

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

Case No. 16-20098
Hon. George Caram Steeh

KHALIL ABU-RAYYAN,
Defendant.

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GOVERNMENT’S OPPOSITION TO DEFENDANT’S MOTION FOR
REVOCATION OF DETENTION ORDER

Abu-Rayyan has filed a motion for bond by relying primarily upon a particular sentence contained in the forensic examination report of Dr. Chad Tillbrook and some self-serving comments he made during the examination.¹ Contrary to his assertions, a full, faithful and accurate reading of the quoted sentence from the forensic examination report does not support his claim for bond. Furthermore, a review of the evidence regarding Abu-Rayyan’s consistent support of ISIL (the Islamic State of Iraq and the Levant), his continually voiced desire to

¹ Likewise, Abu-Rayyan recycles some of the same arguments he previously made and were rejected by this Court in his prior bond motion. Moreover, the defense improperly seeks to have this Court consider the opinion of Dr. Lyle Danuloff, which was specifically rejected as being unreliable, regarding the issue of Abu-Rayyan’s dangerousness. This Court found that Danuloff “lacks the training and education background to offer opinion testimony [as it relates to the potential risk posed by the defendant if released].” (Bond Hearing April 18, 2016 at p 39).

engage in a martyrdom operation, his fascination with death and killing, particularly beheadings, his on-going mental health issues, his possession and attempted possession of firearms, his drug use, and his prior assaultive conduct undoubtedly contradicts Abu-Rayyan's self-serving comments. Abu-Rayyan remains a danger to the community and a risk of flight, and his motion should be denied.²

DISCUSSION

Misquotation does not support bond

Abu-Rayyan appears to place great weight on a particular sentence contained in the forensic examination report of Dr. Chad Tillbrook, as evidenced by serially bolding a portion of the report, to support his motion for bond. Abu-Rayyan claims that "... the Government's expert found that he is '**not a substantial risk of causing bodily harm to others.**'" (R. 86: Motion for Revocation of Detention Order ID 637, 641 and 648) (emphasis in original). This, however, is not a full and accurate quotation from Dr. Tillbrook's report. Nor does it support the proposition that Abu-Rayyan should be granted bond. By failing to fully and accurately quote the forensic report, defense wrongly suggests that Dr.

² The United States does not intend to repeat the prodigious amount of information which it previously provided to the Court in response to Abu-Rayyan's prior motions for bond. Therefore, the United States relies upon its prior pleadings and arguments regarding the matter of Abu-Rayyan's detention and incorporates by reference those materials in this response.

Tillbrook has found that Abu-Rayyan is no longer a danger to the community and thus should be granted bond.

Rather, in context, the entire quotation simply states that Abu-Rayyan does not currently have any mental health issues which require involuntary inpatient mental treatment. The full quotation states: “[G]iven that Mr. Abu-Rayyan is not presenting with any acute psychiatric symptoms and is not a substantial risk of causing bodily harm to others or serious damage to property of another **due to mental illness**, inpatient mental health treatment is not indicated at this time.” (emphasis added)(Tillbrook Report at p.11).

It is clear that Dr. Tillbrook, in an attempt to follow the dictates of the statutes dealing with competency, mental illness and involuntary commitments of defendants for treatment, uses the language of 18 USC §§4241&4246 to find that Abu-Rayyan should not be involuntarily committed to hospital for treatment due to a mental illness.³ Dr. Tillbrook was neither requested nor did he seek to provide an opinion concerning Abu-Rayyan’s dangerousness under the Bail Reform Act (18 USC §3142). Dr. Tillbrook, rather than finding that Abu-Rayyan is not a danger to the community and thus could be granted bond, instead simply found that he is not a danger to the community “due to [a] mental illness” **and** thus should not be

³ 18 U.S.C. §4246 states in pertinent part: “If the director ... certifies... that a person ... who has been committed to the custody of the Attorney General pursuant to section 4241(d) .. is presently suffering from a mental disease or defect as a result of which his release would create a serious risk of bodily injury to another person or serious damage to property of another ...” a hearing shall be conducted to determine if he should be committed.

involuntarily committed according to the statutes dealing with offenders with mental disease or defects (18 USC §§ 4241-4248).

