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

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

UNITED STATES' RESPONSE TO DEFENDANT RONALD E. GILLEY'S MOTION FOR PARTIAL RECONSIDERATION OF DETENTION ORDER

COMES NOW the United States of America, through undersigned counsel, and hereby files its Response to Defendant Ronald E. Gilley's Motion for Partial Reconsideration of this Honorable Court's Detention Order and Judgment (Doc. 763 and Doc. 764). Although the relief Defendant Gilley seeks is limited to reconsideration of the Court's finding that there is no condition or combination of conditions which would assure the safety of any other person or the community, the evidence weighs heavily against Defendant Gilley. United States v. King, 849 F.2d 485 (11th Cir. 1988). Therefore, this Court's Order and Judgment should not be disturbed.

As grounds to support its position, the United States submits the following:

APPLICABLE LAW

In its Order dated March 10, 2011, the Court correctly articulated the appropriate legal standard to be applied for revocation of pre-trial release. The Court wrote:

> The Bail Reform Act, 18 U.S.C. § 3141 et seq., sets out when a defendant's pretrial release may be revoked. The statute provides for different burdens of proof depending upon the nature of the alleged violation. Revocation is appropriate when the presiding judge finds there is "probable cause to believe that the person has committed a Federal, State, or local crime while on release," 18 U.S.C. § 3148(b)(1)(A), or "clear and convincing evidence that the person has violated any other condition of release." 18 U.S.C. § 314(b)(1)(B). In addition, the judge must find 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," U.S.C. § 3148(b)(2)(A), or the person is unlikely to obey any

> conditions set. 18 U.S.C. § 3148(b)(2)(B). If there is probable cause to believe that the defendant committed another Federal, State or local felony while on release, a rebuttable presumption arises that there is no condition or combination of conditions of release that will assure the safety of the community. 18 U.S.C. § 3148(b). "The term 'dangerousness,' as used in the Bail Reform Act of 1984, has a much broader construction than might be commonly understood in everyday parlance," and "extend[s] to non-physical harms." United States v. King, 849 F.2d 485, 487 n.2 (11th Cir. 1988). Thus, if the presiding judge finds that the defendant's actions on release indicate that he "might engage in criminal activity to the detriment of the community," such as corruption or other non-physical harms, id., he may appropriately be detained.
>
> The Bail Reform Act provides for district court review of a magistrate judge's detention order. 18 U.S.C. § 3145(b). This review is de novo, in that the district judge conducts an independent review of the facts. King, 849 F.2d at 490. The district judge may conduct an evidentiary hearing if he "determines that additional evidence is necessary or that factual issues remain unresolved" after reviewing the defendant's motion, or he may rely on the pleadings and evidence considered by the magistrate judge to "determine that the magistrate's factual findings are supported and that the magistrate's legal conclusions are correct." Id. If the district judge conducts an evidentiary hearing, he "must enter written factual findings and written reasons supporting [his] decision," whether or not the court ends up adopting the magistrate judge's pretrial-detention order. Id. at 490-491. Similarly, written findings are required when the district judge adopts the magistrate judge's recommendation "but finds that certain of the magistrate's underlying conclusions or factual findings are incorrect or unsupported by the evidence." id. at 491. However, if the district judge determines that the magistrate judge's factual findings are supported and that his legal conclusions are correct, the district judge may "explicitly adopt the magistrate's pretrial detention order" without writing his own findings of fact and statement of reasons supporting detention. Id. at 490. (Doc. 763 at 10-13).

Defendant Gilley does not object to or otherwise challenge the standard articulated by the Court. In fact, at a glance it appears he agrees. (Gilley's Mot. at 2-3). Upon closer examination, Defendant Gilley appears to ignore a critical part of the standard and then takes exception to the manner in which the Court applied the legal standard.

