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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	No. 3:11-cr-00022-RJB
)	
Plaintiff,)	
)	
vs.)	<u>OPPOSITION TO</u>
)	<u>DEFENDANT COLEMAN</u>
)	<u>BARNEY'S MOTION FOR</u>
FRANCIS SCHAEFFER COX,)	<u>BAIL REVIEW HEARING</u>
COLEMAN L. BARNEY, and)	
LONNIE G. VERNON,)	
)	
Defendants.)	

The United States files with the court an opposition to defendant Coleman Barney's Motion seeking bail review. In anticipation of a possible bail review hearing, the United States provides the court with a proffer of evidence it will

present to the court in the event the court elects to hold a hearing. After reviewing this proffer of evidence, supported by a limited selection of photographic evidence obtained by the investigation, the court will conclude that no condition, nor combination of conditions will guarantee protection of the public nor assure the defendant's appearance at trial. For the reasons set forth below the defendant's motion for bail should be denied.

1. PROFFER OF EVIDENCE BY THE UNITED STATES

The Ninth Circuit has held that in detention hearings, the government may proceed by proffer or hearsay. *United States v. Winsor*, 785 F. 2d 755, 756-757(9th Cir. 1986). In making the determination of detention or release, the weight of the evidence is the least important factor. *United States v. Cardenas*, 784 F.2d 937, 938-939 (9th Cir. 1986). The evidence of guilt is relevant only in terms of the likelihood that the person will fail to appear or will pose a danger to the community. *Id.* at 939.

In *United States v. Smith*, 79 F.3d 1208, 1210 (D.C. Cir. 1996), the court of appeals for the District Court of Columbia also held that the government is permitted to proceed by way of proffer in lieu of presenting live witnesses at a pretrial detention hearing. The D.C. Circuit pointed out that its position was not

unique. “Every circuit to have considered the matter, however, has rejected that inference [that silence in the Bail Reform Act implies the government may not proceed by way of proffer].” *Id.* at 1210.

In *United States v. Alfredo Cabrera-Ortigoza*, 196 F.R.D. 571(S.D. California 2000)[not offered as legal precedent, but rather for its helpful reasoning and analysis of history], Magistrate Judge Battaglia analyzed the issue in depth, including the legislative history for the Bail Reform Act, and an analysis of how various circuits have treated the issue.

The Bail Reform Act was promulgated using a District of Columbia statute, whose procedures have withstood constitutional challenges. *Id.* at 573. Congress intended that “the use of sworn testimony will be the exception and not the rule.” *Id.* The hearing provided for in the Bail Reform Act is not designed to afford defendants a discovery device. *Id.* at 573-574.

Based on the authorities provided above, the court clearly has wide discretion in conducting the manner and methods of a detention hearing. Given the guidance of *Winsor*, the court can allow the government to present its evidence by proffer, and if the court is in any way dissatisfied with the proffer, it may insist on testimony. Such an approach of considering live testimony, but not requiring it

in all cases, allows the court to maximize its judicial resources, without any infringement of a Defendant's rights.

The United States therefore provides the court with a proffer of physical evidence seized from Barney and his co-defendants as a result of this investigation. Given that the proffer of evidence provides a clear determination of a danger to the community and risk of flight, which cannot be ameliorated by any set of conditions let alone those proposed, the Defendant's motion for bail must be denied.

2. THE CHARGES AND EVIDENCE SEIZED BY THE INVESTIGATION

a. The Arrest

Coleman Barney is charged with co-defendants Schaeffer Cox and Lonnie Vernon in a four count indictment.¹ These defendants were arrested by the FBI on March 10, 2011, after a months-long investigation. Count 1 of the indictment charges all three defendants with Conspiracy to Receive and Possess Firearms, specifically silencers and hand grenades. Count Two charges Barney and Cox

¹Lonnie Vernon, along with his wife Karen Vernon, are charged in a separate indictment which alleges, amongst other things, Conspiracy to Murder the Chief Judge of the United States District Court, Judge Ralph R. Beistline. (See 4:11-cr-00006-RJB-SAO, Docket 16)

with Possession of Destructive Devices (hand grenades). The maximum penalties for these offenses is a ten-year term of imprisonment.