The facts and evidence contradict Abu-Rayyan's self-serving statements

In an effort to avoid personal responsibility for any of his actions, Abu-Rayyan expressed several self-serving comments during his examination and tries to attribute his dark thoughts, plans and desires to his misguided attempts to impress a woman (i.e the FBI undercover employee [UCE]). However, the evidence recovered by the FBI during its investigation and Abu-Rayyan's pre-arrest statements and actions belie such a claim. It is clear that Abu-Rayyan has been expressing support for vicious, brutal and heinous acts long before he ever had any contact with the UCE – which first occurred around December 15, 2015. For example:

- 1) As early as when Abu-Rayyan was 12 years old (at least 9 years before his first contact with the UCE), according to his step-mother, and verified by Abu-Rayyan during his forensic evaluation, while attending the Star International Academy (in Dearborn Heights, Michigan) Abu-Rayyan was referred to counseling because he told his teacher that he dreamed he had a gun and shot everyone in the class.
- 2) Abu-Rayyan likewise acknowledged that while in school (a time period that ranges from 3 to 16 years before he first had contact with the UCE), he

engaged in assaultive behavior requiring him to be suspended from school on three or four occasions and engaged in a fight with his brother that resulted in the police being called and Abu-Rayyan being arrested.

3) Abu-Rayyan also has been expressing his support for ISIL and violence for several years. As July of 2014 (approximately a year and a half prior to his first contact with the UCE), he discussed conducting jihad because he believed that Israel was “killing everyone” and that he could not be a bystander to the “genocide.”

4) As early as November of 2014 (more than a year before his first contact with the UCE), Abu-Rayyan had likewise been re-tweeting, liking, and commenting on ISIL propaganda on his Twitter account. This included him actively seeking out the internet links to gruesome ISIL videos, posting them on his Twitter accounts and then posting positive comments after viewing the executions and killings depicted in the ISIL videos.

5) On January 22, 2015 (11 months prior to his first contact with the UCE), Abu-Rayyan added to his “Favorites” on his Twitter account a photograph of a person about to have his throat slit with a knife. (See Exhibit A).

6) On February 19, 2015 (10 months prior to his first contact with the UCE), the FBI found a photograph was uploaded to the defendant’s Twitter account. In this photograph, a camouflage-clad Khalil Abu-Rayyan, in the

presence of two other similarly dressed individuals, is holding what appears to be a semi-automatic hand gun in his right hand, while holding up his left hand with his index finger extended upward. (See Attached Exhibit B).

7) On October 5, 2015 (more than 2 months prior to his first contact with the UCE), Abu-Rayyan purchased a gun which was later seized by the Detroit Police Department when he illegally carried the gun.

8) Shortly after his arrest on October 7, 2015 (more than 2 months prior to his first contact with the UCE), Abu-Rayyan replaced his telephone and began to download a multitude of disturbing photographs on his new phone. These images appear to be screen shots of some of the ISIL videos that he watched, as was verified by the defendant's brother and the review of his Twitter posts. Some of these saved images include the ISIL flag, people with firearms with the ISIL flag, people dressed in orange jumpsuits who appeared to being burned alive, a handcuffed captive in an orange jumpsuit who was placed in front of a tank and run over, handcuffed people being thrown from buildings, and several images of prisoners/people being beheaded or images of severed heads. He installed one image in particular as his cell phone wallpaper (a background image that is openly visible on the home screen of the phone). This unsettling image was that of a camouflaged-

clad smiling man holding his index finger vertical with his left hand while holding a severed head of a woman by the hair with his right hand.

9) On October 22, 2015 (approximately a month and a half prior to his first contact with the UCE), the defendant sent a message from his phone which contained an image of the ISIL flag. (See Attached Exhibit C – Redacted phone number).

10) On October 25, 2015 (approximately a month and a half prior to his first contact with the UCE), the defendant sent a message from his phone to his brother's phone which contained an image of an individual using a knife to cut off a person's head.

11) On November 15, 2015 (a month before his first contact with the UCE), Abu-Rayyan, tried to purchase a second firearm, a 9mm magazine-fed 8 shot semi-automatic handgun and tried to get authorization to carry a concealed firearm. After being denied the ability to purchase the firearm, he went to a shooting range to practice shooting AK-47 and AR-15 assault rifles.