Again, Defendant Gilley's request for reconsideration is limited to the Court's finding that there is no condition or combination of conditions which will assure the safety of any other person

or the community. First, Defendant Gilley contends that he has demonstrated that he can and will abide by stricter conditions of bond, thus rebutting the presumption of detention. Second, he contends that the Court should reconsider those factors articulated in 18 U.S.C. § 3142(g)(1)[1] because they militate in his favor. (Gilley's Mot. at 5). After an evidentiary hearing, an independent and *de novo* evaluation of the record and oral argument, this Court concluded that there is probable cause to believe Defendant Gilley committed a federal crime while on bond. (Doc. 763 at 5, 10 and 17). Furthermore, in light of the presumption in favor of detention which arises when there is "double probable cause," as in the instant case, Defendant Gilley's pretrial detention was appropriate. (Doc. 763 at 23). In reaching its conclusions, the Court methodically applied the applicable law to the facts of this case. Specifically, the Court considered Gilley's statements to co-conspirator Jarrod Massey, which the Court characterized as an "allegation of a deal-to-lie between Gilley and Massey," "as set against the backdrop of all the evidence" presented during the revocation hearing. (Doc. 763 at 18 and 20). The Court also considered the 3142(g) factors articulated in Title 18, and correctly concluded that Defendant Gilley should be detained pending trial. In light of applicable law and the record, the Court reached the correct decision. The mere fact that Defendant

[1]Title 18, United States Code, Section 3142(g)(1)-(4) states what factors the judicial officer shall consider in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community. They are as follows: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person, including - (A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing appeal, or completion of sentence for an offense under Federal, State or local law; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. . . .

Gilley seeks reconsideration based in part on nine (9) affidavits submitted by individuals who are willing to serve as third party custodian does not change the applicable law or the analysis the Court performed in reaching its decision.

DISCUSSION

Without conceding the Court was correct in its finding that the government met its burden of proving there is probable cause to believe that Defendant Gilley committed the crime of obstruction of justice while on pretrial release, he asks the Court to reconsider the second part of its analysis, i.e., is there a condition or combination of conditions that will assure the safety of any other person and the community. Defendant Gilley does not contend that the Court used the incorrect legal standard. However, Defendant Gilley contends that he met his burden of production to rebut the presumption in favor of detention and that the 18 U.S.C. § 3142(g) factors further militate in his favor. This contention is flawed. First and foremost, even if the defendant met his burden of production with respect to the presumption, the presumption survives and remains a factor to be considered. As the Court stated: ". . . Congress has made clear that when there is not only probable cause for the underlying crime (through, for example, a grand-jury indictment) but also probable cause for an additional crime (in short, double probable cause), courts should be extremely circumspect before returning a defendant to his freedom." (Doc. 763 at 23). In the instant case, there is a 39 count indictment currently pending against Defendant Gilley and others, and this Court has found that there is also probable cause for the additional crime of obstruction of justice; therefore, there is a presumption in favor of detention.

Second, in light of the crime (obstruction of justice/witness tampering) for which the government presented probable cause, which the Court characterized as going to the very heart of

this litigation, detention is appropriate. The Court clearly stated that its concern extended beyond keeping a defendant from engaging in illegal conduct. The Court also recognized the public concern of encouraging all potential witnesses to come forward and provide information helpful to the implementation of justice. (Doc. 763 at 23). The United States asserts that pre-trial detention is the only way to assure that the very "integrity of [the Court's] own processes and the fair administration of justice" are protected. Id.

As previously stated, Defendant Gilley makes two basic arguments with respect to why the Court should reconsider its order of detention pending trial. First, he argues that he has demonstrated that he can and will abide by stricter conditions of bond. In fact, during the evidentiary hearing, like now[2], he proposed additional conditions, which he contends would alleviate the Court's concerns about his conduct. The Court was not moved by these proposals at the evidentiary hearing or during the initial appeal, and should not be impressed now. The record is full of evidence which demonstrates that Defendant Gilley is an individual who simply is not amenable to supervision of any kind. It is noteworthy that Defendant Gilley's unlawful contacts with Massey occurred after his (Gilley's) attorney told him to stop contacting Massey. Defendant Gilley's attorney admitted his client did not follow the attorney's advice during the closing argument of the detention hearing. See Evidentiary Hearing Transcript at p. 247. The evidence before the court demonstrates that Defendant Gilley did not follow the advice of his attorney and he did not abide by the pre-trial conditions imposed on him by this Court on October 4, 2010. Obviously, in light of Defendant Gilley's prior conduct of failing to comply with the orders of the Court and rejecting his

[2]Defendant Gilley is proposing third party custody as an additional "special" condition of release. (Gilley's Mot. at 9).

attorney's legal advice, he is not a good candidate for third party custody.

