

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

UNITED STATES :
 :
 : CRIMINAL ACTION
 :
 v. :
 :
 :
 : NO. 05-CR-532
 ANTHONY SPRUILL :

SURRICK, J.

MAY 18, 2006

MEMORANDUM & ORDER

Presently before the Court is Defendant's Motion For Continuance Of Trial Date (Doc. No. 60). For the following reasons, the Motion will be denied.

I. BACKGROUND

On April 24, 2006, Defendant moved to compel certain discovery in this matter, including production of statements by Government witnesses pursuant to the Jencks Act. (Doc. No. 29 at 1-2.) A hearing on Defendant's various motions, including the discovery motion, was held on May 9, 2006. At that time, counsel for the Government represented the Government would turn over the statements of its witnesses. (May 9, 2006 Hrg. Tr. at 10.) Counsel for Defendant represents to the Court that he received statements made by the Government's cooperating witnesses on May 10, 2006. (Doc. No. 60 ¶ 11.) Trial was scheduled for May 15, 2006. On that day, Defendant requested a continuance of one week. The request was granted, and an Order was entered on May 16, 2006 granting a one-week continuance so that Defendant and his counsel could more thoroughly review the materials produced by the Government. (Doc. Nos. 57, 58.) Trial is thus scheduled to commence on May 22, 2006. Defendant now requests a continuance of at least thirty days in order prepare for trial. (Doc. No. 60 ¶ 13.)

II. DISCUSSION

The Jencks Act provides:

In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a Government witness or prospective Government witness (other than the defendant) shall be the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

18 U.S.C. § 3500(a). Accordingly, the Government was under no statutory obligation to provide its witnesses' statements to Defendant prior to trial. Defendant now claims that he needs additional time to obtain witnesses "who would be able to address certain factual representations" made by the Government's cooperating witnesses.¹ (Doc. No. 60 ¶ 5.) The Jencks Act provides for continuances under some circumstances. When witness statements are provided to Defendant, "the court in its discretion, upon application of said defendant, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by said defendant and his preparation for its use in the trial." § 3500(c).

As an initial matter, Defendant was indicted on September 15, 2005. Since that time, he has advised the Court on several occasions of his desire to have trial scheduled. In fact, he has filed several pro se motions seeking dismissal for lack of a speedy trial and has opposed his counsel's requests for continuances. (Doc. Nos. 12, 17, 19, 33.) In addition, the Government has advised the Court and Defendant's counsel that one of its key witnesses, Special Agent Gallant,

¹ We note that Defendant met with Special Agent Gallant of the FBI on several occasions and discussed his drug activities with Agent Gallant. (*See* May 12, 2006 Mem. & Order, Doc. No. 44 (denying Defendant's motion to suppress statements made during these meetings)). The Jencks materials which the Government provided to Defendant involve individuals that Defendant discussed with Gallant in these interviews.

will be out of the country on assignment in Iraq from June through October. (Doc. No. 61 at 3.) Granting a continuance would clearly prejudice the Government at this time. *See United States v. Rude*, 88 F.3d 1538, 1550 (9th Cir. 1996) (district court did not abuse its discretion in denying continuance where the continuance “would greatly have inconvenienced the government, the court, and out-of-state witnesses under subpoena”).

More importantly, twelve days will have passed from the date on which Defendant’s counsel received the Jencks materials to the scheduled date for trial. We find that twelve days is more than enough time for Defendant and his counsel to review the materials provided by the Government and to prepare for trial. *See, e.g., United States v. Velarde-Lopez*, 54 Fed. App’x 265, 268 (9th Cir. 2002) (no abuse of discretion in denying continuance where court ordered government to produce Jencks material no later than seventy-two hours before start of trial); *Rude*, 88 F.3d at 1550 (no abuse of discretion where Jencks materials provided ten days before first witness testified); *United States v. Stetson*, 819 F.2d 1139 (4th Cir. 1987) (a two-hour lunch break and an entire evening after completion of the first day of trial “was more than adequate” amount of time for defense counsel to review Jencks material); *see also United States v. Molt*, 772 F.2d 366, 370 (7th Cir. 1985) (“Because the government was not required to give [defendant] any information before trial began, the court did not need to give [defendant] a continuance before trial.”). We are satisfied that the ends of justice and the interests of the public are best served by going to trial as scheduled. *See* 18 U.S.C. § 3161(h)(8). Accordingly, Defendant’s Motion will be denied.

An appropriate Order follows.

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

UNITED STATES	:	
	:	CRIMINAL ACTION
	:	
v.	:	
	:	
	:	NO. 05-CR-532
ANTHONY SPRUILL	:	

ORDER

AND NOW, this 18th day of May 2006, upon consideration of Defendant's Motion For Continuance Of Trial Date (Doc. No. 60), and the Government's response thereto, it is ORDERED that the Motion is DENIED.

IT IS SO ORDERED.

BY THE COURT:

/s R. Barclay Surrick

R. Barclay Surrick, Judge