

CLIFTON JACKSON AFFIDAVIT AND APPENDIX OF EXHIBITS ARE NUMBERED (first two cover pages of affidavit unnumbered, iii-xiii) IN ROMAN NUMERAL. EXHIBIT PAGES ARE CROSS REFERENCED AS APPENDIX (Appendix Pages are numbered 1-655) PAGES. AFFIDAVIT AND EXHIBITS ARE IN SUPPORT OF 26B MOTION TO REOPEN STATE OF OHIO v. CLIFTON JACKSON, CASE NO. 11CR083104, NINTH DISTRICT COURT OF APPEALS CASE NO. 14CA010555, Not Limited Too.

EXHIBIT

AC

EXHIBITS A-AAAE IN SUPPORT OF CLIFTON JACKSON ENCLOSED AFFIDAVIT AND APPENDIX PREPARED MARCH OF 2016 OF A DETAILED TIME LINE OF FACTUAL EVENTS BETWEEN JUNE 14th, 2011 AND OCTOBER OF 2015 TO THE BEST OF MY LAYMEN LEGAL ABILITIES.
THIS EXHIBIT "AC" IS REFERENCED IN ¶ 81 not limited too.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA)	12-m-170 (HKS)
)	
vs.)	
)	Buffalo, New York
CLIFTON JACKSON,)	February 15, 2013
Defendant.)	10:46 a.m.
)	
----- X		

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE H. KENNETH SCHROEDER, JR.
UNITED STATES MAGISTRATE JUDGE

WILLIAM J. HOCHUL, ESQ.
United States Attorney
BY: MAURA O'DONNELL, ESQ.
Assistant United States Attorney
138 Delaware Avenue
Buffalo, New York 14202

DAVID B. COTTER, ESQ.
5109 Main Street
Williamsville, New York 14221
Appearing on behalf of the Defendant

ALSO PRESENT: Zenaida Piotrowicz, U.S. Probation Office

AUDIO RECORDER: Llane M. Guidotti

TRANSCRIBER: Christi A. Macri, FAPR, RMR, CRR, CRI
Kenneth B. Keating Federal Building
100 State Street, Room 2441
Rochester, New York 14614

(Proceedings recorded by electronic sound recording, transcript produced by computer).

P R O C E E D I N G S

* * *

(WHEREUPON, the defendant is present).

MAGISTRATE JUDGE SCHROEDER: Good morning.

MS. O'DONNELL: Good morning, Your Honor.

MAGISTRATE JUDGE SCHROEDER: Are we ready to proceed for the detention hearing and then discussion of a preliminary hearing?

MS. O'DONNELL: Yes, Your Honor.

MR. COTTER: We are.

MAGISTRATE JUDGE SCHROEDER: All right. Ms. O'Donnell?

MS. O'DONNELL: Thank you, Your Honor.

Your Honor, again, as I stated earlier, the basis for the Government's motion for a detention hearing is our position that there's a serious risk that the defendant will flee.

Your Honor, the Government plans to proceed today by way of proffer, and before I do that I would ask that the presentence report -- excuse me, Pretrial Services Report be made a part of the record and incorporated, and would note that it recommends that there are no conditions or combination of conditions to reasonably assure either the defendant's appearance in court or the safety of the community, and lists various factors in their assessment of non-appearance, as well as their assessment of danger pertaining to the defendant.

Your Honor, looking at the factors cited in 18, U.S.C.,

1 3142(g), they weigh heavily in favor of detention. First of all,
2 Your Honor, looking at the nature and circumstances of the
3 offense, admittedly this is not a crime of violence, but it is a
4 serious crime, at least in economic terms.

5 At this point, Your Honor, 88 victims have been
6 identified with a loss of over \$500,000, and the allegations --
7 just to summarize -- being that the defendant either himself or
8 aided and abetted by others used identification information for
9 these various victims, used it to file tax returns and then was
10 able to gain the proceeds of those tax returns for his own use.

11 Looking at the evidence in this case, it's a strong
12 case. There's surveillance photos implicating the defendant as
13 being the person who is obtaining the proceeds from these tax
14 returns, as well as numerous written statements and
15 identifications of the defendant by witnesses, all of which are
16 consistent.

17 Your Honor, the tax returns were also sent to various
18 properties, all of which are linked to the defendant in different
19 ways.

