

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
-VS-)	Case No. 13-MJ-2162
)	Pages 1 - 12
ROBEL PHILLIPOS,)	
)	
Defendant)	

DETENTION HEARING/PRELIMINARY EXAMINATION

BEFORE THE HONORABLE MARIANNE B. BOWLER
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

B. STEPHANIE SIEGMANN, ESQ. and JOHN A. CAPIN, ESQ.,
Assistant United States Attorneys, Office of the United States
Attorney, 1 Courthouse Way, Suite 9200, Boston, Massachusetts,
for the United States of America.

DEREGE B. DEMISSIE, ESQ. and SUSAN B. CHURCH, ESQ.,
Demissie & Church, 929 Massachusetts Avenue, Suite 01,
Cambridge, Massachusetts, 02139, for Robel Phillipos.

United States District Court
1 Courthouse Way, Courtroom 19
Boston, Massachusetts 02210
May 6, 2013, 2:05 p.m.

LEE A. MARZILLI
OFFICIAL COURT REPORTER
United States District Court
1 Courthouse Way, Room 7200
Boston, MA 02210
(617)345-6787

P R O C E E D I N G S

1
2 THE CLERK: All rise.

3 THE COURT: Please be seated.

4 THE CLERK: United States District Court for the
5 District of Massachusetts is now in session, the Honorable
6 Marianne Bowler presiding. Today is Monday, May 6, 2013. The
7 case of U.S. v. Phillipos, Magistrate Judge No. 13-2162, will
8 now be heard. Will counsel please identify themselves for the
9 record.

10 MS. SEIGMANN: Good afternoon, your Honor. Stephanie
11 Siegmann for the United States.

12 MR. CAPIN: Your Honor, good afternoon, and John Capin
13 as well on behalf of the United States.

14 THE COURT: Thank you very much.

15 MR. DEMISSIE: Good afternoon, your Honor. Derege
16 Demissie for Robel Phillipos. With me, your Honor, is my law
17 partner, Attorney Susan Church.

18 MS. CHURCH: Good afternoon, your Honor. Susan Church
19 representing Robel Phillipos.

20 THE COURT: Thank you very much. We were here
21 originally for the purposes of detention and probable cause,
22 and based on the filings, it's my understanding there is a
23 stipulation to probable cause. Is that correct?

24 MR. DEMISSIE: A stipulation as to the issue of
25 detention, a stipulation as to the continuance of the probable

1 cause hearing.

2 THE COURT: And just continuing the probable cause.
3 All right, does the government want to be heard?

4 MR. CAPIN: Yes, your Honor. Thank you very much.
5 Your Honor, as we stated in our papers, upon conferring with
6 the defense, the government is now confident that there are
7 conditions that will reasonably assure the defendant's
8 appearance at future proceedings. We are therefore pleased to
9 report that we've agreed to proposed conditions which are set
10 forth in our papers. I would suggest that in addition to the
11 conditions, the standard conditions set forth in the Pretrial
12 Services report, the Court order that the defendant be released
13 and ordered to be confined to his residence in the custody of a
14 third-party custodian identified in the papers, that he be
15 monitored 24 hours a day by an electronic bracelet, and that
16 his release be secured by a \$100,000 bond.

17 THE COURT: And the third-party custodian is to be his
18 mother, am I not correct?

19 MR. CAPIN: That's correct, your Honor.

20 MR. DEMISSIE: That's correct, Judge.

21 MR. CAPIN: And I am told she is present in the
22 courtroom and prepared to be heard on the issue of
23 custodianship.

24 MR. DEMISSIE: She is present, your Honor, if you
25 would like to --

1 THE COURT: Yes. Would you please stand. Do you
2 understand that by accepting the responsibility of serving as a
3 third-party custodian, you have a duty to report to the Court
4 in the event that the defendant breaks any of the conditions of
5 release?

6 FROM THE FLOOR: Yes, your Honor.

7 THE COURT: And do you do this freely, willingly, and
8 voluntarily?

9 FROM THE FLOOR: Yes.

10 THE COURT: All right, you may be seated.

11 MR. DEMISSIE: Thank you, your Honor.

12 THE COURT: All right, anything else, Mr. Capin?

13 MR. CAPIN: Simply to point out, your Honor, that the
14 Clerk has given us a new date for a probable cause hearing,
15 which by joint motion had to be continued. I would point out
16 that over the weekend the defendant filed a number of papers
17 which may be indirectly understood as questioning the merits of
18 the government's case. I don't think that was the intention of
19 the papers. I think they were intended to show that conditions
20 of release could be arrived at by the Court. I simply would
21 like to say for the record that the government stands by its
22 allegations, is confident that it can prove beyond a reasonable
23 doubt the allegations set forth in the complaint, and that in
24 the event we go forward as scheduled with the new preliminary
25 hearing, we will establish probable cause on the record before

1 this Court.

