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JUDGE DENIES DEFENSE MOTION

Snipes' tax evasion trial stays in Ocala

Case is set to start in January

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OCALA - In a Christmas Eve ruling, a federal judge delivered mostly coal to Wesley Snipes' legal team, rejecting motions to delay the actor's trial on tax evasion charges or move it out of Marion County.

Senior U.S. District Judge William Terrell Hodges, in a 13-page order, rejected Snipes' lawyers previous claims that Ocala was too racist for the black actor to get a fair trial. Hodges also denied a motion to postpone the trial, scheduled to start Jan 14.

"We're pleased with the judge's decision and we're ready to go to trial," Steve Cole, a spokesman for the U.S. Attorney's Office in Tampa, said Wednesday. Snipes lawyers Robert Bernhoft and Robert Barnes could not be reached for comment Wednesday. Snipes and co-defendants Eddie Ray Kahn and Douglas Rosile are each charged with one count of conspiracy to defraud and one count of aiding and abetting the making of a false and fraudulent claim as part of an alleged tax fraud scheme. Snipes also is charged with six counts of willfully failing to timely file federal income tax returns.

Snipes' legal team sought to have the trial moved to the Southern District of New York, saying the potential jury pool was far more racially diverse than Ocala's and that Marion County was a "hotbed of Klan activity."

But Hodges ruled that the comparison between Manhattan and Ocala was faulty, saying the accurate question was whether the potential jury pool is any less diverse than the local population.

Hodges noted Snipes made "numerous accusations of prejudice and bigotry on the part of the residents of the Ocala [court] division."

"Comparison between different venues is not appropriate," he wrote. "Given the lack of any evidence of a constitutionally relevant racial disparity in the Ocala Division's

jury [pool], Defendant Snipes' motion is due to be denied."

Hodges did grant part of one motion that Snipes' lawyers had requested. He agreed that a government witness would not be allowed to testify as to whether documents created by the co-defendants were for the purpose of committing fraud. In a joint motion, Kahn, Rosile and Snipes' lawyers had requested a three-month delay in the trial to give them time to go over what they claimed were 1.6 million pages of newly discovered records. Hodges responded that the defendants had been aware of the documents since their arraignments in 2006, and federal prosecutors had given them ample time to review the evidence.

Hodges declined to rule on one motion by prosecutors that would prevent the defendants from using tax-protest evidence or arguments in their defense. Instead, Hodges said prosecutors could object to any such evidence or arguments if they arise during the trial.

Hodges also denied motions by Snipes' lawyers to allow lawyers to question prospective jurors during jury selection and to use a written jury questionnaire. Unlike in state courts, where lawyers question jury prospects, Hodges alone usually questions them in jury selection in his courtroom.

Kahn moved to have Hodges disqualified from the case and sought to take a deposition of the judge. Hodges rejected both motions, saying the motion to depose was "without merit" and didn't cite any relevant legal authority.

Hodges said Kahn's claim that the judge had a "vendetta" against him was simply false.

"Kahn bases his entire motion on judicial rulings and other actions I have taken in my role as United States District Judge," Hodges wrote. "[H]e has presented no evidence or made any allegations that any supposed bias stems from extrajudicial sources."

Hodges displayed a sense of humor in rejecting a claim by Kahn he is "impersonating a federal judicial officer."

"This claim comes as a surprise after thirty-six years of service," the judge wrote in a footnote, "especially since I have the benefit of a mandate of the Supreme Court of the United States (perhaps the only one of its kind)." Hodges went on to note that the Supreme Court had refused to hear a challenge to his investiture in 1971.

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