

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA)	DOCKET NO. 3:06CR74-Britt
)	
v.)	
)	
(1) HOWELL WAY WOLTZ)	MOTION FOR REVOCATION OF
(4) VERNICE CHAITAN WOLTZ)	MAGISTRATE’S ORDER OF
)	RELEASE

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 pursuant to Title 18, United States Code, Section 3145(a), hereby moves the Court for an order of revocation of the Order of Release entered on April 21, 2006 by the United States Magistrate Judge.

PRELIMINARY STATEMENT

Under the U.S. extradition treaty with the Bahamas, it is not possible to extradite someone from the Bahamas to the United States on a tax charge.¹ A passport is not necessary to travel from the United States to the Bahamas. There are multiple daily nonstop flights from Charlotte Douglas International Airport to the Bahamas. Defendants have established Nassau, Bahamas as their permanent residence. Moreover, Defendants, as discussed below, have repeatedly demonstrated their utter disregard for the jurisdiction and order of the United States courts. Indeed, a confidential informant has informed the government that Defendant Howell Woltz has a “watchdog” to get him out of the country in case trouble arises. These facts compel the conclusion that there are no terms or conditions that this Court could impose to reasonably assure Defendants’ appearance at trial.

¹ The Office of Internal Affairs at the Department of Justice has informed counsel for the government that even on non-tax charges, it is not clear that extradition could be obtained on obstruction offenses. Moreover, experience has shown that even if extradition is possible, the extradition process takes years. Finally, extradition is charge-specific; defendant could not therefore be tried for tax fraud even if extradited on another charge.

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 for an undercover investigation revealing 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. In two meetings in particular with undercover IRS agents, Defendant Howell Woltz described and proposed an unlawful method of concealing income from the IRS through the use of foreign trust arrangements, off-shore bank accounts, and off-shore credit cards.

Defendants were charged in Counts Nine through Thirteen for conspiring to obstruct justice and an official proceeding, and with committing certain substantive acts related to that conspiracy. In 2004, the Federal Bureau of Investigation was investigating a commodities fraud that involved the solicitation of investors in a commodity trading company known as Tech Traders, which published false and fraudulent statements regarding the historical rates of “return” that Tech Traders earned. In the same time period, the Commodities Futures Trading Commission (“CFTC”) filed a commodities fraud lawsuit. Defendants caused Sterling Trust Ltd. and related entities they controlled to file claims with the CFTC, seeking recovery of funds they had allegedly invested with Tech Traders.² The CFTC subsequently subpoenaed Defendants in an effort to establish the validity of those claims. However, Defendant Vernice Woltz evaded service of the subpoena, concealed and refused to produce documents and other objects, and both made perjurious statements when their depositions were ultimately taken by the CFTC.

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 conducted a

² At the end of a May 7, 2004, hearing in federal district court in Camden, New Jersey, the district judge holding that hearing stated that he was not “even slightly persuaded that these relationships between the Tech Traders groups and the Sterling groups are entirely arms length.”

detention hearing. At the hearing, the government proffered extensive evidence in support of its position that Defendants were an unacceptable flight risk. The Magistrate Judge appeared to accept all of the proffered evidence as true. Nevertheless, the Magistrate Judge determined that some combination of conditions could reasonably assure the appearance of Defendants as required. Among other things, the Magistrate Judge ordered that Defendants were to be released into the third party custody of Defendant Howell Woltz's eighty year old mother and were to be confined to and electronically monitored at her home. The United States immediately gave notice of its intent to appeal and the Magistrate Judge stayed his order of release pending appeal. The detention hearing before this Court is set for April 26, 2006.

STANDARD OF REVIEW

“When the district court acts on a motion to revoke or amend a magistrate judge's pretrial detention order, the district court acts *de novo* and must make an independent determination of the proper pretrial detention or conditions of release.” *United States v. Stewart*, No. 01-4537, 19 Fed. Appx. 46, at *48 (4th Cir. Sept. 6, 2001) (citing *United States v. Rueben*, 974 F.2d 580, 585-86 (5th Cir. 1992)). “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.” *Id.* (Emphasis added.)

ARGUMENT

Defendants pose a severe risk of flight that cannot adequately be mitigated by any combination of conditions.

I. Defendants Are Highly Motivated to Flee

The weight of the evidence against Defendants, and the prison sentences Defendants are respectively facing, gives each of them a motive to fail to appear for any subsequent hearing or trial. As noted during the detention hearing before the Magistrate Judge, Defendant Howell

Woltz is facing an estimated guideline range of 5-7 years imprisonment on the tax fraud conspiracy.³ With regard to the conspiracy to obstruct the commodities fraud, Defendants are facing an estimated guideline range of 5-6 years. *See United States v. Epstein*, 155 F. Supp.2d 323, 326 (E.D. Pa. 2001) (“Two to four years in jail . . . is a sufficiently unpleasant prospect to persuade defendant under the present circumstances to exit the United States if he had the opportunity.”); *United States v. Ishraiteh*, 59 F. Supp.2d 160, 162 (D. Mass. 1999) (holding that three and one-half years imprisonment would “highly motivate[]” defendant to flee). Defendants are also under investigation for a money laundering and securities fraud scheme with losses in the tens of millions of dollars. That investigation is still ongoing, but is again expected to subject Defendants to substantial additional prison time. Defendants have more than sufficient motivation to flee.