20 Your Honor, I think the strongest factor to consider
21 here that weighs in favor of detention is the history and
22 characteristics of the defendant.

23 Your Honor, looking at his criminal history, without
24 going through every single conviction, the defendant has at least
25 six convictions for misdemeanor, felony offenses dating back to

1 1995.

2 Your Honor, almost every one of these -- the arrests for
3 these offenses occurred while the defendant was on some type of
4 release or a probation or parole sentence, and they include
5 serious offenses, Your Honor: Burglary in the third degree in
6 1995; a robbery conviction after a jury trial in 1999. In this
7 case, Your Honor, I would note that the defendant was paroled in
8 2000, was arrested again in 2001, at which point his parole was
9 revoked.

10 While on bail apparently for that case, the defendant
11 was also arrested on federal drug charges, was eventually
12 convicted of that.

13 Again, he was released following a term of incarceration
14 and then had another felony arrest -- felony drug arrest in 2007
15 in Jefferson County which he pled guilty to a D felony for
16 possession of marijuana. He was put out on parole in 2009; in
17 2010 his parole was revoked.

18 Your Honor, most recently in 2011 the defendant was
19 arrested in Ohio, he was indicted for trafficking drugs and is
20 awaiting trial there, out on \$50,000 cash bail at the time of his
21 current arrest.

22 Your Honor, I would also point to the circumstances of
23 the defendant's current arrest. I believe that these are referred
24 to in the Pretrial Services Report, but it's my understanding from
25 speaking to officers, agents involved in the defendant's arrest,

1 that when the defendant apparently realized that he was being
2 followed by law enforcement agents, he fled and made an attempt to
3 evade the police before being arrested.

4 Your Honor, I would note if you look at the defendant's
5 criminal history, it includes various previous attempts to evade
6 the police and, Your Honor, specifically references two different
7 instances in which the defendant led the police on a chase, one in
8 which the defendant was operating the vehicle. Police attempted
9 to pull him over and he led them on a chase throughout the city;
10 and another incident, Your Honor, where another individual was
11 driving the car and the defendant was a passenger, but led the
12 police on the car chase, then apparently the defendant and the
13 other individual left the car, fled the car on foot and later a
14 firearm was found in that vehicle. I don't believe that the
15 defendant was charged with that offense, or was only charged with
16 a violation.

17 But I think, Your Honor, those incidents show the
18 defendant's lack of -- show his attempts to evade police and show
19 that there's a likelihood in this case that the defendant will not
20 follow orders from the police report as required.

21 Your Honor, the defendant, according to the
22 Pretrial Services Report, has a history of drug abuse. His record
23 shows a past history of non-appearances, failures to appear and
24 warrants being issued on several of his prior cases, as well as I
25 already indicated parole revocation, and almost every one of his

1 arrests occurring while he's on bail for another offense.

2 Your Honor, I would also note in referring to the
3 defendant's history and character that it's my understanding that
4 the defendant made some misstatements to the Pretrial Services
5 Officer when completing this report, and specifically gave false
6 information regarding his address to the Pretrial Services
7 Officer, as well as to any of the agents or officers processing
8 him in this case.

9 And I, in fact, have -- the agents in this case have
10 spoken to the individual who lives at 47 Oxford Avenue, and that
11 the defendant has never lived at 47 Oxford Avenue.

12 That he previously -- and this is going back several
13 years -- dated a person at that address. She has allowed him to
14 receive mail at that address, but he does not and has not resided
15 there.

16 It's also my understanding that he owns a number of
17 properties. That he goes back and forth between some of
18 properties and does not have a stable residence.

19 He also appears to have ties out of the area,
20 specifically, Your Honor, I would note that he -- the mother of
21 some of his children and some of his children reside in Ohio; and
22 that his most recent arrest is also in the State of Ohio for which
23 he's currently out on bail.

24 Your Honor, with regard to this case it's my
25 understanding that agents have been attempting to locate the

1 defendant with regard to this case since December of 2012. They
2 have spoken to numerous individuals and informed them, family
3 members and associates of the defendant, have been informed that
4 there's a warrant for the defendant, that agents were trying to
5 make attempts to locate the defendant in relation to this, were
6 given information to convey to the defendant so that he could make
7 arrangements to turn himself in. The defendant never did so.

