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' SUR-REPLY TO DEFENDANT RONALD E. GILLEY'S APPEAL TO THE DISTRICT COURT OF HIS DETENTION ORDER

After a full hearing where the government produced clear and convincing evidence that the defendant, Ronald E. Gilley, violated the terms of his release by obstructing justice, the defendant maintains that he should not be held responsible for his actions. The government could not disagree more. The government's evidence at the hearing established that part of the defendant's attempt to obstruct justice took place in the Federal Courthouse in which he and his co-defendants will be tried on June 6, 2011. (Tr. at 32). The defendant's lack of respect for the Court's authority is a clear indicator that there are no limits to which the defendant would not go to achieve an acquittal and impede the fair administration of these proceedings. Judge Moorer was correct in his decision to detain the defendant prior to trial, and the defendant should remain detained in the Montgomery City Jail. Defendant's motions should be dismissed without rehearing.

I. Defendant's Pre-Trial Detention Does Not Violate his Constitutional Rights

Under the Bail Reform Act ("Act"), Congress "perceived pretrial detention as a potential solution to a pressing societal problem . . . There is no doubt that preventing danger to the community is a legitimate regulatory goal." *United States v. Salerno*, 481 U.S. 739, 747

(1987) *citing* the Report of the Senate Committee on Judiciary. "[P]retrial detention under the [Act] is regulatory, not penal." *Salerno* at 746.

Pre-trial detention is consistent with the Due Process Clause. The "Act provides procedures by which the judicial officer evaluates the likelihood of future dangerousness." *Id* at 751. "Detainees have a right to counsel at the detention hearing. 18 U.S.C. §3142(f). They may testify in their own behalf, present information by proffer or otherwise, and cross-examine witnesses who appear at the hearing. *Ibid.* The judicial officer charged with the responsibility of determining the appropriateness of detention is guided by statutorily enumerated factors, which include the nature and the circumstances of the charges, the weight of the evidence, . . . and the danger to the community. §3142(g). The Government must prove its case by clear and convincing evidence. §3142(f). Finally, the judicial officer must include written findings of fact and a written statement of reasons for a decision to detain. §3142(I)." *Id* at 751-752. All of these procedures were instituted in the present case. Moreover, the goal behind revoking the defendant's bond was not punishment, but to prevent any further obstruction of this case.

Accordingly, the defendant's Eighth Amendment rights have not been violated. "The Eighth Amendment addresses pretrial release by providing merely that '[excessive bail shall not be required.' This Clause, of course, says nothing about whether bail shall be available at all." *Id* at 752-753. Therefore, the right to bail is not absolute.

II. Defendant Clearly Violated the Terms of His Release

The defendant's Reply Brief attempts to make much of minutia, and ignores the mountain of evidence against him. At the hearing, the government called five witness: (1) former co-defendant, Jarrod Massey; (2) FBI Special Erik Doell; (3) defendant's employee, Kelvin Seldon;

(4) childhood friend of the defendant, Douglas "Bo" Pittman; and (5) FBI Special Agent Keith Baker. The defendant cross-examined each witness.

The defense called two witnesses: (1) United States Probation Officer David Conoly; and (2) Dr. Michael McQueen, the defendant's wife's physician.

In sum, Massey testified that on April 2, 2010, during the conspiracy, as alleged in the Indictment, the defendant asked Massey to his office in Enterprise, Alabama, where he promised Massey $1 million dollars to lie to law enforcement and say that they never bribed Senator Beason, but that Senator Beason was attempting to extort them. (Tr. at 11, 14-15, 105-106). On March 31, 2010, the FBI approached Massey regarding his role in the criminal conspiracy. (Tr. at 10). At the hearing, the government played a tape recorded telephone conversation from April 1, 2010, the day after the FBI visit where the defendant assures Massey that "yesterday will be the best damn day of your life" and that the defendant would discuss it more with Massey in person. (Govt. Ex. 1). On April 2nd, at the meeting, the defendant offered Massey and Jennifer Pouncy, then a lobbyist and employee of Massey's, equity interest in an entertainment/casino development called Country Crossing and a potential casino development in Mississippi as incentive for Massey and Pouncy not disclosing their criminal conspiracy to law enforcement. (Tr. at 14-16). The defendant offered to put the deal in writing, but the defendant's attorney, Doug Jones, thought it was not a good idea. (Tr. at 35-36).

