

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No. 22-20290-CR-BLOOM/OTAZO-REYES

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERIC DEAN SHEPPARD,

Defendant.

/

**DEFENDANT ERIC DEAN SHEPPARD'S
UNOPPOSED AMENDED MOTION FOR CONTINUANCE**

Defendant, Eric Dean Sheppard, respectfully submits this amended motion¹ for a *continuance of trial* to Monday, October 2, 2023, for the good cause explained below.

1. On July 20, 2023, the Government moved to continue trial, then scheduled to begin September 11, 2023. [D.E. 49]. As noted in the Government's motion to continue, Defendant strongly objected to a long continuance, in view of his request for a speedy trial given the schedules of defense counsel. [*Id.* at ¶ 5]. The Court granted a short continuance through the current trial date of September 26. [D.E. 50].

2. The Government cited the unavailability of a witness in support of its motion to continue. [D.E. 49 at ¶¶ 2-3]. Defendant believed then, and still believes today, that the primary reason the Government needed more time was because it failed to properly investigate this matter

¹ This amended motion modifies the previous request made in Defendant's unopposed motion for one-day continuance, filed on September 15 at [D.E. 82]. As discussed in this amended motion, additional time is necessitated by the additional disclosure made by the Government on the night of September 15, as well as the Government's attempt to prevent the defense's expert witness from reviewing evidence and to continue to develop opinions before trial.

pre-indictment and the continuance would allow it time to do the investigative work that should have been done long ago.

3. After Defendant made it clear he would not accept a plea deal and he was preparing for trial, the Government ramped up its investigation and began producing substantial new discovery. This post-hoc investigation leading up to trial prejudices Defendant, who seeks only what the Constitution guarantees: a speedy and fair trial.

4. After Defendant rejected a plea offer and met with the Government to discuss some of his defenses:

- On July 6, then approximately 2 months before trial, the Government produced, among other things, numerous 302s of witnesses who worked for and were paid by the Defendant after he received loans, and who had recently been interviewed for the very first time;
- On July 12, the Government produced additional discovery;
- On July 20, the Government moved to continue the trial, as mentioned above;
- On August 23, a month before trial, and based on the exact same facts, the Government superseded the indictment, drastically changing the charges against Defendant by adding six additional Wire Fraud counts and five additional counts of Aggravated Identify Theft, none of which were included in the original Indictment;
- On September 1, approximately 3-and-a-half weeks before trial, the Government produced additional discovery, including documents from the alleged victim banks, the IRS, and tenants from Defendant's shopping center in Orlando;
- On September 7, another AUSA who is apparently going to be the lead litigator entered a Notice of Appearance;

- On September 8, approximately 2-and-a-half weeks before trial, the Government produced over 800 pages of documents, including emails and other records from Defendant's accountant, a Government witness (who was interviewed over six months ago);
- On September 12, two weeks before trial, the Government produced nearly 1,000 pages containing including additional financial information (such as tax and bank documents) and documents from two new potential Government witnesses never disclosed to Defendant (including potential 404(b) evidence); and
- On September 13, the Government sent Defendant two "disclosures" in the form of an email² about statements from two potential Government witnesses, including a 404(b) witness.

5. On September 14, the Government filed its 404(b) disclosure on an entirely unrelated matter that is several years old and requires serious investigation. In effect, the Government seeks yet another new charge just before trial, to the extreme prejudice of the Defendant. The defense recognizes that there is no hard and fast rule for the timing of Rule 404(b) evidence, but generally Rule 404(b) disclosures relate to matters that have previously been disclosed, such as crimes appearing on rap sheets produced upon indictment, for which the defense has had plenty of time to investigate. The Government's excuse—that it only recently learned of this matter from a witness—falls short. The Government has known the identity of this witness since before the original Indictment. His name appears in the initial discovery. Why did they wait so long to interview this witness?

² Interestingly, not in the form of a 302 which can be used for impeachment, but as an email from the AUSA advising of the information, which cannot be cross examined.

6. As Defendant has tried to work on final trial preparation, including with respect to experts and finalizing Motions for filing, it is has had to play catch up on reviewing and analyzing late disclosed discovery and investigating the Rule 404(b) disclosure.

7. On Friday, September 15, the defense and the Government were on the phone for an hour on various “meet and confer issues,” followed by several rounds of emails between the parties. During the meet and confer, there was no mention by the Government of attempting to limit or exclude the defense witnesses. After being advised the defense team was leaving early to observe the Jewish Holiday of Rosh Hashanah, on Friday night, at 6:00 pm, the Government produced additional documents, including emails between Defendant and yet another potential witness, while simultaneously seeking an immediate deadline for disclosure of all possible defense experts and all their opinions that the defense may seek to offer in its case, including related to the very material it produced that day.

8. This, and the rest of the Government’s actions, including over the last month, are the consequence of its failure to properly investigate this matter before charging Defendant, and then waiting until it knew trial was imminent to start investigating in earnest, in addition, adding another prosecutor who probably needed time to catch up.

9. In acting this way, the Government has coerced Defendant into seeking a continuance, for the Defendant to prepare for trial and for his counsel to fulfill their Constitutional and ethical duties.

10. Defendant is left with no choice. Defendant is steadfast in his desire for a speedy trial but given the circumstances (details can be provided upon the Court’s request) is compelled to seek a short continuance of only a few days.

11. This short continuance is not sought for purposes of delay and does not prejudice the Government in any way. In fact, the continuance, although necessary, prejudices Defendant. The continuance is required because of the Government's superseding indictment one month before trial and its late investigation and disclosure of critical discovery. The necessary continuance will now give the Government more time to continue its own trial preparation with the new information it has belatedly investigated.

CONCLUSION

WHEREFORE, Defendant Eric Dean Sheppard respectfully requests that this Court continue the trial of this matter to Monday, October 2, 2023.

MEET AND CONFER CERTIFICATE

Undersigned counsel has conferred with the Government, who states that that it does not oppose the continuance sought herein.

Dated: September 18, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 18, 2023, the foregoing document was filed via the Court's CM/ECF system to all counsel of record.

/s/ Jayne C. Weintraub
Jayne C. Weintraub