2 THE COURT: I reviewed all of the affidavits that were
3 filed, first, earlier on the weekend and then later yesterday,
4 and it seemed to me really that the gist of them went to the
5 issue of detention.

6 MR. CAPIN: I think that's correct.

7 THE COURT: And I did note that obviously the mother
8 has many friends and is well respected in the community, but I
9 noted that in many of the affidavits, the individuals did not
10 have very much involvement with the defendant himself, some of
11 them not familiar with him of late at all, so --

12 MR. CAPIN: Thank you, your Honor.

13 THE COURT: All right, do you want to be heard?

14 MR. DEMISSIE: Your Honor, I would just say that we
15 are in agreement with the proposed terms and conditions of
16 release, and I would rest on my submission as to the reasons
17 behind that. And I thank the government for working over the
18 weekend to craft these conditions and arriving at the
19 conclusion that they did, and I would ask the Court to adopt
20 those recommendations.

21 THE COURT: Now, what about the real estate that's
22 going to be used to secure the bond?

23 MR. DEMISSIE: I have produced documents, and I
24 believe the government is satisfied that the individual
25 proposing to be the person who signs the bond is in a position

1 to sign a secured bond in the amount of \$100,000. That
2 individual is present, and the documents are ready to be --

3 THE COURT: And is that individual present in the
4 courtroom?

5 MR. DEMISSIE: That's correct, your Honor.

6 THE COURT: And would you please have that person
7 identify himself or herself.

8 MR. DEMISSIE: Yes, your Honor. I would just say
9 that, your Honor, there is an agreement by the parties that the
10 address of that individual be impounded and sealed.

11 THE COURT: Well, I'm not asking to reveal that, but
12 I'm asking to inquire of that person.

13 MR. DEMISSIE: Yes.

14 THE COURT: Whether or not that person realizes the
15 responsibility.

16 MR. DEMISSIE: Absolutely. His name is (Redacted),
17 and he's standing with his wife at this point.

18 THE COURT: All right. And do you own this property
19 jointly?

20 FROM THE FLOOR: Yes.

21 THE COURT: And do you understand that if the
22 defendant should fail to appear for any court appearance that
23 he's required to attend or violate any of the conditions of
24 release, you could forfeit your interest in this property to
25 the extent of \$100,000?

1 FROM THE FLOOR: Yes.

2 THE COURT: And do you do this willingly, freely, and
3 voluntarily?

4 FROM THE FLOOR: Yes.

5 THE COURT: All right, thank you.

6 MR. DEMISSIE: Thank you, your Honor.

7 THE COURT: All right, anything else you want to bring
8 to my attention?

9 MR. DEMISSIE: I would ask that the defendant's
10 proposed residence be sealed, and that's by agreement of the
11 parties.

12 THE COURT: Yes, that is by agreement.

13 MR. DEMISSIE: Thank you.

14 MR. CAPIN: No objection, your Honor.

15 THE COURT: All right.

16 All right, I'll ask the defendant to stand at this
17 time. I'm going to set bail in the amount of a \$100,000 bond.
18 The bond is going to be secured by property. The government
19 and defense counsel have agreed and identified this property.
20 And when will the paperwork be filed?

21 MR. DEMISSIE: I have the paperwork ready, your Honor.
22 It would be executed and I'll notarize it right after this
23 hearing and will be filing it thereafter.

24 THE COURT: All right.

25 MR. CAPIN: We have reviewed it, your Honor, and it

1 all appears to be in order.

2 THE COURT: All right. In the interim, when the
3 defendant is released, he will be released to an electronic
4 monitor. This is strict electronic monitoring for house
5 arrest. He will be unable to leave his home except for
6 appointments with counsel and for 911 medical emergencies. At
7 this time it is strict house arrest. Any approval should be
8 sought from Pretrial Services prior to meetings with counsel.
9 The residence where he will reside has been approved by the
10 Court and will appear on the bond, which will be impounded.

11 Needless to say, his travel is restricted to the
12 District of Massachusetts. In addition, the defendant is to
13 refrain from the use of alcohol. He is to refrain from the use
14 of any illegal drug or the possession of any narcotic drug,
15 unless prescribed by a physician. I'm also ordering that the
16 defendant have a urine test for narcotics today before he is
17 released, and he will be subject to random drug testing by
18 Pretrial Services while he's on release. He is to report to
19 Pretrial Services as directed. He is to report any contact
20 with law enforcement personnel to Pretrial Services within
21 24 hours.

