UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA	)	DOCKET NO. 3:06CR74-Britt
	)	
v.	)	
	)	**GOVERNMENT'S OPPOSITION TO**
(1) HOWELL WAY WOLTZ	)	**MOTION FOR RECONSIDERATION**
(4) VERNICE CHAITAN WOLTZ	)	**OF DETENTION**
	)	

NOW COMES the United States of America, by and through Gretchen C.F. Shappert, United States Attorney for the Western District of North Carolina, and hereby opposes Defendants' motion for reconsideration of the Court's Order of detention.

PRELIMINARY STATEMENT

None of the information presented by Defendants is material information that was "not known to [Defendants] at the time of the hearing," 18 U.S.C. § 3142(f). Therefore, none of Defendants' information in their motion is a basis under the Bail Reform Act to re-open their detention hearing. Indeed, as shown below, although Defendants claim they should be released because the Government "misled" the Court, the only misleading information comes from Defendants themselves.

BACKGROUND

On April 4, 2006, Defendants were indicted by the Grand Jury for the Western District of North Carolina. Defendant Howell Woltz was charged in Count One with a conspiracy to defraud the Internal Revenue Service in the collection of federal income taxes through the use of abusive off-shore "dual trusts" owned and controlled by Defendants. Defendants were charged in Counts Nine through Thirteen for conspiring to obstruct a Commodities Futures Trading Commission investigation and committing substantive acts in furtherance of that obstruction.

Defendants were arrested and had their initial appearance on April 18, 2006. On April 20, 2006, Defendants were arraigned and the United States Magistrate Judge ordered their release, but stayed his order pending review by this Court. On April 24, 2006, this Court conducted a *de novo* detention hearing, found that Defendants posed an unacceptable risk of flight, and ordered that they be detained.

STANDARD OF REVIEW

Pursuant to the Bail Reform Act, a detention hearing may be reopened if "information exists that was not known to [Defendants] at the time of the hearing and that has a material bearing on the issue of [detention]." 18 U.S.C. § 3142(f). However, "Courts have interpreted this provision strictly, holding that hearings should not be reopened if the evidence was available at the time of the initial hearing." *United States v. Ward*, 63 F.Supp.2d 1203, 1206-7 (C.D. Cal. 1999); *see United States v. Dillon*, 938 F.2d 1412, 1415 (1st Cir. 1991) (affirming decision not to re-open detention hearing when information presented was known to defendant at time of hearing). "With regard to risk of flight as a basis for detention, the government must prove by a preponderance of the evidence that no combination of conditions will reasonably assure the defendant's presence at future court proceedings." *United States v. Stewart*, No. 01-4537, 2001 WL 1020779, at *48 (4th Cir. Sept. 6, 2001).

ARGUMENT

None of the facts now posed by Defendants were both material to detention and unknown to Defendants at the time their detention hearing, as required by 18 U.S.C. § 3142(f). Their detention hearing thus should not be re-opened for this reason alone. In addition, Defendants do not even now challenge most of this Court's findings in favor of detention -- which were

sufficient, in themselves, to warrant detention. Of those findings that they do now challenge, the discussion below shows that those findings were true and evidenced by Defendants' own words.

I. Defendants Do Not Challenge Most of This Court's Findings In Favor of Detention

This Court held that detention was warranted because of the following findings:

1. "By their own admission to the pre-trial services office, they are residents of Nassau in the Bahamas." (Trans. at 79.)

2. "There has been some evidence . . . of efforts . . . at least on behalf of the female defendant, to avoid service of process while here."

3. "The male defendant is a pilot." *Id.*

4. "The defendants collectively apparently control substantial assets, although there may be some disputes about that . . . ." *Id.*

5. "There has quite obviously been some misstatements made by the defendants to the pre-trial services office." *Id.*

6. "The female defendant was born in Trinidad and is a U.S. citizen . . . only by virtue of her marriage to the . . . male defendant." *Id.*

7. "There was some evidence by the government that the defendant has made some sort of plans to be removed from the country in case of trouble, and I take this a little bit as a bizarre scheme, but I must consider it as some evidence of state of mind." *Id.*

8. "The nature of the offenses involved the offshore bank accounts. And, in fact . . . the defendants themselves are owners of offshore banks and other financial and business interests . . . ." *Id.* at 80.

