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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

22 Cr. 251 (LJL)

5 RAFAEL MARTINEZ,

6 Defendant.

7 -----x

8 New York, N.Y.
9 August 11, 2022
3:00 p.m.

10 Before:

11 HON. LEWIS J. LIMAN,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS,

15 United States Attorney for the
Southern District of New York

16 BY: OLGA ZVEROVICH

Assistant United States Attorney

17 MORVILLO ABRAMOWITZ GRAND IASON & ANELLO PC

18 Attorneys for Defendant

19 BY: ELKAN ABRAMOWITZ

TELEMACHUS P. KASULIS

-and-

20 WILLKIE FARR & GALLAGHER LLP

21 BY: RANDALL W. JACKSON

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1 (Case called)

2 MS. ZVEROVICH: Good afternoon, your Honor. Olga
3 Zverovich for the United States.

4 THE COURT: Good afternoon.

5 MR. KASULIS: Good afternoon, your Honor. Tim
6 Kasulis, Elkan Abramowitz, and Randall Jackson for Mr. Rafael
7 Martinez.

8 THE COURT: We're on for a status conference. So let
9 me hear from the government the status of the case. Have you
10 completed discovery and where do things stand?

11 MS. ZVEROVICH: Your Honor, yes. The government has
12 completed discovery at this time and produced it to defense
13 counsel. To the extent there are any additional discovery
14 materials that we receive on a rolling basis going forward, we
15 will be producing those materials to the defendant as we
16 receive them.

17 We have conferred with defense counsel and I believe
18 the parties are prepared to set a further schedule in this case
19 subject to the Court's views.

20 THE COURT: Do you want to present it to me and then
21 I'll speak to defense counsel?

22 MS. ZVEROVICH: Yes, your Honor. What we discussed,
23 we believe, subject to the Court's schedule, a trial date
24 sometime in May of 2023 would work for both sides. I believe
25 that defense counsel has a proposal in terms of the motion

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1 schedule working off of that trial date.

2 THE COURT: I'll hear from them. I take it you're
3 familiar with what they're going to propose to me?

4 MS. ZVEROVICH: I am actually not, your Honor. I
5 believe up until a few moments ago, they were discussing the
6 various scheduling issues that various defense counsel have, so
7 I actually do not know what they specifically intend to
8 propose.

9 THE COURT: Refresh me, how long do you expect the
10 trial to last?

11 MS. ZVEROVICH: Your Honor, I am actually -- I
12 apologize to the Court. I'm filling in for my colleague. I
13 actually do not have an estimated length at this time. I
14 apologize.

15 THE COURT: Who am I going to hear from on the defense
16 side?

17 MR. KASULIS: It's me, your Honor, Tim Kasulis.
18 Ms. Zverovich is correct. We have received discovery, it is
19 voluminous. So what I would propose, your Honor, is a trial
20 date in May, if that fits the Court's calendar or thereabouts,
21 and a motion schedule sufficiently far in the future from today
22 to give us time to be able to review all that voluminous
23 discovery and make intelligent motions for the Court's
24 consideration. I would suggest our motions due in December, if
25 that works for your Honor.

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1 THE COURT: My recollection is that this is not a case
2 in which there were search warrants or postarrest statements or
3 anything of the like. What type of motions do you contemplate?

4 MR. KASULIS: Your Honor, one of the things we have to
5 consider is whether there is any suppressible material. Your
6 Honor is correct that there is no postarrest statement. There
7 may be other bases to attack the government's evidence. There
8 is certainly no opportunity for severance here, that's not an
9 issue. We really do have to dig into the government's Rule 16
10 production to be sure about any real motions we can make, your
11 Honor.

12 To a certain extent, Judge, our schedules have been
13 compromised because I just finished a trial, and Mr. Jackson
14 and Mr. Schachter have a trial about to begin. So, really,
15 that's why we need that extra time, to make sure that we're
16 safeguarding Mr. Martinez's rights in the motion phase.

17 THE COURT: Can you refresh me, Mr. Kasulis, last time
18 we were here, what did the government estimate was the length
19 of the trial?

20 MR. KASULIS: May I just confer with my colleague,
21 your Honor.

22 (Pause)

23 Your Honor, Mr. Jackson's recollection corresponds to
24 my own, about two weeks is what we recall and we think that's
25 about right.

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1 THE COURT: Give me a moment to confer with my deputy.

2 MR. KASULIS: Yes, your Honor.

3 (Pause)

4 THE COURT: Okay. Let me tell you what I have in mind
5 and then see if it works first for the government and then for
6 the defense.