On March 10, 2011, Barney and Cox were arrested by agents of the FBI as they attempted to purchase two silenced pistols they had ordered (one for each) as well as six “live” hand grenades.² Barney (and Schaffer Cox) arrived at this illegal weapons sale wearing something other than mere street clothes. Barney, a father of four, with a pregnant spouse, was attired in body armor. Along with the body armor he carried two loaded pistols, a Ruger .380, and a Glock .40. He also carried with him \$5,000 *cash* for the purchase of the aforementioned weapons, and to fund the purchase of other unspecified weapons. Immediately prior to his arrest, Coleman Barney sat in the front seat of a truck and held the silencer/pistol and one purportedly live grenade in his own hands. (Exhibit 1) These acts were digitally audio and video recorded. For his part, Barney’s co-conspirator, Schaffer Cox, a married father of two, was armed with a Glock .45. He was also wearing body armor.

²Unbeknown to the defendants, the six hand grenades were inert hand grenades provided by the FBI.

b. The Searches

In addition to the foregoing the United States proffers selected evidence of the results of the searches conducted by the investigation on March 11, 2011. With respect to Barney's residence, a search warrant, secured prior to Barney's arrest, authorized a search of the residence and grounds for various items, including firearms and ammunition. Later on March 10, 2011, a search warrant was secured for Coleman Barney's utility trailer. The state of Alaska also secured a search warrant for the Barney residence with respect to their investigation.³ With respect to these searches, the United States proffers that the following items were seized under authority of the aforementioned warrants:

Items Found in Barney's Residence

- One 37 mm grenade launcher (Exhibit 3)
- One box containing the necessary components to manufacture 100 37 mm grenades of an undetermined type. (Exhibit 3 (a-d))
- Two AR-15 rifles

³A parallel investigation was conducted by the Alaska State Troopers of Barney, Cox and others. This investigation resulted in an indictment in Alaska Superior Court for, among things, conspiracy to commit murder of a judicial officer, the Fairbanks District Attorney, and various Alaska State Troopers. (Exhibit 2)

- Two .308 rifles and 7,500 rounds of .308 ammunition
- A Draco 7.62mm
- 3 .22 rifles with 9,000 rounds of .22 ammunition
- three pistols in .22, .357, and .22 caliber
- Approximately 1230 rounds of .223 ammunition
- Approximately 140 rounds of .40 ammunition
- Approximately 500 rounds of .338 ammunition
- Approximately 224 rounds of .357 ammunition
- Approximately 400 rounds of .38 ammunition

The United States also proffers the following with respect to Schaeffer Cox. In February, 2011, Cox failed to appear for trial in Fairbanks on charges stemming from his failure to inform a law enforcement officer, who was responding to a 9-11 call that he, Cox, who showed up at the same call, was armed with a pistol. Upon failing to appear, the state court issued an arrest warrant for Cox. In anticipation of the arrest warrant being issued, Cox left his home and at first moved himself and his family into co-defendant Lonnie Vernon's residence. After a short tenure there, Cox moved his family and his belongings to Coleman Barney's residence. Barney knowingly harbored Cox from the state for more than a month and until their eventual arrest.

Moreover, the investigation revealed that Barney owned a dual-wheeled utility trailer. The trailer was parked on Barney's property for most of the investigation, only to be moved immediately prior to the March 10, 2011, arrest/search date by Barney and Cox. The trailer was subsequently found on March 11, 2011, parked in the parking lot of a local ice carving festival, an event attended by internationally renown ice carvers, families, children, school groups and other members of the public.

