

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION
CASE NO. 5:06CR-19-R

UNITED STATES OF AMERICA

PLAINTIFF

v.

STEVEN D. GREEN

DEFENDANT

ORDER

This matter comes before the Court on the United States' Motion for Trial Date (Docket #84). Defendant has filed a response (Docket #86). A hearing on the Motion was held on December 13, 2007. This matter is now ripe for adjudication.

On June 30, 2006, Defendant was arrested in North Carolina on a Criminal Complaint charging him with violations of 18 U.S.C. § 3261(a)(2), the Military Extraterritorial Jurisdiction Act. The charges stemmed from Defendant's alleged involvement in a rape and quadruple homicide in Yousifiyah, Iraq, on March 12, 2006, while Defendant was serving as a soldier in the United States Army.

On November 7, 2006, a grand jury in the Western District of Kentucky returned a seventeen-count indictment against Defendant alleging conspiracy to commit murder and sexual abuse, premeditated murder, felony murder, aggravated sexual abuse, aggravated sexual abuse with a child, use of a firearm during a crime of violence, and obstruction of justice. On November 20, 2006, this Court entered an Order in which it concluded that it was unreasonable to expect adequate preparation for pretrial proceedings, or the trial itself within the time limits established by the Speedy Trial Act. Therefore, the Court declared the case complex pursuant to 18 U.S.C. § 3161(h)(8)(B)(ii). On July 3, 2007, the United States filed its notice of intent to seek the death

penalty.

The parties have been unable to reach an agreement as to a schedule for trial of the case or for various pretrial deadlines. The United States has requested this Court set the matter for trial beginning August 4, 2008, while the Defendant suggests that the matter be set for trial in April of 2009. The United States argues that Defendant's proposed trial date of April 2009 unduly burdens the public's right to a speedy trial while the Defendant argues that he cannot be adequately prepared for this capital trial until that time.

The Sixth Amendment of the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." In *Barker v. Wingo*, the Supreme Court explained that this right is different from other constitutional rights that protect an accused in three principal areas. 407 U.S. 514, 519-21 (1972). First, "there is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused." *Id.* at 519. The failure to provide prompt trials "enables defendants to negotiate more effectively for pleas of guilty to lesser offenses and otherwise manipulate the system." *Id.* Secondly, the deprivation of the right may work to the accused's advantage, as delay is not an uncommon defense tactic. *Id.* at 521. "As the time between the commission of the crime and trial lengthens, witnesses may become unavailable or their memories may fade." *Id.* Finally, "the right to speedy trial is a more vague concept than other procedural rights." *Id.* The Court "cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate." *Id.* The right is necessarily relative. *Id.* at 522. "It is consistent with delays and depends upon the circumstances. It secures rights to a defendant. It does not preclude the rights of public justice." *Id.* (quoting *Beavers v. Haubert*, 198 U.S. 77, 87 (1905)).

Here, the Court finds that a trial date in April 2009, will not unduly burden the public's right to a speedy trial. The Court finds that Defendant's request of this date is not for the purposes of delay but rather to allow him to prepare a competent defense in a complex case. With respect to this issue the Court notes that "death is different" and a capital case involves requires greater reliability and heightened scrutiny of all rulings affecting the case. *See Gregg v. Ga.*, 428 U.S. 152, 188 (1976); *Ford v. Wainwright*, 477 U.S. 399, 411 (1986); *Zant v. Stephens*, 462 U.S. 862, 884-85 (1983). The Court also notes that the possibility that witness' testimony will fade is alleviated to some extent as the military co-accused, on whose testimony the United States' case is premised in large part, all have given sworn testimony in other proceedings.

IT IS HEREBY ORDERED:

1. Defendant must file all motions related to Constitutional challenges to charges and penalty and jurisdictional challenges by February 15, 2008. The United States must respond by March 7, 2008, and Defendant must reply by March 21, 2008. Counsel for Defendant shall notify the Court in writing when the issues are ripe with copy to opposing counsel.
2. Defendant must file Notice of Intent to Rely Upon Defense of Insanity / Notice of Expert Evidence of Mental Condition, pursuant to Rule 12.2 on or before May 15, 2008, the date requested by Defendant.
3. Defendant must file any Notice of Intent of Defendant to assert he was mentally retarded as contemplated by *Atkins v. Virginia*, 536 U.S. 304 (2002), by May 15, 2008.
4. On or before October 3, 2008, the parties shall file all pretrial motions related to anticipated evidentiary or unresolved legal issues to include, but not be limited to, statutory and non-statutory aggravating factors and mitigating factors. Response shall be filed within three weeks of the filing and replies two weeks thereafter.
5. On or before October 3, 2008, Defendant must file all motions to suppress.
6. On or before December 5, 2008, the parties shall submit an agreed jury questionnaire form.
7. The United States has agreed to disclose Jencks Act material prior to trial. Same shall be disclosed at least thirty (30) days before trial.

8. To the extent required by *Giglio v. United States*, 405 U.S. 150 (1982) and *United States v. Presser*, 844 F.2d 1275 (6th Cir. 1988), the United States is ordered to provide Defendant *Giglio* material which shall include but not be limited to production of criminal records of government witnesses, deals, promises of leniency, bargains, or other impeachment material. To the extent required by *Brady v. Maryland*, 373 U.S. 83 (1963) and *Presser*, the United States shall disclose any *Brady* material or which it has knowledge in the following manner:
 - (a) Pretrial disclosure of any *Brady* material discoverable under Rule 16(a)(1);
 - (b) Disclosure of all other *Brady* material “in time for effective use at trial.”
 - (c) Early disclosure is encouraged.
9. On or before December 5, 2008, the parties shall exchange proposed jury instructions.
10. On or before January 16, 2009, the parties shall file jury instructions. The parties shall designate those upon which they agree and those they do not. On the instructions on which they disagree, the parties shall include citations of authority supporting their proposed instruction.
11. Jury questionnaires shall be sent to the jury on or before January 9, 2009, and provided to counsel between February 15 and March 1, 2009.
12. On or before March 4, 2009, the parties shall each file a trial brief outlining:
 - A. Statute and elements of the offense.
 - B. Statement of facts (optional for Defendant).
 - C. Proposed voir dire. The Court shall conduct initial voir dire and allow counsel to conduct follow up. To qualify the jury to sit on a capital offense the Court and counsel shall conduct individual voir dire.
13. The trial is set for April 13, 2009. The length of the trial is three to five weeks including jury selection.
14. Telephonic status conference to discuss schedules, including when in person further proceedings are to be held, are set on (all times Central):

February 19, 2008, 11:00 a.m.

May 20, 2008, 11:00 a.m.

July 29, 2008, 11:00 a.m.

October 15, 2008, 11:00 a.m.

December 9, 2008, 11:00 a.m.

January 13, 2009, 11:00 a.m.

March 10, 2009, 11:00 a.m.

April 3, 2009, 11:00 a.m.

15. In person further proceedings shall be set as requested by the parties or as needed.


Thomas B. Russell, Judge
United States District Court

December 18, 2007