

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

UNITED STATES OF AMERICA)
)
 v.) 1:14-cr-00088-JAW
)
JEFFREY PAUL BARNARD)

**ORDER ON MOTION TO CONTINUE, FOR CONFERENCE, AND FOR
COPIES**

With trial scheduled to begin on June 7, 2016, the Court denies Jeffrey Paul Barnard’s motion to continue the trial because the case has lingered too long already and should be ready to be tried in June; denies his motion for an in-person, in-chambers, off-the-record conference with the Court and the Government because such a conference would be inappropriate; dismisses without prejudice his request for access to trial preparation materials because the Somerset County Jail has already provided those materials to him; and grants in part and denies in part his motion for copies of certain filed documents.

I. BACKGROUND

After a criminal complaint was issued against Jeffrey Paul Barnard on June 19, 2014, a federal grand jury indicted him on July 17, 2014 for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). *Compl.* (ECF No. 1); *Indictment* (ECF No. 12) (*Indictment*). The incidents that resulted in the indictment took place on May 31 and June 1, 2014. *Indictment.*

The Court has had a difficult time bringing this case to trial and with the exception of one case where the defendant is a Canadian citizen who has fought extradition to the United States, Mr. Barnard's case is the oldest criminal case on the court docket that has not been resolved by a guilty plea or trial. The Court has set the case for trial seven times, and each time Mr. Barnard moved to continue the scheduled trial.

The most prominent issue that has delayed disposition of the case is Mr. Barnard's inability or unwillingness to communicate effectively with his court-appointed counsel. The Court has appointed four lawyers for Mr. Barnard, each of whom is among the most experienced and professional criminal defense lawyers in the District of Maine. None proved satisfactory to him. On February 2, 2016, the Court granted Mr. Barnard's motion to continue the trial. *Trial List* (ECF No. 152). On February 29, 2016, the Court issued a Speedy Trial Order, indicating that the speedy trial time was excluded until June 7, 2016. *Speedy Trial Order* (ECF No. 166). From April 1 to April 8, 2016, the Court expedited rulings on Mr. Barnard's five pretrial motions in order to make certain that Mr. Barnard would have the rulings well before trial so that the trial could go forward as scheduled. *Orders on Mot. for Hr'g and for Oral Argument and on Mot. for Leave to File Suppl. Pre-Trial Mots.* (ECF No. 183); *Order on Def.'s Mot. for Disc.* (ECF No. 184); *Order on Mot. in Limine* (ECF No. 185); *Order on Mot. to Produce Personnel Files* (ECF No. 186); *Order on Mot. for Order to Preserve and Produce Rough Notes* (ECF No. 187); *Order Denying Mot. to Suppress and Req. for Franks Hr'g* (ECF No. 188).

On May 2, 2016, Attorney Bruce Merrill, Mr. Barnard's fourth defense counsel, moved to withdraw as his attorney. *Mot. to Withdraw* (ECF No. 196). The Court held an extensive hearing on the motion to withdraw on May 5, 2016. *Min. Entry* (ECF No. 199). Before the hearing, Mr. Barnard requested that the Court appoint a fifth defense lawyer, preferably a female, to represent him, and during the hearing, the Court rejected Mr. Barnard's request for a fifth lawyer, itemizing a number of reasons for its decision. The Court also strongly and repeatedly advised Mr. Barnard not to represent himself and to allow Attorney Merrill to represent him at the upcoming trial. The Court warned Mr. Barnard that the trial was going to go forward as scheduled on June 7, 2016. Mr. Barnard insisted on his right to represent himself with full knowledge that the trial would proceed as scheduled on June 7, 2016. The Court appointed Mr. Merrill as stand-by counsel but emphasized to Mr. Barnard that he, not Mr. Merrill, would be speaking in Court.

II. Mr. Barnard's Motions and the Government's Responses

A. The Motions

On May 12, 2016, Mr. Barnard filed a letter with the Court moving for a continuance of the June 7, 2016 trial for a period of ninety to one-hundred and twenty days and asking for an in-person, in-chambers, off-the-record conference with the Court. *Letter Mot. to Cont. and for Conf.* (ECF No. 204). In the letter, Mr. Barnard makes a number of complaints about his asserted inability to prepare for trial: (1) first, he says that he was in a cell without a table or chair and was forced to write his letter on his casefile; (2) that Somerset County Jail has refused to give him access to

the law library and other facilities, such as a typewriter, without a court order; and (3) that Attorney Merrill had failed to send him the discovery in this case because he was unclear what jail procedures to follow. *Id.* at 1-4. Mr. Barnard also seeks a conference with the Court and the Government attorneys to discuss ways to bring this case to a just conclusion. *Id.* at 3. Finally, he asks that the Clerk of Court (1) make two copies of his letter and send the copies to him; (2) one copy of all hearing transcripts in this case; (3) one copy of the docket entry indicated that he is now pro se; and (4) two copies of his April 28, 2016 letter to the Court. *Id.* at 4-5.

