IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR. NO. 2:10cr186-MHT
	)	
RONALD E. GILLEY	)	

UNITED STATES' OPPOSITION TO DEFENDANT RONALD E. GILLEY'S APPEAL TO THE DISTRICT COURT OF HIS DETENTION ORDER

The United States of America hereby opposes Defendant Ronald E. Gilley's Motion for Revocation of Detention Order (Doc.639) ("Motion"). The Motion should be summarily denied.

The Magistrate Court appropriately found that the defendant violated the terms of his probation and that there were no lesser means short of incarceration that would protect the community against the defendant's criminal activity. *See* 18 U.S.C. §§ 3142(g), 3148(b), and 3148(b)(2)(B). Moreover, the facility in which the defendant is currently incarcerated, though not his preference, adequately accommodates the defendant's need to prepare for his June 6, 2011, trial by allowing the defendant to regularly communicate and confer with his attorneys via access to a telephone in his cell, as well as, the defendant can review and maintain materials in his private cell, 24 hours a day. *See*, Joint Report, Ct. Doc. 657[1].

[1]Since the Joint Report was filed on February 24th, the Montgomery City Jail moved the defendant to a four man unit where he has unlimited phone access in the unit, as well as privacy. The defendant is the only occupant in the unit. The defendant can keep his trial materials with him in his cell 24 hours a day and he can prepare for his trial when he chooses.

I. The Magistrate Court's Determination Was Soundly Based on Law and Fact

A. Applicable Law

Title 18 U.S.C. §3148(1)(A) states that, after a hearing, the judicial officer shall enter an order of revocation and detention if the judicial officer finds that there is probable cause to believe that the defendant has committed a Federal, State, or local crime while on release; or (B) clear and convincing evidence that the person has violated any other condition of release; and (2)(A) that there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or (B) the person is unlikely to abide by any condition or combination of conditions of release. Moreover, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of another person or the community. 18 U.S.C. §3148(b)(2)(B). The law allows the judicial officer substantial latitude in determining whether pretrial detention is appropriate. *See,* 3142(e) and *United States v. King*, 849 F.2d 485, 487 (11th Cir. 1988).

The danger to the community standard articulated in the Bail Reform Act ("Act") is not limited to the danger of physical harm. The Act clearly indicates that "safety," as used in the Act, contemplates criminal activity beyond physical violence, but encompasses a broader meaning to include that the defendant might engage in criminal activity to the detriment of the community. *Id*., *at* 487 n.2 (*quoting* Report of the Senate Committee on the Judiciary) (11th Cir. 1988). *See United States v. Provenzano and Andretta,* 605 F.2d 85 (3rd Cir. 1979)(the court held that the concept of 'danger' as used in § 3148 extended to non-physical harms such as corrupting a union); *United States v. Fernandez-Toledo,* 737 F.2d 912, 919 (11th Cir. 1984)(the district court may require detention when the defendant threatens the integrity of the judicial process); *United States v. Graewe*, 689 F.2d

54, 58 (6th Cir. 1982)(pre-trial detention justified to protect the court's processes); and *United States v. Wind*, 527 F.2d 672, 675 (6th Cir. 1975)(pre-trial detention justified to protect the integrity of the trial process). The court can consider defendant's attempt to obstruct justice prior to trial a danger to the community and that factor weighs heavily in favor of pre-trial detention. *See United States v. Salerno*, 481 739, 747-748 (1987)(absent pre-trial detention there was serious risk that the defendant would obstruct or attempt to obstruct justice).

B. Procedural Background

On October 1, 2010, a grand jury sitting for the Middle District of Alabama returned a 39 count indictment, under seal, against the defendant and 10 co-defendants. The defendant is charged in several counts, to wit: one count of conspiracy; six counts of federal programs bribery; 11 counts of honest services wire fraud; and four counts of money laundering. (Doc. 3, Indictment). All of the charges in the indictment involve the defendants' efforts to corruptly pass pro-gambling/electronic bingo legislation through the Alabama Legislature.

The indictment was unsealed on October 4, 2010, and the defendant, as well as his co-defendants, was arrested and appeared for his initial appearance before United States Magistrate Judge Terry F. Moorer. The defendant was represented by counsel and provided with a copy of the indictment. After advising the defendant of the charges against him, the court advised the defendant of its intention to release the defendant on an unsecured bond of $500,000 with certain conditions. (Doc. 35). The court put the defendant and his attorney on notice that **a violation of any of the conditions of the bond would result in revocation of the bond. (***Emphasis added).* The court entered an order releasing the defendant on pre-trial release (bond) and the defendant was allowed to leave the courthouse.