8 And, Your Honor, one of the individuals who was
9 contacted I believe multiple times by agents regarding that was
10 the -- one of the defendant's girlfriends, mother of his, I
11 believe, youngest child who he was with, or at least at her house
12 the morning that he was arrested.

13 Your Honor, finally, looking to the nature and
14 seriousness of the danger of the defendant, he certainly imposes
15 an economic danger to the community based on this behavior, and I
16 think the Court would agree with me that while having someone file
17 a tax return in your name may not be something that causes you
18 physical harm, it certainly causes people a great deal of anguish,
19 can completely ruin their credit history, as well as hinder their
20 own ability to file taxes and cause problems for them with the
21 IRS.

22 The defendant, at least alleged in this complaint, has
23 inflicted that harm on 88 individuals.

24 Your Honor, I also note in the defendant's record that
25 some of those crimes, the crimes of which he's been convicted, are

1 crimes of violence. There's also past allegations that he has
2 possessed weapons or been involved with people who are in
3 possession of weapons.

4 So for all those reasons, Your Honor, the Government
5 feels that there's no set of conditions that would assure the
6 defendant's appearance as required, and that would assure that the
7 defendant does not pose a danger to the community or to any member
8 of the community, we're asking that the Court detain the
9 defendant.

10 MR. COTTER: Judge, there's not much that I can say with
11 respect to the fact that it appears that Mr. Jackson has been
12 arrested 18 times in the past.

13 Those are facts that preceded my existence and I can't
14 necessarily argue, but what I can point out to you, Judge, is that
15 the purpose of detention is if the individual poses some kind of a
16 threat or is a risk for non-appearance.

17 And you go back through the 20 years of Mr. Jackson's
18 criminal history, you will see one warrant that was issued in
19 Jefferson County in 2007.

20 Now, I have only been on this case for a couple of days,
21 as the Court is aware, and it's my understanding that Mr. Jackson
22 missed that appearance in Jefferson County in 2007 because he was
23 in federal custody.

24 But if you go through the rest of the 17 or so arrests,
25 Judge, there's never a non-appearance. There's never a warrant

1 that's issued. There are parole revocation warrants, yes, but not
2 non-appearance warrants.

3 The matter in Ohio, Judge, has been pending for 20
4 months. It has not been brought to trial. I have put a call in
5 to the attorney in Ohio. My understanding is, Judge, that that
6 case involves a terrible stop and a terrible seizure. The Federal
7 Government didn't want to pick it up because they thought that it
8 wouldn't last more than 15 minutes in federal court.

9 Nonetheless, 20 months he has made every appearance.
10 He's made every appearance on every case that he's ever been
11 charged with. He, to my understanding, is more or less a
12 life-long resident of the City of Buffalo. He has never failed to
13 show up for court.

14 This is a non-violent case, Judge. For one, he's got --
15 it was a burglary where he was convicted. That burglary charge,
16 Judge, is a non-violent burglary.

17 He -- I don't know where they are today, Judge. There
18 were (inaudible) with whom my client has a relationship. They
19 were here when we were in court I believe on Tuesday. They were
20 here Monday and Tuesday. I have spoken with both of them. I
21 anticipated them being present today.

22 One of them is a manicurist or something like that,
23 apparently earns about \$1,000 a week. She represented to me
24 earlier this week that she was willing to sign a signature bond.

25 I don't know how the Government can say that if he has

1 posted bail in Ohio in the middle of 2011, how the Government
2 incredibly represents to you today that there is no set of
3 conditions if, in fact, we had this situation in Ohio that's been
4 pending since June 2011, and there are no warrants there where
5 bail is posted.

6 Now, with respect to some of the allegations about the
7 Government's agents going out to the community and talking to
8 Mr. Jackson's friends and relatives, Judge, it's my understanding
9 that on January 14th, 2013, the postal inspector did, in fact, go
10 to a girlfriend's house and say that he had a warrant.

11 She requested to see the warrant. She was shown a
12 folded up piece of paper with the name Clinton Jackson on the
13 outside of it, but it wasn't unfolded for her to examine.

14 Mr. Jackson has friends in the Buffalo Police
15 Department. Inquiries were made as to whether or not a warrant
16 was in the NCIS system and the response was no.

17 I note that the warrant didn't issue. It was filed on
18 PACER after my appearance on Tuesday. The warrant's dated
19 December -- yeah, December 19th, but apparently was not entered
20 into the system for Buffalo Police Department personnel to have
21 access to it..