II. Defendants Have Little Connection to the United States

Defendant Vernice Woltz was born in and is a citizen of Trinidad. Both Defendants are now permanent residents of the Bahamas, and own a house there. As Defendant Howell Woltz wrote in an email on October 13, 2004, “Please be advised that Vernice and I have listed the farm in North Carolina for sale, and will be moving to Nassau. . . . We’ve been approved for permanent residence, and have located a house.” Defendant followed up in a later email in January 2006 that “[w]e’re living full-time in Nassau now,” and would have only a post office box in Fort Lauderdale, Florida. Although Defendants owned property in Advance, North Carolina, that property was listed as for sale more than a year ago, and, as of last week, a closing date was set for June 1, 2006.

³ That guideline range is based only upon the 2.3 million dollars in tax loss and appropriate enhancements for the IRS sting; Defendant Howell Woltz told the undercover that he had 104 trust clients. Thus, Defendant’s expected guideline of imprisonment for the tax fraud should grow much larger as the IRS concludes its investigation.

Family members of Defendant Howell Woltz do still live in North Carolina, including Defendant's mother. However, North Carolina is clearly not Defendants' home. They live and reside in the Bahamas, which Defendant Howell Woltz described in a published article as a "Libertarian paradise" compared to "socialist" countries like the United States. Indeed, prior to the week surrounding their arrest, Defendants apparently had not set foot in the United States since approximately four months earlier, or December 2005.

The Bahamas -- where Defendants are permanent residents -- is where they are comfortable. As Defendant told the undercover agent, "I've lived offshore most of my life." Because they are permanent residents of the Bahamas, fleeing for Defendants would merely be going home rather than remaining in the United States to face almost certain prison time. *See Epstein*, 155 F. Supp.2d at 325-26 (detaining defendant who was permanent resident of Brazil despite lack of criminal history, posing no danger to the community, and ownership of approximately \$1 million in assets in the United States).

III. Defendants Have Unusual Tools to Flee

Defendants have unusual -- if not unique -- tools that would allow them to flee. On April 19, 2006, the government learned from a confidential informant of proven reliability (the same informant that helped establish the undercover sting) that Defendant Howell Woltz has a "watchdog" who is ready and waiting to remove Defendant from the country if Defendant Woltz finds himself in trouble. This "watchdog" has the ability to post a bond of several million dollars, according to this confidential informant.

In addition, Defendants are owners and directors of a network of Sterling entities based offshore and located, *inter alia*, in the Bahamas, Anguilla, and St. Lucia, including Sterling Bank, Sterling Trust, Sterling ACS, Sterling Alliance, Sterling Casualty and Insurance Company, Sterling Precious Metals Limited, and Sterling Investment Management Ltd. Defendant Howell

Woltz bragged to the undercover agent that Sterling banked in Bermuda, Curacao, the Dutch Antilles, and Switzerland. Moreover, in a May 2004 email to his co-conspirators in the securities fraud, Defendant Howell Woltz exposed that his reach extends also to Eastern Europe, where he had “applications for trading firm in Prague,” and could “begin setting up merchant accounts, issuing credit cards, and being a transferor of funds within that system.”

Courts have long recognized that mere offshore bank accounts are evidence of an unacceptable risk of flight. The Fourth Circuit held in *Stewart, infra*, that the defendant should be detained in part because he had transferred the proceeds of his fraud to offshore banks and currently maintained at least one offshore bank account. 19 Fed. Appx., at *49. Likewise, in *Ishraiteh, infra*, the court held that detention was warranted in part because the defendant had transferred the proceeds of his fraud to Luxembourg and had numerous international contacts. 59 F. Supp.2d at 161.

Defendants’ circumstances are far worse. They are owners and directors of an offshore bank. Thus, not only do Defendants have offshore accounts themselves, they actually control the offshore bank in which others -- like the defendants in *Stewart* and *Ishraiteh* -- hold offshore accounts. Moreover, Defendants are directors of Sterling Trust and other offshore entities whose purpose, as Defendant explained to the undercover agent, is to shelter money from the United States.

Indeed, Defendants together pitched to the undercover agent an offshore credit card whose primary purpose was to allow U.S. citizens to take money offshore undetected by the government and to use the card without being tracked. Defendant Howell Woltz explained in October 2004 that “we also have an absolutely wonderful debit card program that’s a big no, no, up in the US . . . [where] nothing touches the U.S. . . . And, if you notice, *my name’s not even on it.*” The problem with normal credit cards, as Defendant explained, is that they allow the

government to track you, and the government was developing even more sophisticated techniques to do so. Defendant touched on the card again in a meeting in April 2005, stating, “the card that we would recommend you use, it doesn’t clear the first day in the U.S. The U.S. government has no -- they can’t say what’s clearing there, so you can take a look at it. It wouldn’t have your name on it.” Defendant Vernice Woltz added that the credit card is “a wonderful tool to have” and “the privacy issue, the option on this, is really, really wonderful.” When asked whether he had any involvement with the credit card business under oath in his deposition, Defendant Howell Woltz lied and said “no.”