On January 6, 2011, the United States filed a Motion to Revoke the Order of Pre-Trial Release (Doc. 322) contending that the defendant violated two of the conditions of his bond. First, the defendant committed a federal crime while on bond. Specifically, the defendant knowingly offered money or a thing of value in order to corruptly persuade another person, then co-defendant Jarrod Massey ("Massey"), with the intent to influence, delay, or prevent the testimony of Massey in an official proceeding and to cause or induce Massey to withhold testimony from an official proceeding in violation of Title 18, United States Code, Section 1512(b)(1) and (2)(A).

Second, the government's motion asserted that the defendant violated the court's additional condition of release (8)(j), in that the defendant failed to avoid all contact, directly or indirectly, with any person who is or may become a potential witness in the investigation or prosecution. Specifically, on more than one occasion, one of which occurred during the very time in which the District Court conducted a hearing related to this case, the defendant offered money or a thing of value to co-defendant Massey and he did so after having promised the court to obey all conditions of release and agreeing that he was aware of the penalties and sanctions which might be imposed should he fail to abide by those conditions.

On February 7, 2011, the revocation hearing was conducted before Judge Moorer. In sum, the government provided evidence that the defendant violated his terms and conditions of release when he offered co-defendant Massey money and things of value in exchange for Massey providing false information to the government regarding the conspiracy in which the defendants were charged; and that there were no conditions of release that would reasonably assure that the defendant would not continue to engage in obstructive behavior short of incarceration. In light of its findings, the court granted the United States' motion and remanded the defendant to the custody of the United

States Marshal for detention pending further proceedings. *See* February 7, 2011 Tr. at 267. The court entered its Order revoking the defendant's bond on February 14, 2011. (Doc.597).

On February 18, 2011, the defendant filed a motion seeking the revocation of Judge Moorer's detention Order. (Doc. 639). The District Court then issued an Order directing the United States to show cause by February 27, 2011, why the defendant's motion should not be granted. (Doc. 644).

C. Government's Evidence at the February 7th Hearing

Massey is a former lobbyist who represented the defendant and the defendant's company, Ronnie Gilley Properties, for approximately three and-a-half years. (Tr. at 5-6). Part of Massey's services included helping to pass legislation which was favorable to the defendant and his companies. (Tr. at 6-7). During the 2010 legislative session, the focus was on the passage of pro-electronic bingo legislation which was necessary for the survival of the defendant's entertainment development project called Country Crossing. (Tr. at 7-8). The defendant instructed Massey to focus his attention on the passage of the pro-gambling legislation. (Tr. at 92).

During their business relationship, Massey and the defendant had regular contact with each other, at a minimum three to five times a week, and on other occasions it was fifteen to twenty times a week. (Tr. at 7). Because of the focus on the electronic bingo issue, during the 2010 legislative session, Massey and the defendant communicated with one another substantially more than previously. Id.

In February 2010, Massey met with Alabama State Senator Scott Beason on multiple occasions attempting to secure his vote to pass the pro-gambling legislation. (Tr. at 8) During one of these meetings, Massey was accompanied by the defendant and co-defendant Milton McGregor.

It was at this meeting, "when out of left field came the [Public Relations Firm] offer [to Senator Beason in an effort to secure his vote in favor of the pending pro-electronic bingo legislation] which Senator Beason immediately expressed or showed interest in." (Tr. at 8-10, 36-37, 92). The defendant presented the offer to Senator Beason. (Tr. at 92). Unbeknownst to the defendant, Massey and McGregor, Senator Beason was cooperating with law enforcement and recorded the meeting. (Tr. at 91). The following day, Massey and Senator Beason had a follow-up meeting, during which they discussed the P.R. firm offer in more detail, i.e., it would generate a million dollars a year for Senator Beason. (Tr. at 36-37). Massey became concerned that Senator Beason may have recorded their conversation. (Tr. at 9-10). Massey relayed his concerns to the defendant and obtained assurance from the defendant that if he [Massey] was "found guilty" as a result of their illegal acts to corrupt the Alabama legislature, the defendant would take care of Massey's family. The defendant agreed and asked Massey for the same assurance. *Id.* In fact, Massey and the defendant went further and made up a false story they could tell law enforcement if later questioned about the corrupt offer. (Tr. at 14-15, 105-106). Specifically, Massey was going to tell law enforcement that it was Senator Beason who tried to extort a bribe from Massey and when Massey told the defendant about the offer from Senator Beason, the defendant told Massey to go back to Senator Beason and tell Senator Beason the defendant said "no." *Id.*

During the early morning of March 31, 2010, Massey was approached, at his home, by special agents of the Federal Bureau of Investigation. Massey was told that he was a target of a federal investigation and offered an opportunity to assist agents in the investigation of corruption surrounding pro-gambling legislation which had just been passed the day before by the Alabama Senate. Massey declined to answer questions, invoking his right to counsel. (Tr. at 10, 56).