22 My client's understanding and his friends and relatives'
23 understanding was that the representation was made that a warrant
24 was in existence, but that wasn't supported by the facts.

25 With respect to him going into custody, Judge, the

1 Pretrial Services Report says that he tried to evade the police
2 and that, you know, there might have been a chase of some sort.
3 What the record does show, Judge, is that no traffic violations
4 were issued; no citations; no vehicle and traffic laws were
5 broken, at least as supported by oath or affirmation from a law
6 enforcement officer who was present at the scene.

7 Judge, they don't have a statutory presumption in this
8 case and I think what they're doing is grasping at straws. You
9 can't look at this record with 18 arrests and find that there were
10 no non-appearances and say that, well, because he has always
11 appeared in the past, he's not going to appear in this case.

12 Because he posted bail in Ohio and hasn't had any
13 violations or warrants issued in Ohio, he's going to run in this
14 case.

15 He's got nowhere to go, Judge. If, in fact, he, you
16 know, this allegation that Mr. Jackson is responsible for \$500,000
17 in fake federal tax refunds being issued, why does he need an
18 assigned attorney?

19 He represented to you apparently at his arraignment last
20 Friday that he was going to try to hire Paul Dell. He couldn't
21 afford to do that, Judge. I know for a fact that the request for
22 the retainer from Mr. Dell was \$7,500. By my estimation on a
23 federal criminal case, that's a real low ball offer for the lawyer
24 to accept, but Mr. Jackson couldn't meet that.

25 He is a property manager, his mother has some properties

1 here in Buffalo. I have not yet gotten in touch with her, but I
2 assume that those properties could be posted. I do have a woman
3 who is willing to sign a signature bond and if given the
4 opportunity, Judge, I'll certainly get her in here.

5 With respect to the postal inspector going door to door
6 and talking to the relatives and so on, I may be mistaken, but I'm
7 not quite sure that anybody has the duty to cooperate. I know
8 they're not allowed to lie to the federal law enforcement
9 officers, but they don't have to give up information.

10 Now, with respect to the prior federal drug charge,
11 Judge, that case lasted for about four years from start to finish
12 and ultimately what he took on that was a phone count. It's
13 hardly the most egregious violation that this Court has seen in
14 the past.

15 And there are no weapon charges or convictions. Maybe
16 somebody else in the car took one or something, but certainly
17 Mr. Jackson hasn't.

18 I find it kind of surprising that the Government is
19 moving for detention in this case, Judge. There's a presumption
20 that he's entitled to bail. It seems to me to be presented to you
21. today backwards.

22 I would ask that any kind of conditions be set, Judge.
23 He would be willing to take an ankle monitor. It's my
24 understanding that we can get that set up in places. He does have
25 children to support. He is working.

1 Judge, if I could just sort of walk you through the
2 complaint a little bit? In paragraphs 5 and 6, at the beginning
3 of the complaint the verbiage or the verbs that get used are that
4 Mr. Jackson participated in this scheme.

5 And by paragraph 60, they come to the conclusion that
6 Mr. Jackson is responsible for this scheme.

7 What you can glean from the complaint, Judge, is that
8 certainly somebody with the initials DM seems to be wholly
9 responsible for at least 50 of these income tax returns being
10 filed.

11 And my guess, Judge, is that some of the witnesses that
12 the Government are ultimately going to rely on are kind of shaky.
13 But I don't see why there's any reason why bail could not be
14 posted on a signature bond, why we can't explore having some real
15 estate posted, why we can't explore having an ankle bracelet or a
16 curfew.

17 It seems to me, Judge, that there are a whole list of
18 conditions and combinations of conditions that could be explored
19 to allow Mr. Jackson to have his liberty while this case winds its
20 way through the system.

21 I think that the Court is aware that in this district
22 it's not at all uncommon that Mr. Jackson's last run through of
23 these things could take three or four years to get done. There's
24 no reason for him to be locked up for that period of time in this
25 case, and the evidence that's been presented to the Court and

1 based on his past history of always appearing.

2 MAGISTRATE JUDGE SCHROEDER: Ms. O'Donnell, anything you
3 want to add?

4 MS. O'DONNELL: Yeah, I do, Your Honor. First of all,
5 just with respect to the case in Ohio, it's my understanding that
6 bail was set in the amount of \$500,000 and that \$50,000 cash was
7 put towards a bond in that case.

