the most basic rights preserved by our constitution." Id. citing *Klopler v. North Carolina*, 386 U.S. 213, 226, 87 S.Ct. 988, 18 L.Ed.2d 1 (1967), Congress chose to safeguard this requirement through the rigid procedural requirements of the Speedy Trial Act. Id. at 1212.

CONCLUSION

In this case, Mr. Brown's rights to a speedy trial outweigh the judicial economy of a joint trial. More than seventy days have passed since April 4, 2019. The Indictment should be dismissed with prejudice.

WHEREFORE, the Defendant, Reginald Brown, for the above-mentioned reasons respectfully moves this Honorable Court to grant this motion.

Respectfully submitted,

S:// Thomas M. Bell
THOMAS M. BELL, #0615692
301 West Bay Street, Suite 1460
Jacksonville, Florida 32202
Telephone (904) 354-0062
Telecopier (904) 353-1315
tbellesq@bellsouth.net
Attorney for Reginald Brown

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 16, 2019, I electronically filed the foregoing with the clerk of the Court by using CM/ECF system which will send a notice of electronic filing to A. Tysen Duva, AUSA, Michael Coolican, AUSA, John P. Leombruno, Esq., and Richard Landes, Esq.

S:// Thomas M. Bell
THOMAS M. BELL