Although not mentioned by the agents, Massey believed the agents' visit had something to do with meetings he had with Senator Beason in February 2010, which were attended by the defendant and co-defendant McGregor. (Tr. at 10). Massey immediately contacted the defendant and told the defendant about his visit from the FBI. (Tr. at 10). Massey and the defendant made arrangements to meet at the defendant's office in Enterprise, Alabama on April 2, 2010. (Tr. at 11). Massey traveled to Enterprise for a face-to-face meeting because he and the defendant were concerned that law enforcement might be monitoring their telephone conversations. (Tr. at 12). During this meeting, the defendant offered Massey and Jennifer Pouncy[2], then a lobbyist and employee of Massey's, equity interest in Country Crossing and a potential casino development in Mississippi ". . . as an incentive to hold the line with the story that Mr. Gilley and I had discussed prior as to our joint story as it would relate [to] Senator Scott Beason." (Tr. at 14-15). Massey relayed the offer to Pouncy. (Tr. at 16). Massey left the defendant's office with a clear understanding that if approached by law enforcement about corrupt offers that had been made to Senator Beason or any other legislators, Massey and Pouncy were supposed to give false information and they would be rewarded with an equity interest in Country Crossing and the defendant's potential Mississippi casino venture. In fact, the defendant offered to give Massey a written document confirming his promise of the equity interest, but it did not happen. (Tr. at 15-16).

Concerned that law enforcement may be monitoring their telephone calls, Massey and the defendant decreased use of their regular cell phones and started using prepaid phones. The defendant was already leery of talking on his regular cell phone and used prepaid phones on a frequent basis.

---

[2]On September 28, 2010, Jennifer Pouncy pled guilty to 18 U.S.C. §371 for her part in the criminal conspiracy to buy legislator votes to pass the pro-gambling legislation.

(Tr. at 11-12, 18-19)(Govt. Ex. Nos. 1, 2, 4, 5, 7 and 9). For example, Pouncy traveled to Enterprise to pick up several prepaid phones from the defendant's office and delivered them to Massey. (Tr. at 18-19).

Massey continued to work for and communicate with the defendant; however, by the Summer of 2010, matters surrounding the investigation consumed 95 percent of their conversations. (Tr. at 21, 56-57). The defendant also owed Massey a considerable amount of legitimate money on outstanding invoices and Massey was attempting to collect what was owed to him. (Tr. at 24-25, 56-57).

Communications between Massey and the defendant decreased considerably after the indictment was returned and the defendants were released on bond during the first week of October 2010. It was Massey's understanding that he should not have any more communications with the defendant because to do so would violate the conditions of his bond. (Tr. at 21-22). Although the defendant continued to try and contact Massey via telephone, Massey took steps to ensure that he stopped direct communications with the defendant. (Tr. at 21-23). To that end, Massey advised his office receptionist that if the defendant called, she should take a message. (Tr. at 22)(Govt. Ex. No. 9)[3]. Massey even complained to his attorneys that the defendant was trying to communicate with him via telephone and they intervened, contacting the defendant's attorney (Mr. Doug Jones), who assured them that the communications would stop. (Tr. at 26-27). The defendant did not heed his counsel's advice and instead, the defendant approached Massey during the arraignment which was

[3]Government Exhibit No. 9 is an analysis by FBI Special Agent Erik Doell of telephone toll records of Massey's cell phone. These records were produced to the government by defense counsel. The analysis shows that on October 6, 2010, just two days after having been released on bond, the defendant called Massey's cell and office phones a total of 18 times between 12:42 p.m. and 4:48 p.m. Massey testified that he did not answer any of the calls. (Tr. at 21-22).

held on October 15, 2010. (Tr. at 23-24). The defendant got in Massey's face and said: "[T]he eagle is about to land, about to knock something down, hang tight." (Tr. at 23). Massey understood the defendant to mean that his equity interest would still be viable if he stuck with their initial plan to lie about the million dollar bribe offer to Senator Beason. (Tr. at 23-24). Massey reported this incident to his attorney. (Tr. at 26). This occurred after Massey's attorneys had been assured by the defendant's attorney that the communications from the defendant would stop. (Tr. at 27).