After being removed from the parking lot and searched by investigators, the following items were discovered and seized under the authority of state and federal search warrants:

Items Found in Coleman Barney's Trailer (Attributable to Cox and Barney)

- Body armor
- hand cuffs
- a gas mask
- a camo uniform
- a Browning .30 caliber, belt-fed, tripod-mounted submachine gun (not fully automatic) (Exhibit 4 (a-b))

- a fully automatic 9mm Sten machinegun with 10 magazines and 1 box/can of 9mm ammunition (Exhibit 5)
- a Walther P22 Handgun with an attached silencer, along with two magazines. (Exhibit 6) Barney and Cox are on tape discussing the manufacture of this silencer and are on tape each ordering a matched pistol/silencer set.
- 28 OC 37 mm canisters and “Hornets Nest” grenades⁴
- 2 Spikes Tactical 37 mm launchers (Exhibit 7 a-d)
- 17 grenade bodies (Exhibit 8)
- 2 grenade bodies with smoke fuses attached and two smoke fuses with a spoon attachment
- 1 case of “Wolf” primers
- 14 other assorted firearms including pistols, shotguns, an AR-15 (.223 caliber), and SKS 7.62 mm assault-type rifle and a 1,000 rounds of 30-06 ammunition.

⁴ “OC” is Oleoresin Capsicum, a chemical compound, whose active ingredient is derived from peppers, that irritates the eyes and sinuses to cause tears, pain, respiratory irritation, and even temporary blindness. OC is used in riot control, crowd control, and personal self-defense, including defense against dogs and bears. A “Hornets Nest” is an anti-personnel device which fires a swarm of high velocity rubber bullets from the 37mm launcher. They are used for riot/crowd control and can be defined as a “destructive device” under 18 U.S.C. § 5861(d).

Evidence at the hearing, and proffered by the government here, will establish that Barney and Cox parked this trailer, with its contents, prior to purchasing the hand grenades and pistol/silencer combinations, and left it at the local ice carving festival in an area adjacent to festival property.

3. “MAJOR BARNEY”

In November, 2010, Cox was set to appear on a local television station, KJNP, for a scheduled, extended interview session. Appearing with Cox on the televised interview were his wife, Marty Cox, and a common law judge, “Judge Bartell.” In summary, and as established through audio recordings of Cox and Barney obtained by the investigation, as well as documentary evidence seized via search warrant, Coleman Barney was given the title of “Major Barney” and was in charge of, among other things, a “security team” for Cox while he gave his interview.

Attached as Exhibit 9 is a photo of a white board seized from Cox’s residence. As the court can observe, on the upper left side of the board there’s a reference to “Major Barney.” There is an itemized, 13 category listing which provides details and plans for protecting Cox, Marti Cox and “Judge Bartell.”

Among the items on the list are the following:

1. *Pistols, SC grenades, radio, armor*

3. *Plain clothes agents may appear in courtyard*
5. *Look out for plain clothes agents drawing weapons*
6. *Do not shoot unless life is in danger*
7. *Drawing down on Schaeffer, Mary, Judge Bartell-shoot for defense*
12. *Trooper come to arrest-allow peaceful arrest*

Item 13, has two elements listed, they are:

- Plain clothes get non-lethal first option-hornet nest ocs gas*
- Lethal Force 2nd Option-Lead poisoning*

As to this “security team”, the court should note that the references to “OCS gas” and grenades. These refer to the 37mm grenade launchers, as well as the litany of OCS gas cylinders found during the course of the search. Additionally, the audio tapes obtained during the investigation reveal Barney admitted to being present on the night Cox gave his interview at KJNP, and also admitting being in possession of a 37mm grenade launcher while providing a security detail for Cox.

