

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CASE NO. 1:12CR038
	)	
KURAYE AKUIYIBO	)	

MEMORANDUM OF THE UNITED STATES IN SUPPORT OF MOTION FOR PRETRIAL  
DETENTION

COMES NOW the United States of America, by and through its attorneys, Neil H. MacBride, United States Attorney, and Kimberly Riley Pedersen, Assistant United States Attorney, and moves this Honorable Court to continue the detention hearing. In support of this motion, the government states as follows:

1. A federal grand jury sitting in Alexandria returned an indictment against the defendant charging him with multiple counts involving money laundering, racketeering and firearms counts. The defendant was arrested in the Southern District of New York on 26, 2012, and detained after a detention hearing before United States Magistrate Judge Dolinger. The defendant was subsequently transported to the Eastern District of Virginia.

2. The defendant made his initial appearance before United States Magistrate Judge Davis on February 9, 2012, and the government made a motion for detention. The defendant was detained pending further hearing. On February 13, 2012, a detention hearing commenced before United State Magistrate Judge Jones. The government introduced the testimony of Special Agent David DeFilippis, FBI, concerning the defendant's use of other names; his failure to disclose to Pretrial Services additional international travel in 2010 and 2011 to Dubai, Nigeria

and Toronto, Canada; and inconsistent statements made to Pretrial Services about the location of his residence and that he was self-employment earning legitimate income. Further evidence was introduced about the strength of the government's evidence in this case, including the use of wiretaps of the defendant's phones, cooperating witnesses, and physical evidence seized at his arrest. The defendant cross-examined the agent and the agent answered questions asked by the Court. Additional testimony was presented that the defendant was a dual citizen of the United States and Nigeria but that the FBI had seized his passports.

3. The government argued that the defendant was a risk of flight and a danger to the community. Since the defendant was charged with a violation of 18 U.S.C. § 924(c), the government argued that the defendant was presumed to be a risk of flight and a danger to the community, pursuant to 18 U.S.C. § 3142(e). The defense presented no evidence at the hearing but proffered that there were four individuals willing to put up their homes as a condition of release<sup>1</sup>. At first glance, a reasonable inference from this proffer was that these four individuals believe that the defendant is not a risk of flight but it does not address the presumption that the defendant is a danger to the community. Moreover, this inference requires placing substantial reliance on a number of facts about these four individuals, of which almost next nothing is known or has been presented.

4. In response to the Court's question of whether this proffer rebutted the

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1. The individuals include the defendant's brother in California, an aunt in Texas, a family friend in Virginia and an unknown individual in Georgia. However, the Pretrial Services report indicated that the family friend in Virginia advised that he was not willing to co-sign on an unsecured bond, assist with a secured bond, or post his own home as collateral on a property bond. The defendant now represents that this same individual has now agreed to post a property in Washington, D.C., which is not his stated residence in Virginia, and is presumably an investment property.

presumption, the government argued that the fact that four individuals were willing to put up property as collateral did not rebut the presumption of flight or danger to the community. At the conclusion of argument, the Court directed the defense to prepare a title report for the four properties and to have the record owners prepare affidavits or declarations that there were no lines or encumbrances on the properties for consideration. The defense indicated that it could get such documents within two to three days. Thereafter, the Court continued the detention hearing for Thursday, February 16, 2012, at 3:00 p.m. and adjourned.

5. At the conclusion of the hearing, the defense provided the government with only the names of the four individuals but not any identifying information or the addresses of the properties. On February 15, 2012, the defense provided the government with the property addresses and owners names but has not produced any title reports or declarations. Currently, there is simply insufficient information for the government and the Court to make a meaningful review of whether or not the four properties would satisfy the presumption that the defendant is a risk of non-appearance or a risk of flight if released on conditions. Clearly, the willingness of third parties to post property as collateral for the pretrial release of a defendant has no bearing on whether the defendant is a danger to the community.

6. Quite simply, the title report will only establish the name of the recorded owner(s) of each property and whatever liens may be recorded against that property. These documents will not provide any information such as the amount of equity, if any, exists for any of the properties. Therefore the Court, will have no way of knowing if any of the four proposed properties have any value, or the exact amount of the value, if used as collateral to guarantee the defendant's future appearances at court. The critical issue is not whether the defendant, or his

friends and family, have the financial means to post a bond but whether the amount of bond is reasonably calculated to assure his appearance at trial. *Government of the Virgin Islands v. Lopez Texido*, 1996 WL 580372 (Terr. V.I. 1996) (denying defendant's motion for bail); *United States v. Borrows*, 486 F.2d 124 (1972); *see also United States v. Wright*, 483 F.2d 1068 (C.A. Md. 1973).

7. Here, without any evidence of the value of the properties, any other income and assets owned by the third parties, and whether or not they could afford to lose these properties if forfeited upon the defendant's failure to appear, this proffer cannot rebut the presumption that no combination of conditions will reasonably assure the defendant's appearance, as required.