8 We have been in touch with the -- a court in Ohio. I
9 can't say that I specifically have. My guess is that at some
10 point an attempt will likely be made to revoke the defendant's
11 bail there, but I can't speak for them.

12 But that may give some reason why the defendant -- and
13 that's a substantial amount of bail. That's not going out on an
14 ankle monitor with a signature bond. That's someone posting
15 \$50,000 cash.

16 You know, Your Honor, if you look through the
17 defendant's criminal history, every time -- I'm not going to say
18 every time -- almost every time it appears the defendant is put
19 under the supervision of the Court, which is what would occur if
20 the defendant were to be released on bail in this case -- he may
21 come back to court if he's arrested again on another charge. So
22 he's put back in jail.

23 So I don't even know how long he's out on some of these
24 cases. In March of 1998 he's arrested, he's put on bail, he's
25 arrested again on April 15th of 1998, and then again arrested on

1 April 27th of 1998. He then is --

2 MAGISTRATE JUDGE SCHROEDER: But that's a different
3 scenario than non-appearance. If he's arrested while out on bail,
4 that's a basis for revoking the bail.

5 MS. O'DONNELL: That's correct, Your Honor. I understand
6 that. I guess my point is that he's not actually -- doesn't
7 appear on some of these cases to actually -- even out on bail --
8 he doesn't even have a chance to not appear because he gets
9 arrested and he's brought back in in custody and that's why he
10 continues to appear.

11 I mean, there's a strong history of it throughout his
12 record. And I also think, Your Honor, the defendant's lack of
13 being able to abide by the conditions of supervised release does
14 not make him a good candidate for pretrial release on this case,
15 meaning that he will come back to court on his own.

16 But, Your Honor, I would -- I mean, as far as I'm
17 concerned, there's been no discussion about a substantial amount
18 of bail. I think if the defendant was able to put up some amount
19 of bail that's equal to what he's put up in Ohio, maybe the
20 Government's position would be that we would be -- we would be
21 willing to evaluate that and consider whether our position has
22 changed.

23 Your Honor, with respect to the defendant divulging to
24 you whether he has some proceeds of the crime in this case, it's
25 my experience, it's limited in prosecuting economic crimes, that

1 usually a -- someone who is accused of an economic crime is not
2 going to tell the Court that they have some proceeds of that crime
3 that they would be able to use for either purposes of putting up
4 bail or for hiring an attorney.

5 So I don't think that that is any -- the fact that the
6 defendant did not retain an attorney is any indication of his
7 guilt or innocence in this case.

8 I have nothing further to add, Your Honor.

9 MAGISTRATE JUDGE SCHROEDER: All right. Considering the
10 totality of the circumstances as I'm required to do under the Bail
11 Reform Act, and recognizing the presumption of innocence to which
12 the defendant is entitled both under the Constitution of the
13 United States as well as under the Bail Reform Act of 1984 as
14 amended, I'm faced with a defendant charged with a non-violent
15 crime -- it's an economic crime.

16 The crime charged does not constitute one of those
17 contained in the Bail Reform Act where the presumption of either
18 violence or non-appearance would apply.

19 Although I am deeply concerned about the lengthy
20 criminal history of the defendant, and the history of the
21 defendant allegedly and factually based on pleas or convictions
22 committing another crime while on supervised release or while on
23 probation or parole or while on bail, nevertheless, as has been
24 rightfully pointed out for counsel for the defendant, the issue
25 before me is whether the defendant constitutes a risk of flight or

1 non-appearance and what has been put forth as far as his criminal
2 history is concerned.

3 There is nothing in that history that establishes a
4 failure of the defendant to appear when required. It would
5 indicate the commission of other offenses while on such release,
6 but that's a different issue, that's a different matter for
7 purposes of bail.

8 And as I pointed out, if such additional offense or
9 crime were to occur while on release in this case, that would be a
10 basis for revoking the defendant's bail and lock him up and
11 keeping him locked up until the matter was completed.