12) On November 29, 2015 (more than 2 weeks prior to his first contact with the UCE), Abu-Rayyan posted a photograph of himself holding an AK-47 and holding his index finger vertical with his right hand. He also posted a comment under the photo "Sahwat hunting." The term "Sahwat" describes Iraqis who oppose ISIL. (See Attached Exhibit D).

13) On December 12, 2015 (about 3 days before first communicating with the UCE), Abu-Rayyan sent a message to his brother (“Adam”) stating “This would be a perfect time to do a istishadi (martyrdom/suicide) operation.” (See Attached Exhibit E –Redacted phone number).

All of the above statements and acts cannot be attributed to Abu-Rayyan being “entrapped” by the UCE, nor can they be attributed to an attempt to impress the UCE, as they all took place **before** he ever had any contact with the UCE.⁴ Of course this Court is well aware that Abu-Rayyan continued on with his consistent support of ISIL, his continually voiced desire to engage in martyrdom operations, his fascination with death and killing, particularly beheadings, after he believed he found a like-minded individual – the UCE.⁵

Moreover, when one reflects upon the finding by Dr. Tillbrook, that the Abu-Rayyan is not suffering from any mental disease or defect, and considers it along with Abu-Rayyan’s pre-arrest statements and actions, a more ominous picture of Abu-Rayyan is revealed. This is because Abu-Rayyan’s dark thoughts of beheading people, following ISIL, being fascinated with firearms, planning

⁴ Abu-Rayyan’s continued claim of “entrapment” is a legal and factual impossibility because the crimes he is charged with committing took place before his contact with the UCE. Abu-Rayyan is currently charged with making false statements to purchase a firearm by claiming he was not a drug user/addict, and possession of a firearm by a prohibited person (i.e. a drug user/addict). Abu-Rayyan has readily admitted that he began using and became addicted to drugs several years ago, and was continually using drugs when he made the false statement and purchased the firearm. It is likewise clear that he made the false statements and purchased the firearm several months before he had any contact with the UCE.

⁵ Several of Abu-Rayyan’s statements can be found as an attachment to the government’s prior pleading (See R.59: Government’s Opposition to Bond - Attachment A Pg ID 349-357).

executions and the mass murder of church goers cannot be attributed to a mental illness over which he holds no control of his thoughts or actions.

Perhaps, if all of Abu-Rayyan's gruesome plans and desires were beyond his control, due to a mental illness, this Court and the community could take some comfort in the fact that Abu-Rayyan's dark thoughts, desires and dangerousness potentially could be mitigated or controlled through Court mandated medications and/or treatments. However, due to Dr. Tillbrook's findings, such comfort cannot be found with Abu-Rayyan's condition. It is inescapable that due to Dr. Tillbrook's determination that since Abu-Rayyan is not suffering from a mental disease or defect, that all of Abu-Rayyan's expressed thoughts, plans, and actions, over an extended period of time, had to have come about as a result of the longings of a clear minded individual who has a heartfelt desire to engage in vicious, brutal and heinous acts.⁶ Thusly, Dr. Tillbrook's, or any other person's, finding that Abu-Rayyan is not suffering from a mental illness undoubtedly exacerbates rather than mitigates Abu-Rayyan's dangerousness, and therefore release is not appropriate.

⁶For example, it is unreasonable to attribute Abu-Rayyan's downloading of ISIL videos and photographs to his telephone, which he never shared with the UCE but shared with his brother, as the act of "a guy trying to lose his virginity." (Tillbrook Report at p.7).

CONCLUSION

Based upon the forgoing, and evidence presented during Abu-Rayyan's two prior bond hearing, Abu-Rayyan remains a danger to the community and a risk of flight, and his motion should be denied.

Respectfully submitted,

Barbara L. McQuade
United States Attorney

s/Ronald W. Waterstreet
RONALD W. WATERSTREET
Assistant U.S. Attorney
211 W. Fort St., Ste. 2001
Detroit, MI 48226
(313) 226-9100
ronald.waterstreet@usdoj.gov

Dated: August 12, 2016

CERTIFICATE OF SERVICE

I hereby certify that on Friday, August 12, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of the filing to the counsel for the Defendant:

Todd Shanker

s/Ronald W. Waterstreet
RONALD W. WATERSTREET
Assistant U.S. Attorney
211 W. Fort St., Ste. 2001
Detroit, MI 48226
(313) 226-9100
ronald.waterstreet@usdoj.gov