On December 14, 2010, all of the defendants were ordered to appear in court for a pre-trial conference. *Id*. Again, in direct contradiction of his attorney's instructions, the defendant approached Massey in the courtroom, the courthouse restroom, and then via telephone after the court proceeding was over. (Tr. at 27-29)(Def. Ex. No. 2UU and 2VV). In fact, the contact was witnessed by one of Massey's attorneys, who walked up and interrupted the conversation between Massey and the defendant. (Tr. at 28). However, the defendant had already made comments which Massey believed were an effort to corruptly offer and persuade Massey to testify falsely by talking about how good things were looking in Mississippi. (Tr. at 27-28). The defendant mentioned the figure of a million dollars during his conversation with Massey. (Tr. at 28).

After the pre-trial conference, Massey returned to his office. (Tr. at 29). It was approximately 2:34 in the afternoon when Massey received a telephone call on his cell phone from an unknown telephone number. (Govt. Ex. No. 8 and Govt. Ex. No. 9). Turns out, it was the defendant, who after a bit of small talk, immediately began talking about how excited he was about Mississippi, and "promising things as it related to Country Crossing and Mississippi." (Tr. at 29-30). Again, Massey understood the defendant to be "verifying or reconfirming the previous commitment he made to [Massey] on the equity piece, and wanting to give [Massey] the optimistic viewpoint that Country

Crossing would be reopening, as well as the potential part of the development in Mississippi in the near future." (Tr. at 30, 32). That same day, Massey immediately contacted his attorneys and also memorialized a summary of both conversations, the one that occurred in the courthouse and the one that took place on the telephone. (Tr. at 30-31)(Def. Ex. No 22UU and 2VV). A review of the emails shows that Massey sent the first email after the courthouse encounter with the defendant but before Massey received the telephone call from the defendant. (Def. Ex. No 2UU). The second email is very damning with respect to the defendant's intentions toward Massey. Specifically, it says in part: ". . . [H]e said everything we talked about previously (taking care of me) was going to happen. He said the Mississippi deal was very close and that he would tell me all the details in person next time we talked (in person). He made a statement on the phone that if anyone was listening that we were only talking business and that I was his political consultant. . . .". *Id.*

On January 3, 2011, Massey's attorneys notified the prosecutors about the defendant's conduct toward Massey. Massey was interviewed via a telephone call and again in person the following day. Special Agent Erik Doell initiated an investigation into the origins of the telephone number identified as used by the defendant to contact Massey on December 14, 2010. The investigation showed that the defendant used a prepaid phone. Further investigation revealed that the defendant did not purchase the telephones himself. He used conduits to purchase and activate a prepaid cell phone from a Wal-Mart store located in Enterprise, Alabama. The conduits, Kelvin Seldon and Courtney Samson, are employed by the defendant. Seldon and Samson work in the IT section of Ronnie Gilley Properties. Seldon was subpoenaed and testified as a government witness. (Tr. at 123). According to Seldon, even though the defendant has a regular cell phone, the defendant asked Seldon to purchase a prepaid cell phone and a card which would give the user unlimited

minutes for one month. Seldon does not know why the defendant needed the prepaid cell phone or why the defendant couldn't go to Wal-Mart and make the purchase for himself. Samson activated the prepaid cell phone in his own name. He did not use the defendant's name as the subscriber for the prepaid cell phone. Absent the information provided by Massey and the subsequent investigation, there was no way to connect the defendant to the phone he used to contact Massey on December 14, 2010. The defendant's use of this prepaid cell phone used to contact Massey on December 14, 2010, is consistent with the defendant's use of other prepaid cell phones during the course of the investigation. (Govt. Ex. No. 7)(Govt. Ex. No. 8). Several examples of how the defendant used prepaid cell phones in a nefarious manner were presented during the evidentiary hearing.

Government Exhibit number 1 is a transcript of a telephone conversation between the defendant and Massey. The day after the FBI paid a visit to Massey's house, the defendant used a prepaid cell phone to talk to Massey and arrange a face-to-face meeting between the two. It is clear that the defendant was offering more than comfort to Massey when he tells Massey: "[A]lright . . . what happened to you yesterday? . . . Is gonna be the best damn thing that's ever happened to you in your life. . . . I'll explain it to you when I see you." This promise is repeated at the end of the conversation after Massey expresses his concern about how recent events will cost him clients.