12 So in taking into account all of the circumstances and
13 realizing there are some serious factors that cause this Court
14 concern, nevertheless when I weigh those factors against the
15 presumption of innocence and the constitutional right to bail, I
16 can only conclude that there is not a legitimate legal basis for
17 me to deny the defendant that constitutional right because I do
18 believe there are conditions that I can impose to at least
19 reasonably warrant the appearance of the defendant at future
20 proceedings, and those conditions are as follows:

21 The defendant is hereby required to post security in the
22 amount of \$50,000, be it either in cash or property having a value
23 of at least that amount free and clear of any and all liens or
24 encumbrances.

25 The defendant is hereby made subject to the supervision

1 and authority of the United States Probation Office and what that
2 means, Mr. Jackson, is you must obey and carry out and follow
3 through with every directive given to you, every reasonable
4 directive given to you by a representative of that office.

5 And if you should fail to do so, that can result in your
6 bail being revoked and your being kept locked up until this matter
7 is completed.

8 Do you understand?

9 THE DEFENDANT: Yes, Your Honor.

10 MAGISTRATE JUDGE SCHROEDER: The defendant is also hereby
11 required to report any contact he has with any law enforcement
12 personnel for any reason whatsoever, be it something as minor as a
13 vehicle and traffic stop or for any other reason. And that report
14 must be made within 72 hours after the contact has occurred and it
15 must be made to the United States Probation Office.

16 The defendant is hereby prohibited from having
17 possession of or access to any firearms or any destructive
18 devices. And if the defendant does have such possession or
19 access, he must make that known to his attorney. And I direct
20 you, Mr. Cotter, as an officer of the Court to then confer with
21 counsel for the Government so that appropriate arrangements can be
22 made for the surrender and safekeeping of same while this case is
23 pending.

24 The defendant will also be required to submit to drug
25 and/or alcohol testing as determined by the United States

1 Probation Office and to contribute towards the cost of that
2 testing in the form of a co-payment as determined and directed by
3 the U.S. Probation Office.

4 And if the Probation Office further finds that in-house
5 treatment is necessary or other forms of treatment are necessary,
6 the defendant will be obligated to comply with those directives
7 issued by the United States Probation Office.

8 The defendant is also prohibited from attempting in any
9 way or in actual ways of interfering with or obstructing the
10 accuracy of any testing that is carried out with respect to drug
11 use or alcohol abuse.

12 The defendant is also hereby placed on electronic
13 monitoring and to home confinement where he will be able to
14 conduct his business or employment.

15 Confinement?

16 MS. PIOTROWICZ: Detention, Your Honor.

17 MAGISTRATE JUDGE SCHROEDER: Detention. Home detention.

18 The hours of such detention will be established by the
19 U.S. Probation Office. The hours which the defendant will be
20 allowed to leave his premises will also be determined by the
21 U.S. Probation Office.

22 And the only legitimate reasons the defendant leaves the
23 premises are either for employment purposes, medical purposes, or
24 religious purposes. Other than that, the defendant is to stay in
25 the premises where he will be residing.

1 The defendant is also required to give a valid place,
2 address of residence. And that residence will first be determined
3 as to feasibility for the electronic monitoring.

4 Since the defendant also appears to have properties that
5 he manages or supervises in various places within the city, I'm
6 also going to place the defendant on GPS monitoring and he will be
7 obligated to contribute towards the cost of that monitoring
8 service as determined and directed by the U.S. Probation Office.

9 If the defendant has a passport, he is to surrender that
10 passport to the Clerk of the Court. While this matter is pending
11 he is not to apply for any passports or renewal of passports.

12 The defendant's travel is hereby limited to the County
13 of Erie where he resides, except for the necessity to travel to
14 the State of Ohio where he presently has criminal charges pending
15 against him.

16 But before he is allowed to undertake such travel, he
17 must first notify the U.S. Probation Office and provide the
18 Probation Office with an itinerary establishing the dates of which
19 he is to appear in court in Ohio and the purpose of such
20 appearance or the purpose for such travel to Ohio if it is also to
21 confer with his Ohio counsel.

22 The defendant is not to undertake any travel outside of
23 the County of Erie without first receiving permission to do so
24 from the U.S. Probation Office.

25 Any other conditions?

1 MS. PIOTROWICZ: No, Your Honor.

2 MAGISTRATE JUDGE SCHROEDER: Upon completion of any
3 additional processing by either the U.S. Marshal's Service and/or
4 the U.S. Probation Office, the defendant is hereby released on
5 bail subject to the posting of the \$50,000 security as I've
6 indicated; and subject to the Probation Office determining the
7 feasibility for the installation of the electronic monitoring and
8 GPS monitoring system as I've indicated.