Finally, Defendants have an unusual ability to maneuver overseas. The entire family has Trinidadian passports (although no passport is necessary to get into the Bahamas), and Defendant bragged to the undercover, “I will be issued a diplomatic passport for the nation of Dominica . . . and cannot be inspected . . . so that will be comforting, because I get a little nervous when people send papers to the U.S.” Defendant Howell Woltz has traveled at least once to the government’s knowledge with co-conspirators on a private jet, and was in discussions to buy his own private jet in January 2004.

IV. Defendants Have an Unusual Disregard for Court Orders and the Law

The very nature of the charges against Defendants -- especially Defendant Vernice Woltz -- and their past behavior demonstrates their utter disregard for court orders and United States law. This proven disregard for court orders and the law of the United States is likely to cause defendants to act on their motive to flee and to employ the unusual tools they possess to flee.

Defendants lied to the Probation Office about their employment and assets. Defendant Vernice Woltz’s claim to the Probation Office that she has been unemployed since earning \$40,000 a year in North Carolina in 2001 is absurd. She appeared in federal court in New Jersey as the representative of Sterling in the CFTC, and admitted under oath, *inter alia*, that she was

the Chief Financial Officer of Sterling Trust. Moreover, three separate witnesses have told the United States in recent proffers that Defendant Vernice Woltz was an equal partner in the Sterling companies, and that she, in fact, a C.P.A., was the financial brains behind much of the scheme, and oversaw the books for the companies.

Defendant Howell Woltz's claim to the Probation Office that he worked only as a "consultant/partner" for Sterling ACS and made \$70,000 annually was similarly absurd. It left out that Defendant Woltz was an owner of Sterling ACS and an owner of a multitude of other entities. His suggestion that apart from the equity in his house he had less than \$100,000 in assets was equally false.

As detailed in the indictment and confirmed by two witnesses, both defendants went to the home of the Tech Trader's accountant and removed material documents relevant to Sterling. Both also were present when computer files were deleted from that individual's computer. Moreover, the "Mr. H." who was with them at the house took the back-up tape from the accountant, and provided it to Vernice Woltz. She subsequently refused to produce it in response to a valid subpoena, and, when it finally was produced, the tape was blank -- apparently erased.

Vernice Woltz also evaded a process server twice, hiding behind a refrigerator once and moving into the house on another occasion when she saw the server. Defendant Howell Woltz lied for her on the second occasion, claiming that he did not know where she was. On the first occasion, he repeated that he "did not live here at the farm" in a misguided attempt to evade service. When Vernice Woltz was finally served at the airport by a U.S. Customs agent, she failed to appear for the deposition in Charlotte, and only agreed after much negotiation to appear in Chicago, away from the city where the FBI was conducting its investigation. And, when she finally appeared for that deposition, she lied.

Defendant Howell Woltz's comments to the undercover agent demonstrate an unusual disregard for the law. In April 2005, he explained to the undercover that he deliberately kept records in different jurisdictions, and deliberately created entities in different jurisdictions, so he could refuse to turn over such records, even if requested by the Supreme Court of the Bahamas. Worse, he 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, 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." As Defendant Woltz explained, he had trust companies in Panama, Hong Kong, Singapore, Anguilla, St. Lucia, and Bahamas, and could move any documents between countries within 24 hours. These are not individuals who would regret cutting off an electronic bracelet.

CONCLUSION

WHEREFORE, the United States moves the Court for an order of revocation of the Magistrate's order granting bond in this matter.

Respectfully submitted, this the 21st day of April, 2006.

GRETCHEN C.F. SHAPPERT
UNITED STATES ATTORNEY

s/ Kurt W. Meyers
Assistant United States Attorney
VA Bar Number: 66666
Attorney for the United States
United States Attorney's Office
227 West Trade Street, Suite 1700
Charlotte, North Carolina 28202
Telephone: 704.344.6222
Fax: 704.344.6629
E-mail: Kurt.Meyers@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April, 2006, the foregoing document was electronically served upon Defendant at the following address:

David B. Freedman

White and Crumpler
301 N. Main Street, Suite 1100
Winston-Salem, NC 27101
336-725-1304
Fax: 336-761-8845
Email: david@whiteandcrumpler.com

And by facsimile on Defendant at the following address:

Donald K. Tisdale, Sr.

Grace Holton Tisdale & Clifton
301 North Main Street
Suite 100
Winston-Salem, NC 27101
Fax: 336-721-1176

GRETCHEN C.F. SHAPPERT
UNITED STATES ATTORNEY

s/ Kurt W. Meyers

Assistant United States Attorney
VA Bar Number: 66666
Attorney for the United States
United States Attorney's Office
227 West Trade Street, Suite 1700
Charlotte, North Carolina 28202
Telephone: 704.344.6222
Fax: 704.344.6629
E-mail: Kurt.Meyers@usdoj.gov