On October 4, 2010, the defendants were arrested and bond was set by Judge Moorer. (Doc. 35). Massey testified that he believed that one of the terms of his release on bond was not to have direct communication with his co-defendants. (Tr. 21-23). Massey testified that after the criminal investigation became public, Massey lost most of his business and he attempted to

collect legitimate monies owed him from the defendant. (Tr. at 24-25). The defense extensively cross-examined Massey regarding emails from June 9, 2010 thru November 19, 2010, that Massey sent to the defendant's company to receive approximately $90,000 of money the defendant owed him. (Tr. 24, 95). (Defendant's Ex. 1 and 2). Most of the emails "cc'd" the defendant and there was only one email back to Massey from the defendant. On October 16, 2010, Gilley promised to pay "$50,000 next week." (Defendant's Ex. 2U). Other than the October 19, 2010 email from Massey to the defendant, there are no other communications from the defendant until the December 14, 2010 hearing before United States District Court Judge Myron H. Thompson. (Tr. at 34). (Defendant Ex. 2).

At the December 14th hearing, the defendant approached Massey and extended the same deal regarding the $1 million and the equity interest in the Mississippi deal if Massey continued with their false story to law enforcement. (Tr. at 27-31). (Defendant's Ex. 2UU and 2VV). Massey testified that he had been around the defendant enough to know what the defendant was communicating to him. (Tr. at 35-36, 40).

The government substantiated Massey's testimony with telephone records to prove that the defendant repeatedly called Massey after his initial appearance and Massey ignored the calls. (Tr. at 21-23). (Govt. Ex. 9). Moreover, S.A. Doell testified that, based on the telephone toll analysis he had performed, Massey did not answer 18 calls that were placed to Massey's cell and office lines by the defendant on October 6, 2010. (Tr. at 119). S.A. Doell also testified that without the subpoenaed telephone records, the caller's phone number would be unknown. (Govt. Ex. 8). As Massey testified, the calls from the defendant stopped after Massey had his attorneys contact the defendant's attorney to have the defendant stop calling Massey. (Govt. Ex. 9). (Tr. at

27). Massey's telephone records proved that on December 14th after the hearing, the defendant ignored his lawyer's warnings and called Massey that afternoon. (Tr. at 22-23). Massey answered a call from a phone number he did not recognize, only to find it was the defendant on a "throw down" phone. (Tr. at 29). (Govt. Ex. 8 and 9). S.A. Doell testified that pre-paid telephones are often used by individuals to evade law enforcement. (Tr. at 183, 198-199). At the hearing, the government played audio tape recordings of conversations between the defendant, Massey, and co-defendant Milton McGregor where during the conspiracy, the defendant regularly used "throw down" phones to evade law enforcement and to speak about their illegal plans to bribe members of the Alabama legislature. (Govt. Ex.1-9). (Tr. at 153).

Through a subpoena, the government obtained the location of the sale of the "throw down" telephone. The individual who purchased the telephone was different than the individual who activated the telephone ("Courtney"). However, both individuals worked for the defendant. (Tr. at 130). Kelvin Seldon, who works in the IT department for the defendant, testified that the defendant requested him to purchase the "throw down" phone used to call Massey and that he had purchased other pre-paid telephones for the defendant during the time and after the criminal conspiracy, but Seldon was unsure why the defendant needed the telephones. (Tr. at 132). Seldon further testified that he did not activate the telephone because he went to get lunch from McDonald's so he had his supervisor, Courtney Samson, activate the telephone. (Tr. at 130).

Government witness Douglas "Bo" Pittman is a childhood friend of the defendant's. After the government filed its motion to revoke the defendant's bond, the defendant called Pittman after midnight one night to ask Pittman to facilitate a meeting between the defendant and Sonny Reagan, former legal advisor for Governor Bob Riley. (Tr. at 137). Although Pittman

testified on direct that the defendant, Pittman, and Reagan all grew up in the same hometown and knew each other (Tr. at 138), he later testified on cross-examination that he did not know if the defendant knew Reagan (Tr. at 148). Pittman testified that he was unsure why the defendant did not contact Reagan himself to set up a meeting. (Tr. at 147). Pittman testified that he contacted Reagan and Reagan agreed to meet the defendant as long as the defendant's lawyers were present. (Tr. at 145). The meeting never occurred. The government submits that Reagan's name and other information concerning Reagan was given to the defendant during the discovery process in October 2010. Reagan is a potential government witness at trial.

The government also elicited testimony from defense witness Senior Probation Officer David Conoly. P.O. Conoly is the defendant's assigned probation officer. He testified that with the defendant on house-arrest in Enterprise, Conoly could only visit the defendant every 12 days or once every two weeks. (Tr. at 215). P.O. Conoly also testified that the GPS tracking system within the electronic monitoring bracelet that the defendant wore around his ankle could not monitor who visited the defendant's home or who the defendant contacted on his home telephone. (Tr. at 215).

The defendant's misconduct made Massey, Seldon, Pittman, and Reagan witnesses against him. If Massey and Reagan had not come forward to alert law enforcement of the illegal advances of the defendant, the government would have never known. More importantly, there are no conditions of release that would have detected the defendant's actions, because every condition that was in place, the defendant found a way around it.