9 MS. PIOTROWICZ: It would only be the GPS, Your Honor,
10 because those are two separate systems.

11 MAGISTRATE JUDGE SCHROEDER: All right. Anything further
12 at this time as to conditions of bail?

13 MS. O'DONNELL: Your Honor, is there a timeframe for the
14 bail to be posted so that --

15 MAGISTRATE JUDGE SCHROEDER: Well, he won't be released
16 until it's posted. He won't be released until it's posted.

17 MS. O'DONNELL: Thank you, Your Honor.

18 MAGISTRATE JUDGE SCHROEDER: Now, as to a preliminary
19 hearing, Mr. Cotter, does the defendant waive his right to a
20 preliminary hearing with the understanding that I will issue an
21 order pursuant to Rule 48(b) of the Federal Rules of Criminal
22 Procedure where and whereby the criminal complaint herein will be
23 deemed dismissed without prejudice effective April 30th, 2013?

24 MR. COTTER: We do, Your Honor.

25 MAGISTRATE JUDGE SCHROEDER: Ms. O'Donnell, is it the

1 position of the Government that the time between now and
2 April 30th, 2013, will operate in the interest of justice in this
3 case and, therefore, such time should be excluded for purposes of
4 the Speedy Trial Act as well as the time requirements set forth in
5 Rule 5.1 of the Federal Rules of Criminal Procedure?

6 MS. O'DONNELL: Yes, Your Honor.

7 MAGISTRATE JUDGE SCHROEDER: And Mr. Cotter, is it the
8 position of the defendant that the time between now and
9 April 30th, 2013, will operate and inure to his benefit and,
10 therefore, such time should be excluded for purposes of the Speedy
11 Trial Act as well as the time requirements set forth in Rule 5.1
12 of the Federal Rules of Criminal Procedure and any other statutory
13 time requirements that might be applicable?

14 MR. COTTER: That is our position, Your Honor.

15 MAGISTRATE JUDGE SCHROEDER: Based on the representations
16 made by counsel for the respective parties herein, I find that the
17 time between now and April 30th, 2013, will, in fact, be utilized
18 in such a way so as to operate and inure to the benefit of the
19 defendant as well as operate in the interest of justice in this
20 case in that such time is going to be utilized to allow the
21 Government sufficient time within which to provide voluntary
22 discovery material to the defendant and thereafter give the
23 defendant's attorney sufficient time within which to review the
24 material provided, as well as time to prepare in the
25 representation of the defendant so as to provide the defendant

1 with effective assistance of counsel, that being his
2 constitutional right which right outweighs the public's right or
3 interest to a speedy trial.

4 Further, such time will be utilized by the parties for
5 the purpose of conducting pretrial negotiations with the objective
6 of reaching an agreement that will dispose of this matter without
7 the necessity of a trial.

8 And should that objective be accomplished, the public
9 will also benefit from same in that it will be spared the cost and
10 expenditure and resources that would be necessitated in the
11 holding of a trial and possible appeal.

12 For all of those reasons then the time is justifiably
13 and validly excludable and is hereby so excluded pursuant to and
14 in accordance with the provisions contained in Title 18 of the
15 United States Code, Section 3161(h) (7) (A) and
16 Section 3161(h) (7) (B) (iv).

17 And, Ms. O'Donnell, will you provide an Order of
18 Exclusion to that effect, please?

19 MS. O'DONNELL: Yes, Your Honor.

20 MAGISTRATE JUDGE SCHROEDER: Anything further?

21 MS. O'DONNELL: No, Your Honor.

22 MAGISTRATE JUDGE SCHROEDER: In the meantime then the
23 defendant is remanded to the custody of the U.S. Marshal's Service
24 until the bail conditions that I've indicated are met for his
25 release.

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(WHEREUPON, the proceedings adjourned at 11:22 a.m.)

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CERTIFICATE OF TRANSCRIBER

In accordance with 28, U.S.C., 753(b), I certify that this is a true and correct record of proceedings from the official electronic sound recording of the proceedings in the United States District Court for the Western District of New York before the Honorable H. Kenneth Schroeder on February 15th, 2013.

S/ Christi A. Macri

Christi A. Macri, FAPR-RMR-CRR-CRI
Official Court Reporter