

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 24-CR-80103-CANNON

UNITED STATES OF AMERICA

v.

DUSTIN SEAN McCABE,

Defendant.

**STATUS REPORT AND JOINT MOTION FOR FINAL CONTINUANCE OF TRIAL
DATE AND FOR TRIAL TO BE HELD AT WEST PALM BEACH COURTHOUSE**

The United States of America, through the undersigned Assistant United States Attorney, and Defendant Dustin Sean McCabe, by and through undersigned counsel, jointly move for a final continuance of 28 days or, alternatively, 14 days from the current date of trial and a corresponding extension of any associated plea and pretrial motions deadlines, with the expectation that we move forward to trial at the date the Court sets here. The parties also respectfully move for the case to be set for trial in the Paul G. Rogers Federal Building and Courthouse in West Palm Beach. In support, the parties state the following:

BACKGROUND AND CASE STATUS

1. Mr. McCabe is charged with one count of seaman's manslaughter, in violation of 18 U.S.C. § 1115, one count of making a false statement within the jurisdiction of an agency of the United States, in violation of 18 U.S.C. § 1001(a)(2), and three counts of wire fraud, in violation of 18 U.S.C. § 1343. DE 3.

2. Mr. McCabe made his initial appearance in this District and was arraigned on September 20, 2024, and he remains on bond in the Middle District of Florida, where he lives. *See* DE 13.

3. On September 24, 2024, this Court entered its trial order setting trial for November 4, 2024. DE 14. The Government filed its first response to the Standing Discovery Order (“SDO”) on October 6, 2024, which consisted of videos, photos, and other documentation that made up over 3,000 Bates number entries. *See* DE 19. While the Government has an additional report it recently produced to the defense for which it will file an SDO response soon, it does not anticipate producing substantial additional discovery in this case.

4. On October 17, 2024, the parties filed their first joint motion to continue the trial date in this matter, noting that the parties “have been discussing resolution since the case’s inception anticipate the case being resolved by plea.” DE 20 at 1. This Court granted the parties’ motion on October 21, 2024, continuing trial to December 16, 2024. DE 21. The parties then moved for a second 60-day continuance on December 2, 2024, again noting that the parties were discussing resolution and intended to negotiate further and determine whether the case would, in fact, resolve by plea as they had anticipated. DE 22 at 2. This Court granted the motion in part, continuing the trial to January 13, 2024.

5. In granting these motions, the Court has excluded the time from October 17, 2024, through January 13, 2025. *See* DE 20 & 23. Based on those orders, only 25 of the 70 days permitted under the Speedy Trial Act have passed, which leaves 55 days remaining.

6. On the afternoon of December 10, 2024, the defense informed the Government that Mr. McCabe would be proceeding to trial, though with a different counsel working with Mr. Musca than Ms. Calisha Francis, who had been Mr. McCabe’s plea negotiation counsel. Since that time, the Government has ramped up trial preparations in anticipation of trial in January or February as this Court rules in response to this Motion.

7. The parties file this Motion a week after the Court's prior ruling on the parties' second motion to continue for two purposes: (a) to notify the Court that this matter will proceed to trial and (b) to secure a trial date that will permit the parties adequate time to prepare, including through making flight, hotel, and scheduling arrangements for the parties and witnesses.

REQUESTS AND BASIS FOR REQUESTS

8. Through this Motion, the parties respectfully make two discrete requests: (a) a final continuance of 28 days or, alternatively, 14 days, with the expectation that the parties proceed to trial on the date this Court sets, and (b) that the trial be held at the West Palm Beach federal courthouse. In support of these requests, the parties submit the following:

9. Continuance to February 10 or January 27 Trial Calendar. While the parties acknowledge and understand that the Court was previously inclined to continue this matter to January 13 instead of the requested February date, *see* DE 22 & 23, the parties respectfully make this request for additional time now that trial is a certainty to give the parties time to prepare this complex case. Five considerations support this request:

- a. First, additional time will give defense counsel, including new trial counsel, time to prepare Mr. McCabe's case in light of his recent decision to proceed to trial.
- b. Second, the parties anticipate that this trial will take approximately two weeks (8-11 days), with the Government anticipating approximately 23 witnesses at this time and the defense potentially calling its own witnesses. Some witnesses will need to travel from outside the district, which will require flight and hotel arrangements. Additional time and a firm trial date will facilitate securing all witnesses for trial.
- c. Third, this case involves unusual legal issues, such as the proper negligence standard for seaman's manslaughter. The Government will be filing a motion *in*

limine as well as a trial brief outlining these issues, and additional time will permit the parties to fully brief these matters, which is appropriate in light of Mr. McCabe only having fully decided to go to trial yesterday.

- d. Fourth, Mr. McCabe is and will remain on bond, the parties respectfully submit that he is not prejudiced by the additional time the parties use to prepare for trial.
- e. Fifth, the parties have year-end holiday travel booked, which will delay trial preparation. While the parties appreciate that this reason is not as compelling as the others, we respectfully submit that it favors a continuance in light of Mr. McCabe's bond status and his first appearance in this case occurring in late September.

10. Holding Trial at West Palm Beach Courthouse. In addition to a final continuance, the parties also respectfully request that this Court move the trial from the Fort Pierce federal courthouse to the West Palm Beach federal courthouse. Three considerations lead us to make this request:

- a. First and most importantly, this case involves many civilian fact witnesses, most of whom resided in the West Palm Beach area at the time of the instant offense and who were still West Palm Beach last time we interviewed them.¹ Holding the trial in West Palm Beach will facilitate their appearing with minimal interference.
- b. Second, the conduct in this case occurred in West Palm Beach, so there is an interest in trying the case in the community where the conduct occurred.²
- c. Third, and of concededly far less importance, the undersigned Assistant United States Attorney notes that two of the prosecutors live in Miami and have children

¹ The Government is still in the process of re-confirming their addresses but have no reason to believe them to have moved.

² This matter was noticed as a "WPB" case in the Certificate of Trial Attorney. *See* DE 3 at 11.

under the age of two, so holding the trial in West Palm Beach will make it more feasible to continue assisting with childcare during trial.

11. As a result of the foregoing considerations, the parties respectfully submit that an additional continuance will permit the parties adequate time to prepare for trial. In light of Mr. McCabe's remaining on bond and the complexity of the case, the parties respectfully submit that this additional time would serve the interests of justice by ensuring an efficient and fair trial.

12. This request is made in good faith and not for purposes of unnecessary delay. It is in the interests of justice and would not interfere with the public or Mr. McCabe's interest in a speedy resolution of this matter.

13. The undersigned Assistant United States Attorney has conferred with Mr. McCabe's counsel, Ms. Calisha Angeline Francis, who advised that Mr. McCabe joins in this request. In addition, Mr. McCabe agrees to the exclusion from the speedy trial period of the time from the filing of this motion until a new trial date is set.

14. A proposed order is attached and will be emailed to chambers.

WHEREFORE, the United States, joined by Mr. McCabe, respectfully requests that the Court continue trial by either 28 or 14 days from the current date of trial, grant a corresponding extension of the pretrial motions deadline, and set the trial for the West Palm Beach federal courthouse.

Dated: December 11, 2024

Respectfully submitted,

MARKENZY LAPOINTE
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 11, 2024, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Zachary A. Keller
Zachary A. Keller
Assistant United States Attorney