The government's evidence established a pattern of activity by the defendant to conceal his communications with potential witnesses in violation of his bond release. The evidence

established clear and convincing evidence that the defendant attempted to obstruct the administration of these proceedings by having Massey lie to law enforcement. Moreover, the government would argue that had a face-to-face meeting with Reagan occurred, possibly there would have been another attempt to obstruct justice. The onus is on the defendant not to commit crime. He cannot shift that burden to the witnesses.

The Court has the inherent power to deny bail pre-trial and during trial, especially when it comes to protecting witness' testimony. *United States v. Graewe*, 689 F.2d 54, 57 (6th Cir. 1982). In doing so, the Court protects "the integrity of its own processes and the fair administration of justice." *Id.* "By protecting witnesses before trial through a defendant's detention, the [C]ourt is encouraging those witnesses and other potential witnesses to come forward and provide information helpful to the implementation of justice." *Id.*

III. Given the Circumstances, Detention Was the Only Option

The defendant was initially released on bond. In the presence of his lawyer, he signed the terms and conditions of his release. It was the defendant's actions which resulted in his bond being revoked and now he wants to cry foul regarding his incarceration. The defendant is responsible for his actions. Thousands of defendants across this country prepare for trial behind bars, with accommodations far less than those of the defendant. The defendant is alone in a four man unit with a private cell. He can keep any documents, a CD player and audio tapes with him in the cell 24 hours a day or the jail personnel will safe-keep the materials for him. The defendant has a telephone in the cell with unlimited access. The defendant can meet with his attorneys any day of the week, and they can stay throughout visiting hours. Yet, the defendant complains of security protocols that cannot be relaxed, even for the defendant. For example, the

defendant, and all inmates, is required to be stripped searched after every meeting with his lawyers. (Jail personnel contest that the defendant has waited for 30 minutes to an hour for this process to be completed.) The defendant, and all inmates, cannot receive incoming telephone calls. These security measures are limited and do not deprive the defendant of the ability to adequately prepare for trial.

The defendant also claims in his Reply Brief that certain prison routines interfere with his ability to meet with his attorneys and prepare for trial, such as roll call, boot camp, and meals. Def. Brief at 7. The defendant's brief is inaccurate on all counts. First, jail officials informed the government that roll call is at 6:00 am, 2:30 pm, and 10:30 pm. The 2:30 pm roll call is the only time that would be within visiting hours. Jail officials also informed the government that when an inmate is with his attorney, the defendant is not disturbed for roll call. Their presence is accounted for without disturbing the meeting. In particular, on March 1, 2011, the defendant was visited by his attorney, Anil Mujumdar, at 1:47 pm. The defendant was not disturbed for roll call. Second, boot camp is a fifteen minute exercise at 4:30 am. The defendant has never participated in boot camp. The defendant would not qualify for boot camp due to the injury to his ankle. More importantly, the defendant would not qualify for boot camp because it is only offered to City inmates, not Federal inmates like the defendant. As stated in the Joint Report, while meeting with his attorneys, if the defendant misses a meal, the jail will save the meal for him after the meeting. The defendant and his attorneys determine when the meeting should end.

The government understands that the conditions in jail are not ideal, but it's jail.[1] The

[1]The defendant attempts to compare his conditions with those of Jarrod Massey who is now incarcerated. Def. Brief at 7. The government has had Massey released to the FBI's custody to review his materials, however, he has not been provided any benefits. While in the

evidence clearly establishes that the defendant is in jail because he could not abide by the conditions of release Judge Moorer placed upon him. The defendant's actions left the Court with no other option.

IV. Conclusion

The government had a legitimate and compelling interest to report allegations of defendant's criminal misconduct while on bond to the Magistrate Court that authorized his release. (Doc. 322). The allegation that the defendant obstructed justice by attempting to buy a co-defendant's silence regarding their criminal conspiracy in the very case in which the defendant received bond, is a clear indication that the defendant does not respect this Court's authority. The facts bear the reality that the defendant will go to any length to interfere with the fair administration of this case and he is a danger to the community.

The record is clear. Judge Moorer was well within his authority to revoke defendant's bond. The government respectfully requests that this Court adopt Judge Moorer's findings and keep the defendant in pre-trial detention.

FBI's custody, Massey remains chained to a wall in a 3x4 room with a desk and three chairs. He is locked in the room the entire time. He is not allowed snacks, but of course he is provided bathroom breaks, lunch and dinner, given the time. The meals consist of local lunch spots and fast food. Massey does not have the ability to maintain any documents and recordings in his cell, not even newspapers, nor does Massey have unlimited use of a telephone.

Respectfully submitted this the 2nd day of March, 2011.

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Acting Under Authority of 28 U.S.C. § 515

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CERTIFICATE OF SERVICE

I hereby certify that on March 2, 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,

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