9. "The very nature of the offenses charged in this Indictment deal with deception, the hiding of assets, an attempt to defraud the United States Government." *Id.*

10. "Relevant . . . is the fact that each defendant is facing substantial prison time if convicted of the charges as set forth in the Indictment." *Id.*

11. "[R]eading the transcript of statements made to undercover agents, the Court can only arrive at a conclusion that the evidence in the case is strong, because there are statements clearly in the transcripts . . . that would tend to show knowledge by the defendants of . . . the schemes that are alleged in the Indictment and of their participation in those schemes. So I would have to say that the weight of the evidence is strong." *Id.* at 81.

Defendants do not even challenge -- nor could they -- findings (2), (5), (6), (9), (10), and (11) above. Accordingly, they do not challenge or rebut evidence that Defendant Vernice Woltz evaded process servers. They do not challenge the Court's conclusion that they lied to pre-trial services. Defendants do not challenge the finding that Defendant Vernice Woltz is Trinidadian. Nor do they challenge the Court's recognition that they face substantial prison time if convicted. Finally, Defendants do not challenge the Court's findings that "the very nature of the offenses charged . . . deal with deception," and that "the evidence in the case is strong." The Court may conclude on the basis of these undisputed findings alone that continued detention is warranted.

Regardless, as shown below, even Defendants' challenges to the Court's findings in (1), (3), (4), (7), and (8) above are not a basis to reopen their detention hearing because none of those facts are both material and not known to Defendants at the time of their detention hearing, as required by 18 U.S.C. § 3142(f). In addition, as further shown below, those findings were supported by Defendants' own lips and Defendants' own documents.

II. Defendants Told Pretrial Services That They Were Residents of the Bahamas

The Court should reject Defendants' primary argument that they should be released because the Court received "misleading" information that they were residents of the Bahamas. First, Defendants' residency obviously was "known to [Defendants] at the time of the hearing." 18 U.S.C. § 3142(f). Accordingly, this supposed information about their domestic residency is not a basis to reopen their detention hearing. *Dillon*, 938 F.2d at 1415.

In addition, the accusation is specious because Defendants themselves told pretrial services that they were residents of the Bahamas. (Trans. at 79.) This fact did not just come from Defendants' own lips to pretrial services, however. It also was borne out in several exhibits introduced by the Government during Defendant's detention hearing.

Indeed, Defendant emailed "friends and associates" in Government's Exhibit 4, stating that as of October 2004, Defendants had been "approved for permanent residence" in Nassau, Bahamas -- directly contrary to Defendants' current assertion that their permanent residency application was never approved. (Defendants' Mot. for Reconsideration, at 4-5.) Several other Exhibits also showed that Defendants were residents of the Bahamas. *See also* Government Ex. 6 (January 2006 email stating "we're living full-time in Nassau now."); Ex. 3 (Defendant telling undercover agent about the United States, "I've still got some assets up there, but, you know, I just don't live there anymore."). In addition, neither Defendant has filed a United States tax return in several years. Defendants' current claims that they are residents of the United States, that the Government "misled" the Court by describing them as offshore residents, and that Defendants would be mere "tourists" in the Bahamas are ludicrous.[1]

III. Defendant Knows How to Fly, and Knew the Status of His License at the Hearing

The Court also should reject Defendants' contention that the Government "misled" the Court about Defendant Howell Woltz being a pilot. First, Defendants ignore Governments' Exhibit 21, in which Defendant Howell Woltz wrote in January 2004 to some of his co-conspirators that "I'm a licensed, instrument rated, multi-engine pilot with over 3,000 flight hours." It was not "misleading" for the Government to rely on Defendant Howell Woltz's own email for the conclusion that he was a licensed pilot.

Second, even if Defendant Howell Woltz's pilot's license had lapsed in 1998, as Defendants now claim, Defendant Howell Woltz knew the status of his license at the time of the

[1] The Court did not address extradition as a reason for detention, and the Government thus does not focus on that issue here. Note, however, that Defendants' materials do not cast doubt upon the fact that extradition is not possible for tax charges. And, although the Bahamas does appear to have some obstruction-type offenses on the books, the Bahamian government informed the Office of International Affairs for the Department of Justice when contacted prior to the detention hearing that extradition would not likely occur for Defendants' specific offenses. Thus, the generalized Bahamian statutes cited by Defendants are unhelpful.

detention hearing. Accordingly, such information is not a basis to re-open the hearing. *Dillon*, 938 F.2d at 1415.

