

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA)
)
 v.) 1:08CR384-1
)
DEMARIO JAMES ATWATER)

ORDER

This matter is before the Court following the arraignment of Defendant Demario James Atwater on a superceding indictment charging him with Kidnapping Resulting in Death in violation of 18 U.S.C. § 1201(a) and § 2, Carjacking Resulting in Death in violation of 18 U.S.C. § 2119(3) and § 2, Use of a Firearm During and in Relation to a Crime of Violence and Causing a Murder in the Course of the Violation, in violation of 18 U.S.C. § 924(c) & (j) and § 2, Possession of a Firearm by a Felon in violation of 18 U.S.C. § 922(g) and § 924 and § 2, and Possession of an Unregistered Firearm in violation of 26 U.S.C. § 5861(d) and § 5871 and 18 U.S.C. § 2. The charges against Defendant Atwater for Count 1, Kidnapping Resulting in Death, Count 2, Carjacking Resulting in Death, and Count 3, Use of a Firearm During and in Relation to a Crime of Violence and Causing a Murder in the Course of the Violation, are capital offenses with a maximum possible penalty of death. The Government has filed a Notice of Intent to Seek the Death Penalty in this case.

With respect to the scheduling of a trial in this matter, during the arraignment on the original indictment in this case on December 2, 2008, the Court set this case for trial beginning in November 2009. The Court determined that the ends of justice outweighed the public's and the Defendant's interest in a trial earlier to that time, in light of the need to provide the

Government and the Defendant a reasonable time necessary for effective preparation, taking into account the exercise of due diligence, in light of the nature of the prosecution and complexity of this matter as a capital case. Therefore, the time through November 2009 has been excluded from the computation of time under 18 U.S.C. § 3161(h)(8).

At the arraignment on the superceding indictment on February 25, 2009, the Court again noted that the trial in this matter would be scheduled beginning in November 2009, and that the time through November 2009 was excluded under 18 U.S.C. § 3161(h)(8) based on the findings noted above. At that arraignment, counsel for Defendant inquired whether the trial could be postponed until January 2010 in order to accommodate holiday schedules for potential jurors in November and December. However, counsel for Defendant did not contend that any additional time beyond November 2009 was needed to effectively prepare for trial in this matter, nor did counsel for Defendant present any other basis for continuing this matter that would justify a continuance and additional exclusion of time under 18 U.S.C. § 3161(h). Both counsel for the Government and Defendant have indicated that they can be ready for trial in November 2009. To the extent that any potential jurors may have scheduling issues in November and December, the Court can address those issues at the time of trial. Therefore, to the extent Defendant has moved to continue this matter to January 2010 due to holiday scheduling issues in November and December 2009, that request will be denied. This matter will be set for trial beginning November 2, 2009. In addition, the Court will schedule this matter for a hearing on June 4, 2009 at 2:00 p.m. to address pre-trial deadlines and scheduling of pre-trial matters in this case. On or before May 29, 2009, each side is directed to file a proposal for the scheduling of

pre-trial proceedings and deadlines in this matter, in light of the November 2, 2009 trial date.

IT IS THEREFORE ORDERED that Defendant's request to continue this matter to January 2010 is DENIED, and this matter is set for trial beginning on November 2, 2009. IT IS FURTHER ORDERED that this matter is set for a pre-trial scheduling hearing on June 4, 2009 at 2:00 p.m. in Winston-Salem Courtroom Number 1. FINALLY, IT IS ORDERED that on or before May 29, 2009, each side shall file a proposed schedule for pre-trial proceedings and deadlines in this matter.

This, the 7th day of April, 2009.


United States District Judge