

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL NO. 01-744-1,2,3
 :
 LOUIS FOGLIETTA :
 CHARLES POTTS :
 ROBERT DAHDAH :

MEMORANDUM ORDER

Defendants Dahdah and Foglietta have filed motions to postpone the trial of this case for reasons of health to which the government has consented. Defendant Potts is a fugitive.

Defendant Dahdah's treating physician has submitted a written report that this defendant is currently undergoing palliative chemotherapy for inoperable head and neck cancer which has recurred despite prior aggressive treatment. The current treatment has produced significant side effects including fatigue, nausea and difficulty in swallowing and breathing. Mr. Dahdah's physician has characterized his health as "very fragile" and has concluded that "[i]t is very important that he not be placed in any stressful situations."

It appears that if chemotherapy is successful in shrinking the cancer, it may then be addressed through surgery and defendant's condition could be sufficiently stabilized to permit his participation in a trial without disrupting treatment or posing an undue health risk. It appears that the requested continuance is clearly appropriate in these circumstances.

Defendant Foglietta's situation is less clear. His attorney states that his client's treating physician has opined that Mr. Foglietta "remains at risk of sudden death" due to congestive heart condition should he be subject to the stress of a trial. This is not quite correct. In connection with an earlier request for a ninety-day continuance which the court granted, defendant's physician opined that the stress of a trial "would substantially increase the potential for a potentially fatal cardiac event" during a ninety day period of "post-operative recovery" following a procedure in February 2002.

In his current report, defendant Foglietta's physician repeats no such dire assessment. He notes that upon examination, Mr. Foglietta appeared to be "in no acute distress" and that his heart "was regular in rhythm and rate." He noted that defendant's condition is being exacerbated by his failure to follow a prudent diet, cease smoking and take certain prescribed medication. The physician also notes that defendant is under "emotional stress," and opines that his participation in the currently scheduled trial "would be too stressful" and "should be postponed." Under the circumstances, the court will honor that recommendation.

At some point, however, the question may arise of whether a defendant may indefinitely avoid trial by disregarding medical advice and engaging in activity which creates or

materially contributes to a condition that is relied upon to obtain a postponement. It is unlikely that the court will entertain any further request for a continuance on this basis unless supported by a verified account of defendant's compliance with medical advice and after an opportunity for the government to obtain an opinion from its own consulting physician.

ACCORDINGLY, this day of June, 2002, upon consideration of defendant Dahdah's Motion for Continuance of Scheduled Trial Date (Doc. #24) and defendant Foglietta's Motion to Adjourn Trial Date (Doc. #25), and the consent of the government thereto, consistent with 18 U.S.C. § 3161(h)(4), **IT IS HEREBY ORDERED** that said Motions are **GRANTED** and the trial in this case is continued to September 16, 2002.

BY THE COURT:

JAY C. WALDMAN, J.