Finally, the fact relevant to the risk of flight analysis is that Defendant Howell Woltz *knows how to fly* -- whatever the status of his license. A man fleeing a federal indictment would hardly be deterred by the realization that his license has lapsed. Thus, this ground, too, should be rejected.

IV. Bizarre or Not, Defendants Had Arranged for a "Watchdog"

The Court also should reject Defendants' challenge to the finding that they had arranged for a "watchdog" to remove them from the country if necessary. As noted at the hearing, the Government received this information from a reliable confidential informant. In addition, its truth or falsity was known to Defendants at the time of the detention hearing. Accordingly, it is not a basis to re-open the detention hearing.

V. Defendants Have Substantial Offshore Resources, Contacts, and Abilities

The Court should also reject Defendants' claim that they do not (and, by implication, could not) now control offshore banks and offshore business entities. Defendants' letter from Anguilla (Exhibit F to their motion) merely states that the license for *Sterling Trust* has been temporarily revoked because of its failure to file a notice of change of registered agent. There is no indication that the revocation is permanent or that the license could not be revived. Further, Defendants provide no similar evidence that Sterling Bank (a St. Lucian entity) has been closed. Nor do they provide any such evidence regarding Sterling ACS (a Bahamian entity), Sterling Casualty & Insurance Ltd., Sterling Investment Management Ltd., Sterling Precious Metals Limited, Sterling Alliance Ltd., or Sterling Securities International, Ltd. Indeed, Defendants' Exhibit F is itself interesting because "Sterling Trust Limited" (the only entity addressed by

Defendants) recently changed its name to "Steward Trust Limited." Even if Defendants currently are experiencing problems with these other offshore entities, any current hiccup in their ability to operate overseas because of their present detention could be changed if Defendants are released. Thus, the information about Sterling Trust is not material. Recall that Defendants already have lied once to the Court about these entities -- through pre-trial services -- by failing to admit their ownership in them when questioned. *See, e.g.*, Government Exhibits 8-9, 27-29, 31-32, 34, 39.

In addition, the undercover tapes show that Defendants are quite facile at relocating to other offshore havens if they encounter legal difficulty in any particular jurisdiction. As shown at the detention hearing, Defendant Howell Woltz told the undercover agent that he deliberately kept records in different offshore jurisdictions, and deliberately created separate business entities in these different jurisdictions. Defendant claimed that he did so in order to evade legal process from their offshore havens. Defendant said, "it's our policy that if anybody's accused of anything, however minor, civil, criminal or whatever . . . we have simply transferred the company to another jurisdiction while everything was going on, so if the order came from the Supreme Court [of the Bahamas], that company is no longer in the files here. And then I'd say, 'Oh well, that company was transferred a year ago. We didn't realize it.' So then they got to start over in another jurisdiction and another jurisdiction." *See* Government Exhibit 24. As Defendant Howell Woltz explained, they had trust companies in "Panama, Hong Kong, Singapore, Anguilla, St. Lucia, and [the Bahamas]," and could move documents between countries within 24 hours. *See* Government Exhibit 25. Thus, any temporary problem Defendants may be experiencing with the governments of Anguilla or the Bahamas should offer the Court no comfort.

Another reason to reject this claim is that Defendants can move freely abroad in several countries. Defendants do not contest the fact, as shown at the detention hearing, that they devised an offshore credit card whose very purpose was to evade detection in the United States. *See* Government Exhibits 13 - 17 (transcripts from conversations with undercover agents about Defendants' offshore credit card business). Nor do they contest their pursuit of passports from the Nation of Dominica so that they might travel with the criminal trust documents without, in Defendant Howell Woltz's words, fear of being "inspected." Government Exhibit 19. If released, Defendants will quickly disappear with their offshore credit cards -- moving to Panama, Hong Kong, or Singapore if they cannot revive their ties with the Bahamas or Anguilla.

CONCLUSION

For the foregoing reasons, Defendants' Motion to re-open their detention hearing should be denied.

RESPECTFULLY SUBMITTED, this 14th day of December 2006.

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CERTIFICATE OF SERVICE

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