7 I'm prepared to try this case on May 1. I'm also
8 prepared to receive motions on December 2nd with opposition
9 briefs filed on December 23rd and replies on January 6th. We
10 would then do a motions hearing sometime in mid January.

11 Based off of a May 1 trial date, I'm going to need
12 requests to charge and proposed voir dire and any motions *in*
13 *limine* by April 7th, oppositions to the motions *in limine* and
14 responses to the requests to charge and proposed voir dire on
15 the 14th of April, and any replies on the motions *in limine* – I
16 would hope there would not be a need for them – on April 18th,
17 with a pretrial conference to be held sometime probably late
18 the week of April 22nd.

19 Does that work for the government, those dates?

20 MS. ZVEROVICH: That schedule works for the
21 government. Thank you, your Honor.

22 THE COURT: Mr. Kasulis, what about on your end?

23 MR. KASULIS: That's fine with us, your Honor.

24 THE COURT: Let me give you some dates for the motion
25 hearing mid January of 2023 and for the final pretrial

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1 conference the week of April 22nd. The motion hearing will be
2 January 19th at 11:00 a.m., final pretrial will be April 25th
3 at 2:00 p.m. Let me just look at one other thing. Does the
4 government have a view as to whether it intends to present any
5 kind of expert testimony?

6 MS. ZVEROVICH: Your Honor, I'm not aware of that
7 right now. If that changes, we will let defense counsel and
8 the Court know.

9 THE COURT: What about on the defense side?

10 MR. KASULIS: We're not sure yet, your Honor. To the
11 extent the Court wishes to set an expert disclosure deadline,
12 that might make sense just from an abundance of caution.

13 THE COURT: That's the reason why I asked that
14 question. Mr. Kasulis, do you have a proposal for me to
15 consider?

16 MR. KASULIS: Just a moment, if you would, your Honor.

17 (Pause)

18 Your Honor, after conferring here, it probably makes
19 sense to put it between these two busy windows that we have.
20 So perhaps March 1st.

21 THE COURT: That would be for each side to disclose
22 the experts they intend to present at trial.

23 The government's view on that?

24 MS. ZVEROVICH: That's fine with the government, your
25 Honor.

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1 THE COURT: So March 1st the will be the deadline for
2 each side to propose any experts, and then if there are *Daubert*
3 motions with respect to the expert, I can receive them at the
4 same time as the motions *in limine*. I don't think there is a
5 need to get *Daubert* issues resolved before then. Do you,
6 Mr. Kasulis?

7 MR. KASULIS: That's fine, your Honor.

8 THE COURT: Does the government?

9 MS. ZVEROVICH: That's fine with the government, your
10 Honor.

11 THE COURT: Besides the Speedy Trial Act, is there
12 anything else to address from the government's perspective?

13 MS. ZVEROVICH: No, your Honor.

14 THE COURT: What about from the defense perspective?

15 MR. KASULIS: No, your Honor. Thank you.

16 THE COURT: Is there an application of the Speedy
17 Trial Act?

18 MS. ZVEROVICH: Yes, your Honor. The government moves
19 to exclude time under the Speedy Trial Act through January 19th
20 of 2023 in the interests of justice. That time will enable
21 defense counsel to continue reviewing discovery and the parties
22 to prepare and brief any appropriate motions for the Court.

23 THE COURT: Let me ask first you and then I'll ask the
24 defense whether there's any reason why I shouldn't exclude time
25 all the way up until the date of trial. If the defense is the

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1 one asking for a trial on May 1 and feels like they need that
2 given their trial schedules and the voluminous discovery, it
3 seems to me there would be a basis for an exclusion of time.

4 MS. ZVEROVICH: We agree, your Honor. We would move
5 to exclude time through the trial date.

6 MR. KASULIS: We have no objection, your Honor.

7 THE COURT: Then the Court will exclude time from
8 today until May 1, 2023 under the Speedy Trial Act, 18 U.S.C.
9 3161(h)(7)(A). As previously indicated, I find that the ends
10 of justice outweigh the interests of the defendant and the
11 public in a speedy trial in that the discovery in this case is
12 voluminous and counsel needs time to go through the discovery
13 to prepare for trial, to discuss any kind of pretrial
14 dispositions, to consider motions to make, experts to retain,
15 and to consult with the clients. Is there anything further
16 from the government's perspective?

17 MS. ZVEROVICH: No, your Honor. Thank you.

18 THE COURT: Anything further from the defense
19 perspective?

20 MR. KASULIS: No, your Honor. Thank you.

21 THE COURT: Good afternoon, everybody. If there is a
22 need for the Court to pay attention to this case or for there
23 to be a hearing anytime before January of 2023, I assume you'll
24 all write. Thanks.

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