B. The Responses

On May 13, 2016, the Government filed a response and a supplemental response. *Gov't's Resp. to Def.'s Mot. to Cont. and Mot. for Conf.* (ECF No. 205) (*Gov't's Resp.*); *Gov't's Supp. Resp. to Def.'s Mot. to Cont. and Mot. for Conf.* (ECF No. 206) (*Gov't's Suppl.*). Noting that a delay in trial causes prejudice not only to the Defendant but also to the Government, the Government expressed concern that over time memories fade and witnesses become unavailable. *Gov't's Resp.* at 1-2. The Government notes that Mr. Barnard has been placed in maximum security due to his own behavior, but the Somerset County Jail has made exceptions to its policies to ensure Mr. Barnard appropriate access to discovery and other materials. *Id.* at 2. The Government attached a memorandum from the Somerset County Jail dated May 10, 2016, confirming that Mr. Barnard would have access within his cell from 0800-1600 hours daily from Monday through Friday to (1) an electric typewriter, (2) "Toughbook," a program that will allow him to access the discovery in this case, (3) a

medical adjustable bed table, (4) his discovery disks, and (5) a multi-outlet power cord. *Id.* Attach. 1 *Memo from CPT Sean P. Maguire Re: SCJ Support of Inmate J Barnard's Pro Se status*, at 1 (ECF No. 205). The memo stated that he would have access to a notary public on the same days that he had access to the Facility Law Library cart. *Id.* at 1-2. The memo said that he would have access to the typewriter and Facility Law Library Cart on Tuesday and Thursday mornings from 0800 to 1100 in the A Pod Interview room. *Id.* at 2. Attached to the Supplemental Response was a notation from the Somerset County Jail, indicating that Mr. Barnard was given access to the typewriter, Toughbook, cables, and nineteen intact discovery disks on May 11, 2016, but he refused access to all items on May 12 and May 13, 2016. *Suppl. Resp.* Attach. 1 *Inmate Barnard Legal Log* (ECF No. 206).

III. DISCUSSION

A. Access Issues

It is unclear whether Mr. Barnard had the Somerset County Jail memorandum about his access to materials brought to his cell and his access to the law library when he wrote his motion. Given that he now has all the discovery in the case, access to a typewriter and to the law library, the Court preliminarily concludes that the Somerset County Jail's efforts to provide him access to the necessary material to prepare for trial is reasonable. If Mr. Barnard contends that the Somerset County Jail is not providing the access that it says it is providing or if he contends that he should be granted greater access, he is free to bring another motion to the Court. The

Court warns Mr. Barnard, however, that if he brings another motion, it will expect him to explain why he is refusing to accept the materials he is now seeking.

B. Conference with the Court and the Government

In requesting a conference with the Court and the Government to discuss a possible resolution of the case, Mr. Barnard has asked the Court to do something the Court may not do. Under Federal Rule of Criminal Procedure 11(c)(1), the Court “must not participate in . . . discussions” concerning possible plea agreements. FED. R. CRIM. P. 11(c)(1). In its initial memorandum, the Government indicated that he “can contact the U.S. Attorney’s Office directly and an appropriate time/place for negotiations can be arranged.” *Gov’t’s Resp.* at 3. In any event, the Court informs Mr. Barnard that it does nothing off the record in criminal or civil proceedings, and under the law, the public has a general right of access to criminal proceedings. Therefore, the Court will not convene an off-the-record chambers conference in this case with Mr. Barnard and the Government.

C. Motion to Continue

The Court also rejects Mr. Barnard’s request for a ninety to one-hundred-and-twenty day continuance. In doing so, the Court has considered the following: (1) the length of time this case has been pending; (2) the fact that Mr. Barnard has been closely involved with his four attorneys in his own defense; (3) the fact that he now has over three weeks to prepare his defense; (4) the fact that he is uniquely advantaged because, unlike either of the Government attorneys, according to the indictment and the prior motions, Mr. Barnard was actually present during and

participated in the events that led to his indictment so Mr. Barnard has a personal familiarity with the facts underlying the case beyond what any attorney could have; (5) the underlying facts are not complex, having taking place over the span of two days; (6) the charge of being a felon in possession of a firearm is not complex, consisting of three elements; and (7) Mr. Barnard is not a stranger to the criminal justice system, having participated in one earlier criminal trial in this Court and a number of revocation hearings. Furthermore, the Court is not convinced that if it ordered additional time for Mr. Barnard to prepare for trial, Mr. Barnard would not find the extended time to be inadequate or otherwise claim that the trial should be again continued. For the sake of the Government and Mr. Barnard, the Court views this case as one that should be tried to completion beginning June 7, 2016.

D. Copies

The Court is reluctant to place the Clerk of Court in the role of Mr. Barnard's secretary. For this occasion only, the Court will order the Clerk of Court to copy and mail to Mr. Barnard, his April 28, 2016 and May 10, 2016 letters to the Court and a copy of the docket sheet to date. The Court will not order the Clerk to copy all of the transcripts. Mr. Barnard should have access to the Court's docket through its case management/electronic case filing system, and the Court knows of no reason Mr. Barnard cannot make his own copies of transcripts that are available on the docket.

IV. CONCLUSION

The Court DISMISSES without prejudice Jeffrey Barnard's motion for access to trial preparation materials, DENIES Jeffrey Barnard's motion to continue trial,

DENIES Jeffrey Barnard's request for an in-person, off-the-record chambers conference, and GRANTS in part and DENIES in part Jeffrey Barnard's request for copies.

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 13th day of May, 2016