

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

UNITED STATES,

Plaintiff,

v.

WESLEY SNIPES,

Defendant.

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) Case No. 5:06-cr-00022-WTH-GRJ
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DEFENDANT'S EMERGENCY MOTION TO CONTINUE TRIAL

Wesley Trent Snipes ("Snipes"), the defendant in the above-captioned matter, by and through counsel of record, Robert G. Bernhoft, hereby respectfully moves this Court to continue the currently scheduled trial date of October 22, 2007, to give new counsel adequate time to prepare for trial. Snipes' fundamental right to the effective assistance of counsel compels a continuance to ensure a fair trial.

Grounds for this motion are two-fold. First, Snipes' concerns over Attorney Meachum's health, which were previously conveyed to the Court, may preclude Attorney Meachum's meaningful involvement in the trial at this time. Second, and most importantly, Snipes' former lead trial counsel, William R. Martin, was responsible for discovery review, pre-trial investigation, and motion practice. It is abundantly apparent, however, from the defense's discovery motion practice and this Court's recent orders relating thereto, that there are fundamental deficiencies in Mr. Martin's pre-trial preparation in this matter, involving lack of diligence in reviewing hundreds of thousands of pages of discovery documents that form the core of this case. It is also undisputed that Attorney Martin failed to timely raise critical issues of

venue, and furthermore, failed to seek remedy for serious grand jury abuse of which he should have known with the exercise of reasonable diligence. The scope and prejudicial effect of this pervasive ineffective assistance of counsel only recently came to Snipes' attention, causing an irreparable breach in the attorney-client relationship with his former attorneys, and precipitating their discharge by Snipes, and the hiring of new trial counsel.

Of particular import here, these deficiencies have rendered Snipes wholly unprepared for trial. Consequently, Snipes' fundamental right to effective assistance of counsel is violated, and he is axiomatically prejudiced, without a continuance for new counsel to perform and discharge these tasks. *See Williams v. Taylor*, 529 U.S. 362, 371 (2000); *Wiggins v. Smith*, 539 U.S. 510 (2003). Fortunately, these problems were discovered prior to trial when they can still be corrected, with a sufficient continuance of the trial. A memorandum of law in further support of this motion will be filed forthwith.

As an informational advisement to the court, Attorneys Bernhoft and Barnes are co-lead trial counsel in two major federal criminal trial settings: *United States v. Struckman, et al.*, Case No. 2:04-cr-00229-RMT (W.D. Wash.) (the Honorable Robert M. Takasugi sitting by designation from Los Angeles, set for trial on October 29, 2007); and *United States v. Sikma*, Case No. 2:05-00040-RL-APR (N.D. Ind.) (the Honorable Rudy Lozano, set for trial May 5, 2008).

For the foregoing reasons, Snipes respectfully requests a trial continuance so that his new attorneys may obtain the voluminous discovery documents from former counsel; review, index, and incorporate those documents into necessary trial preparation; conduct the necessary pre-trial investigations; protect Mr. Snipes' right to raise all issues concerning venue, including those not previously raised and all issues improperly waived through ineffective assistance of counsel;

and properly prepare for trial. Snipes' new trial counsel stands immediately ready to discuss these matters, at an in-person hearing, at the court's calendar convenience.

The undersigned counsel has conferred telephonically with AUSA Scott Morris (counsel for the government), and Attorney David A. Wilson (counsel for co-defendant Douglas P. Rosile), and the government objects to this request for continuance, while Mr. Wilson has no objection. Co-defendant Eddie Ray Kahn's position on this motion is unknown.

Respectfully submitted on October 3, 2007.

THE BERNHOFT LAW FIRM, S.C.
Attorneys for the Defendant

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was sent to all parties by sending a copy to their attorneys of record, via the District Court's ECF system, to the following email addresses:

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The following parties were served via U.S. Mail first class postage prepaid:

American Bankers Insurance Co. of Florida
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1575 N.W. 14th Street
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Eddie Ray Kahn
#0101545
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551 W. Main Street
Tavares, Florida 322778

Dated: October 3, 2007

/s/ Robert G. Bernhoft
Robert G. Bernhoft