Government Exhibit numbers 2 and 3 are the transcripts of telephone calls between the defendant and co-defendant Milton McGregor, the initial portion of which reveals that the defendant's use of prepaid cell phones is common knowledge and the defendant teases McGregor about how having a phone for four months defeats the purpose of being covert. (Govt. Ex. No. 2). Thereafter, the two discuss whether to make another run at Senator Beason even though they believe

he breached the previous deal they thought they had with him. However, in the followup call (exhibit 3), McGregor decides they should not make another run at Senator Beason because they may not need Senator Beason after all.

Government Exhibit number 4 is a transcript of the defendant retrieving a voice mail message left by Senator James Preuitt, a co-defendant, on the defendant's regular cell phone. The defendant is obviously in a public establishment and announces to those in earshot that he is about to return Senator Preuitt's call and turn Senator Preuitt's previous "no" vote on electronic bingo to a "yes" vote. It is important to note that the defendant does not use his regular cell phone to return Senator Preuitt's call, rather the defendant uses a prepaid cell phone to call Senator Preuitt at home. FBI Special Agent Keith Baker testified that he confirmed through phone tolls that the defendant used a prepaid cell phone to call Senator Preuitt at home that evening. Further, during a proffer meeting with Senator Preuitt, Senator Preuitt told agents the defendant "crossed the line" in trying to get Senator Preuitt to vote in favor of the then pending pro-electronic bingo legislation. (Tr. at 167-170). In other words, the defendant used the prepaid cell phone to offer Senator Preuitt a bribe. *Id*.

Government Exhibits 5 and 6 are transcripts of calls between Massey and the defendant. During the first of the two (exhibit 5), Massey tells the defendant that Senator Larry Means, who is also a co-defendant, is shaking them down. Specifically, Senator Means is "asking for $100,000 if he votes for this bill." The defendant immediately tells Massey, "let me call you uh, from another phone please." The defendant then calls Massey back on a prepaid cell phone and says: "[H]ey, hey, uh, he can 100 percent count on our support." Later in the conversation, the defendant tells Massey, "whatever we've go to do, do it." Massey responds, " okay, gotcha." Again it is obvious that the co-defendants know that the defendant likes to use prepaid cell phones when engaging in criminal

activity because when Massey answers the phone (exhibit 6), Massey immediately apologizes, "hey I forgot" for calling the defendant on the defendant's regular cell phone as opposed to one of the defendant's prepaid cell phones.

During the revocation hearing, the United States presented testimony from Douglas "Bo" Pittman, who is a childhood friend of the defendant. (Tr. at 137). Pittman was contacted by the defendant and asked to facilitate a meeting between the defendant and Sonny Reagan, former legal advisor for Governor Bob Riley. *Id*. Pittman testified that the three men knew each other. (Tr. at 138). This request came from the defendant sometime around midnight via a cell phone call, after the government filed its motion to revoke the defendant's bond, but before the evidentiary hearing. *Id*. The defendant had been placed on home confinement, so he directed Pittman to tell Reagan the meeting would have to take place at the defendant's home in Enterprise, Alabama. (Tr. at 139, 141). Other than "to extend the olive branch" the defendant did not tell Pittman what the meeting was about or why he could not call Reagan directly. During the argument portion of the hearing, the government told the Court that it believed Reagan was a potential witness and that discovery material included information about Reagan. (Tr. at 243).

United States Probation Officer David Conoly also testified during the evidentiary hearing. Conoly supervised the defendant since his placement on home confinement on January 12, 2011. (Tr. at 208). Conoly traveled to Enterprise about once every two weeks to conduct a house visit. (Tr. at 215). Although Conoly had not had any problems out of the defendant, there are some activities which G.P.S. electronic monitoring simply cannot monitor or control. For example, it cannot notify Conoly that the defendant is using agents or conduits to do things on the defendant's behalf, or notify Conoly who the defendant is talking to on a hard line phone in the defendant's

house, or notify Conoly who is coming and going from the defendant's home. (Tr. at 215-216).