8. In this case, the defendant is charged with owning and operating a business enterprise engaged in racketeering offenses and money laundering conspiracy. The nature of the illicit proceeds was derived from prostitution and the government has calculated that over the most recent two years, the defendant's business generated over \$4 million dollars. The government has recovered cars, watches and jewelry during this investigation but no proceeds in any bank accounts and has not seized more than \$25,000 in cash. There is evidence that the defendant used alias or false names to conceal his true identity while operating his criminal enterprise. The defendant has lied to Pretrial Services about his foreign travel, his residence and the nature of his self-employment. The defendant's own actions before this Court demonstrate that he is not trustworthy and cannot be taken at his word.

9. Here, the indictment alleges that the defendant was concealing his illicit proceeds by causing third parties to deposit cash into accounts held in the names of third parties. The investigation has revealed that one of the defendant's brothers accepted his illicit proceeds and

that he used the bank account of another brother, one of the proposed third party property owners, to launder his illicit proceeds. The defendant has not produced any evidence that any of the properties owned by the proposed third parties money was not, in fact, derived from his illicit proceeds, traceable to his illicit proceeds or forfeitable by the government as a substitute asset.

10. The grand jury found probable cause that the defendant's illicit business operation generated substantial sums of cash, and the defendant used the bank accounts of others to launder his illicit proceeds, another reasonable inference is that the defendant has agreed with the property owners to reimburse them or otherwise make them whole (morally or financially) for the loss of their properties, if forfeited by the Court. Such an agreement or understanding would make it appear that the third parties were risking parting with something of value (their property) thereby allowing the defendant to be released, flee and/or disappear from the jurisdiction of the Court without doing irreparable harm to his family or friends. The willingness of family and friends to agree to put up real property as security for the defendant's appearance at court does not rebut the statutory presumption that he is a risk of flight and a danger to the community. Moreover, when weighed against the nature of the charges, the strength of the government's case, the complete lack of any ties to this district, and the defendant's use of aliases and bank accounts of others and his history of untruthfulness to Pretrial Services about material facts, it is clear that the defendant should be detained pending trial. *See United States v. Bailey*, 750 F.Supp. 413 (W.D. Missouri 1990)(denying defendant's motion for revocation or amendment of detention order because defendant failed to present evidence contrary to the statutory presumption even where defendant's mother and aunt filed an affidavit stating their willingness to post their respective homes as security for defendant's release).

11. “In a presumption case such as this, a defendant bears a limited burden of production - not a burden of persuasion - to rebut that presumption by coming forward with some evidence he does not pose a danger to the community or a risk of flight.” *United States v. Abad*, 350 F.3d 793 (8<sup>th</sup> Cir. 2003)(finding insufficient evidence to assure defendant’s appearance at trial where parents willing to pledge family home where defendant faced a maximum sentence of thirty years if convicted), citing *United States v. Mercedes*, 254 F.3d 433, 436 (2<sup>nd</sup> Cir. 2001). “Once a defendant has met his burden of production relating to these two factors, the presumption favoring detention does not disappear entirely, but remains a factor to be considered among those weighed by the district court.” *Id.* (emphasis added).

12. Here, while the defendant has provided the names of four individuals, including two family members, willing to sign over their properties as security, the defendant has failed to produce any evidence he does not pose a risk of flight if released. If convicted at trial, the U.S. Sentencing Guidelines provide that the defendant faces approximately 12.5 years on the money laundering conspiracy charge to be followed by a consecutive term of imprisonment of five years, if convicted on one charge of 18 U.S.C. § 924(c), then 25 years if convicted of the second § 924(c) charge, for a total of over 35 years. The evidence against the defendant in this case is strong. The possible maximum sentence facing the defendant has to be weighed strongly in favor of finding the defendant is a risk of flight in this case.

13. The fact that the government seized the defendant’s United States and Nigerian passports in this case do not rebut the presumption of risk of flight even where the defendant would promise not to travel or obtain any new travel documents if released. The reality is that the defendant cannot be trusted to make truthful statements to the court and his promises to abide

by conditions would be meaningless. Upon release, there is nothing stopping the defendant from driving across the border into Canada with a driver's license, preventing the Embassy of Nigeria from issuing travel documents to the defendant upon request or the defendant using someone else's travel documents or creating his own documents. The defendant is educated, articulate and an experienced foreign traveler who owned and operated a million dollar generating business. It is reasonable to infer that if released, the defendant will have no difficulty finding the resources to obtain a different identity and maintain a lifestyle on the run. The government will therefore be prejudiced in its ability to subsequently locate, arrest and extradite the defendant back to the United States. When weighed against all of the foregoing factors, the willingness of third parties to secure the defendant's release with a promise to sign over properties with unknown value do not rebut the presumption that the defendant is a risk of flight or a danger to the community.

14. Pursuant to 18 U.S.C. § 3142(g)(4), which sets forth the factors to be considered by the judicial officer in determining whether there are conditions of release, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required. The United States asks the Court to decline to accept the designation, or use as collateral of any of the proffered property, in this case as it will not reasonably assure the appearance of the defendant in this case for the reasons set forth herein.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Memorandum in Support of Detention was filed via ECF this 16th day of February, 2012, and a copy sent via email to counsel of record to:

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