Additionally, the nefarious manner in which Defendant Gilley used Bo Pittman to try and arrange a meeting with Sonny Reagan[3], after the motion to revoke his bond was filed, sufficiently demonstrates the difficulty with supervising Defendant Gilley. Although Senior Probation Office Conoly testified that he did not encounter any problems while Defendant Gilley was under his supervision for approximately one month, he also testified about the type of conduct for which his supervision could provide no protection to the public. For example, use of pre-paid cell phones (used extensively by Defendant Gilley during the investigation and post arrest period of this prosecution), human conduits, obstruction of justice conspiratorial agreements (with Massey and co-conspirator Jennifer Pouncy) and clandestine meetings at the defendant's home, compounded by the fact that the probation officer home visits would only be approximately once every two weeks. On information and belief, the United States does not believe Senior Probation Officer Conoly would recommend pre-trial release for Defendant Gilley based on the established record in this case. In light of the evidence in the record, there simply is no condition or combination of conditions that this Court could impose on Defendant Gilley that would assure the safety of the community.

With respect to Defendant Gilley's contention that "as it relates to detention, [] there is no suggestion that there is probable cause to believe that Mr. Gilley has committed any offense that carries the statutory or even common sense notion that he is a danger to the safety of anyone or to the community at large," the United States submits that this contention ignores the legal standard applicable in this case. Specifically, the United States agrees with the Court when it wrote: "the term

[3]These events are submitted for the sole purpose of showing that Defendant Gilley is not a good candidate for any type of pretrial supervision, including third party custody.

'dangerousness,' as used in the Bail Reform Act of 1984, has a much broader construction than might be commonly understood in everyday parlance, and extend[s] to non-physical harms. United States v. King, 849 F.2d 485, 487 n.2 (11th Cir. 1988). Thus, if the presiding judge finds that the defendant's actions on release indicate that he 'might engage in criminal activity to the detriment of the community,' such as corruption or other non-physical harms, id., he may appropriately be detained." (Doc. 763 at 111-112). Unlike Defendant Gilley, the Court used the term dangerousness in its appropriate context when concluding that his conduct is a threat to the safety of any other person or the community. Defendant Gilley appears to further muddy the waters by suggesting that there is no probable cause that he is a danger to the safety of anyone or to the community at large, therefore, when the Court reconsiders its application of the 18 U.S.C. § 3142 (g) factors he will prevail on the instant motion. This suggestion is void of any merit. Again, the Court applied the correct legal standard, appropriately considered those factors enumerated in 18 U.S.C. § 3142(g)(where relevant to Defendant Gilley) to the evidence before it and concluded that Defendant Gilley should be detained pending trial. (Doc. 763 at 22-24).

It warrants repeating that in reaching its decision to detain Defendant Gilley pending trial, the Court was not only concerned about keeping a defendant from engaging in illegal conduct, but also the public concern of "encouraging [all] witnesses and [all] potential witnesses to come forward and provide information helpful to the implementation of justice," id., and, by that, the court means encouraging witnesses to come forward for both the government and the defendants." (Doc. at 23-24).

CONCLUSION

After an evidentiary hearing, an independent and *de novo* evaluation of the record and oral argument, this Court concluded that there is probable cause to believe Defendant Gilley committed a federal crime (obstruction of justice) while on pre-trial release. Furthermore, in light of the presumption in favor of detention which arises when there is "double probable cause," as in the instant case, Defendant Gilley's pretrial detention was appropriate. In reaching its conclusions, the Court methodically applied the applicable law to the facts of this case and Defendant Gilley has not articulated a sufficient legal basis this Court reconsider and change its decision. The mere fact that Defendant Gilley seeks reconsideration based in part on nine (9) affidavits submitted by individuals who are willing to serve as third party custodian does not change the applicable law or the analysis the Court performed in reaching its decision.

Respectfully submitted this the 29th day of March, 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 March 29, 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