The government as well as the defense may proceed by proffering evidence. *United States v. Gaviria*, 828 F.2d 667, 669 (11th Cir. 1987). However, in the present case, the government went far beyond merely proffering evidence. The government presented a strong case with (1) co-conspirator testimony; (2) recorded conversations between the defendant and Massey where the defendant would only speak about their illegal conduct on a prepaid telephone; (3) evidence that the defendant tried to conceal his identity and his communications from law enforcement when he contacted Massey to offer him money in exchange for Massey's lying to law enforcement; and (4) evidence that the defendant tried to conceal his communications with other potential witnesses by using a conduit to set up a face-to-face meeting regarding matters that may be issues at this trial. Given the nature and circumstances of the charges, together with the weight of the evidence, the government sufficiently illustrated "a consistent pattern of activity by the defendant to obstruct justice." *See United States v. Burstyn,* 2005 WL 2297605 (S.D.Fla.)(strong evidence that the defendant counseled members of his criminal enterprise to testify falsely before the grand jury, absent pre-trial detention defendant would take further steps to obstruct justice). These factors become more of a danger given that it is now in the defendant's self-interest to engage in the obstruction of justice with other defendants and potential witnesses in an attempt to discredit Massey at trial. *Id.*

II. DEFENDANT'S INCARCERATION DOES NOT HINDER HIS ABILITY TO PREPARE FOR TRIAL

As of February 25, 2011, the defendant was moved from an eight man unit with unlimited access to a telephone and television in the unit, to a four man unit with unlimited access to a

telephone and television in the unit. As of February 24, 2011, the defendant had one man occupying the eight man unit with him. The defendant now has the privacy of the entire four man unit. The defendant can communicate via telephone with his attorneys and his family as often as he chooses. The defendant is now able to keep and maintain any documents or audio recordings in his private cell to prepare for his trial as he chooses. Accordingly, all of the other conditions provided in the Joint Report still apply. (Doc. 657). Defendants commonly prepare for their defense while incarcerated, with far less accessibility than what the defendant has been afforded. Given the accommodations made on behalf of the defendant, he too has no prohibitions against his being able to adequately assist his attorneys in his own defense.

III. CONCLUSION

The Court has the inherent power to confine the defendant to protect future witnesses in pre-trial proceedings, as well as during trial. *Wind*, 527 F.2d at 675. Contrary to the defendant's position that Judge Moorer's decision appeared to find defendant guilty of the crimes alleged in the indictment, Judge Moorer's decision clearly states that the evidence supported that the defendant's conduct while on bond could not adequately be regulated. The defendant did not rely on his lawyer's advice. The defendant was placed on electronic monitoring and on home confinement (after the government filed its Revocation Motion on January 6, 2011) and he still violated the terms of his release. The court determined that it could not monitor the defendant's home telephone or the visitors in and out of the defendant's residence in Enterprise, Alabama. (Hearing Transcript 263). There were no conditions left available to assure the court that the defendant would cease his unlawful conduct, except incarceration. *Id. See, United States v. Salerno*, 481 739, 747-748 (1987)(pre-trial detention based on danger to the community was constitutional as a permissible

regulatory measure). The degree of defendant's misconduct, in particular his apparent systematic obstruction of justice within the Federal courtroom in which he will be tried in this case, raises serious concerns about the additional steps the defendant might take to avoid conviction. *Id.*

All bail decisions rest on predictions of a defendant's future behavior. *United States v. Gotti,* 797 F.2d 773, 779 (2nd Cir. 1986). In the present case, Judge Moorer made a prediction, based on substantial evidence, that the court had to protect the community from further efforts by the defendant "to corruptly influence testimony in this case and unlawfully impede these proceedings." (Revocation Hearing Transcript Page 266). The defendant's pre-trial detention was the only means to achieve that end. The defendant's motion should be summarily denied.

Respectfully submitted this the 27th day of February, 2011.

LANNY A. BREUER
Assistant Attorney General
Criminal Division
Attorney for the United States
Acting Under Authority of 28 U.S.C. § 515

JACK SMITH, Chief
Public Integrity Section

/s/Louis V. Franklin, Sr.
LOUIS V. FRANKLIN, SR.
Assistant United States Attorney
131 Clayton Street
Montgomery, AL 36104
Phone: (334) 223-7280
Fax: (334) 223-7135
E-mail: louis.franklin@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Respectfully submitted,

/s/ Louis V. Franklin, Sr.
LOUIS V. FRANKLIN, SR.
Assistant United States Attorney
131 Clayton Street
Montgomery, AL 36104
Phone: (334) 223-7280
Fax: (334) 223-7135
E-mail: louis.franklin@usdoj.gov