As additional evidence, the government provides the court with Exhibit 10 which, the government believes are written in the hand of co-conspirator Lonnie Vernon. These notes also reflect the “KJNP” meeting and provide additional details of the Cox security team and the plans to confront law enforcement in the event law enforcement appeared on scene. Vernon’s notes reflect the use of

grenades, state, “if an agent draws down on Judge Bartells-shoot him.” Later, at page 3 of the exhibit, Vernon notes, “If stopped, call Maj. Barney” while providing a phone number. (Redacted by the government)

Finally, other notes collected from Cox’s residence by the search teams reveal that Marty Cox, Schaeffer Cox’s spouse, and who appeared with him on the KJNP program, were also assigned a security for what is described on the document as “Courthouse.” With respect to this document, Exhibit 11, Cox’s “security team” was lead by Coleman Barney. His spouse Marty’s “security team” had listed as primary, “Bill Barney,” and as Secondary, “Mae Barney.” The court should note that both Bill Barney, and Mae Barney, the defendant’s parents, did not provide this court, or the state court, with letters of support for Coleman Barney.

4. THE THIRD PARTY CUSTODIAN AND BOND

By all appearances, the third party-custodian arrangement provided by the defendant is of brief tenure and totally unsatisfactory. It appears, due to his employment as an educator, that the third party custodian, the defendant’s brother, Sam Barney, will be required to return to the Yukon River village of Huslia, Alaska, within one month or so. It is also understood by the United States that the third-party custodian is 1) the defendant’s brother, 2) that he is residing on the

Barney property either free of charge or at a reduced rate, and 3) that he will be employed by the defendant. Having a close relative of the defendant act as the third-party custodian raises the specter of divided allegiances between a sibling and the court.⁵

With respect to the posted bond, there is no evidence to establish the source of the funds for the bond. Obviously, this raises the possibility that the funds were collected either from family members or well-meaning members of the defendant's social or business circles. If that is the case, it is clear that the defendant will have no stake in the funds secured as collateral for his release. Using other's funds as collateral to secure release is simply not the type of arrangement that this court should ratify nor permit. There is nothing in the proposal to establish that the defendant, who appears to have ample property, has but any of that property up as collateral. Permitting others to satisfy a bond amount provides no incentive for the defendant to abide by release conditions. If he absconds, it won't be under collateral posted by him, but by others.

⁵While Sam Barney has apparently been accepted as a third party custodian in state court, the government is unaware as how much information the state court heard or permitted to be heard with respect to the results of the parallel investigations.

ARGUMENT

- A. THE SEIZED EVIDENCE AND THE FACTS OF THE GOVERNMENT'S PROFFER ESTABLISH THERE ARE NO CONDITIONS NOR COMBINATION OF CONDITIONS WHICH WILL ASSURE THE SAFETY OF THE COMMUNITY NOR ASSURE THE DEFENDANT'S APPEARANCE AT TRIAL

Coleman Barney, Schaffer Cox and Lonnie Vernon are charged conspiring to acquire illegal weapons in the form of handgrenades and silencers. In connection with this investigation, the evidence submitted by the United States establishes that Barney and Cox, in acquiring these items, already possessed and or had immediate access to a cache of firearms which included a fully automatic Sten machine gun, hand grenade bodies and fuses, a pistol/silencer combination, 37 mm grenade launchers, parts to build 100 37mm grenades for those launchers, as well as a belt-fed .30 caliber Browning sub-machine gun along with a enough other small arms and ammunition to supply a small army.

Barney and Cox also showed up to an illegal arms sale wearing body armor, armed with loaded pistols (in Barney's case, two pistols) and with Barney carrying \$5,000 in cash.⁶

⁶Vernon and his wife, for their part, were arrested after purchasing a pistol/silencer combination, and the six inert hand grenades. In their vehicle state investigators discovered an SKS 7.62 rifle, a Hi-Point .380 handgun, a Sig-Arms .223 rifle, and a Mag pouch with five 7.62 clips. Vernon was armed with a

The evidence here establishes significantly more than peaceful militia membership, or lawful enthusiast, hunting or hobbyist gun ownership. While Barney provides the court with a plethora of letters from various members of the community, his professional life, and private life, the government doubts that any of these individuals were privy to this aspect of Barney's life. Indeed, Barney harbored Cox as a fugitive, with the knowledge he was wanted by the state of Alaska, in his own home, along with his pregnant wife and their small children. Barney maintained in his home his own 37mm grenade launcher, and permitted storage on his property of a trailer he owned which was stocked by Cox with all the parts necessary for the building of hand grenades, two live hand grenades, a fully automatic Sten machine gun and other tactically intended weapons and ammunition.

While Barney makes much of the fact that his bond was reduced and he was released in state court. Again, the government believes that the state court may not have been aware of all of the facts relating to the searches that were conducted as well as Barney's actions. As this court has been made aware, discovery is

Springfield .45 and 3 magazines, Karen Vernon possessed a Glock .357 pistol with a laser grip, magazine and holster. In their residence investigators discovered another fully automatic Sten machine gun, along with other firearms, tactical vests, body armor, gas masks and ammunition too numerous to list.

voluminous. From the United States' perspective, release of this defendant, given these facts, would not only result in the release of a danger to the community, but given that Barney's co-conspirator went underground, harboring himself with Barney, a trusted colleague, Barney could just as easily slip bail and be harbored by those sympathetic to his or his co-conspirator's cause. At a minimum, the defendant's parents were listed as custodians for the safety of Cox's spouse. Firearms, ammunition and other items such as hand grenades are easily concealed and cached. It is highly possible, given that Barney and Cox knew Cox was wanted by law enforcement, that one or more emergency caches of weapons exist in and around the Fairbanks, Alaska area. In the event of flight, Barney could easily access these possible caches, thus imperiling the safety of the community and law enforcement.

CONCLUSION

The court has before it, simply, one question. Given the foregoing, can it be assured that Coleman Barney is not a danger to the community, and, if released, will he appear at trial given the proposed offer. The answer to this question is a resounding "No." The Coleman Barney, father of five, business owner and member of the community referenced in the defense pleadings and in letters of support is not the same Coleman Barney who elected to arrive to an illegal arms

sale wearing body armor and carrying two loaded pistols. It is not the Coleman Barney who, during this arms sale held and examined with his own hands what he thought were live hand grenades, and a pistol silencer combination. It was not the same Coleman Barney who sought to purchase tactical weapons which only exist to kill either violently, secretly, or furtively. To this sale, Coleman Barney arrived with a similarly armed and equipped fugitive/co-conspirator whom he (and without doubt his spouse) supported and harbored for several weeks amongst his their own family of small children while hatching a plan to murder state of Alaska law enforcement officers and a state court judge. To assist this fugitive/co-conspirator, Schaffer Cox, Barney secreted and left in a very public place – a well known and popular winter festival – a trailer he owned, loaded with tactically-directed weapons of warfare – two live grenades, grenade making components, 18 grenade shells, grenade launchers, a belt-fed Browning semi-automatic machine gun, and other militarily offensive firearms and ammunition. The decision to deposit this trailer in such a public place defies explanation and speaks volumes concerning character. In leaving the trailer in plain view, Barney placed the needs of his cause and his allegiance to his co-conspirator above those of who lived in his community. The risk of harm to the attendees, which included children of all ages, were very real and very significant.

Despite the order of the state court, which may have not been in command of these facts due to the volume of discovery, Coleman Barney's motion for bail must be denied. The risk to the community, the danger to the community and the risk of flight or absconding are simply too great.

RESPECTFULLY submitted this 7th day of July, 2011, at Anchorage, Alaska.

KAREN L. LOEFFLER
United States Attorney

s/ Steven E. Skrocki
United States of America

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2011,
a copy of the foregoing Opposition to Motion for Bail Review Hearing
was served electronically on:

Tim Dooley, Esq.

s/ Steven E. Skrocki