22 Now, I have seen one passport. Is that the only
23 passport that the defendant has?

24 MR. DEMISSIE: That is correct, your Honor.

25 THE COURT: And does he claim any citizenship rights

1 in any other country?

2 MR. DEMISSIE: No, he does not.

3 THE COURT: All right, then he is instructed not to
4 apply for a new passport or for any other type of travel
5 document. He is to remain within the third-party custody of
6 his mother, who has agreed to assume supervision of him and who
7 has a duty to report to the Court any violation of these
8 conditions. In addition, he's not to possess any firearms,
9 ammunition, or other destructive devices.

10 I remind you that violation of any of the foregoing
11 conditions of release may result in the immediate issuance of a
12 warrant for your arrest, a revocation of release, and an order
13 of detention as provided for in 18 United States Code,
14 Section 3148, and a prosecution for contempt as provided for in
15 18 United States Code, Section 401. This could result in a
16 possible term of imprisonment and/or a fine. If you are
17 arrested while you are on release, you must notify Pretrial
18 Services within 24 hours.

19 I'm now going to tell you about the statutory
20 conditions about bail. I ask you to listen carefully and to
21 review these conditions with your counsel at the end of these
22 proceedings.

23 While you are on release, you are prohibited from
24 committing a federal, state, or local crime. If you fail to
25 appear before the Court as required by the conditions of

1 release -- in other words, if you're found guilty of bail
2 jumping -- you shall be subject to a fine of up to \$250,000
3 and/or five years in jail. Any term of imprisonment for the
4 bail jumping would be a consecutive sentence to the sentence of
5 imprisonment for any other offense. In addition, a failure to
6 appear could result in a forfeiture of the bail posted. That's
7 the \$100,000 bond that's secured by real estate.

8 And I remind you once again that if you violate any
9 condition of release that I have set today, I can immediately
10 issue a warrant for your arrest, and can under some
11 circumstances revoke your bail and detain you and commence a
12 prosecution for contempt, which could result in a possible term
13 of imprisonment and/or a fine.

14 If you are convicted of an offense while you are on
15 release, you may receive a term of imprisonment of not less
16 than two years and not more than ten years if it is a felony,
17 and a term of not less than 90 days and not more than one year
18 if it is a misdemeanor. This term of imprisonment shall be
19 consecutive and must be imposed in addition to the sentence
20 received for the offense itself.

21 Now, there are four other statutes that I'm going to
22 tell you about now. These involve obstruction of justice. I
23 ask you to listen very carefully. Under Section 1503, it is a
24 federal felony, punishable by up to five years in jail and a
25 \$250,000 fine, to threaten or try to influence or intimidate

1 any juror, court officer, or witness, or to in any way impede
2 or obstruct the administration of justice.

3 Under Section 1510, it is a federal felony, punishable
4 by up to \$250,000 in fines and five years in jail, to obstruct
5 criminal investigations by endeavoring by means of bribery to
6 obstruct, delay, or prevent the communication of information
7 relating to the violation of any federal criminal statute by
8 any person to a criminal investigator.

9 Under Section 1512, it is a federal felony, punishable
10 by up to ten years in jail and a \$250,000 fine, to tamper with
11 a witness, a victim, or an informant.

12 And, finally, under Section 1513, it is a federal
13 felony, punishable by up to ten years in jail and a \$250,000
14 fine, to retaliate against a victim, a witness, or an informant
15 by causing bodily injury or property damage, or even threatening
16 or attempting to do so.

17 If I find that there's probable cause to believe that
18 you have committed any one of these offenses, I could issue a
19 warrant, and, after a hearing, detain you. Do you understand
20 everything that I've said here today?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. I'd like to have the bail
23 papers all signed before counsel are excused.

24 MR. DEMISSIE: Yes, your Honor.

25 THE COURT: Any other matters you wish to bring to my

1 attention at this time?

2 MR. CAPIN: No, your Honor. Thank you.

3 THE COURT: All right.

4 MR. DEMISSIE: Nothing from the defense, your Honor.

5 THE COURT: Can we have a date for a probable cause
6 hearing that counsel can agree on.

7 MR. DEMISSIE: We picked May 17, I believe.

8 MS. SEIGMANN: At 2:00 p.m., I believe.

9 THE CLERK: At 2:00? Sure.

10 MR. CAPIN: Thank you, your Honor.

11 THE COURT: All right, nothing else?

12 MR. DEMISSIE: Nothing from us.

13 THE COURT: All right, just do the bail papers at this
14 time, and I want that urine sample before he's released.

15 MR. DEMISSIE: Thank you, your Honor.

16 THE COURT: We stand in recess.

17 (Adjourned, 2:18 p.m.)
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I, Lee A. Marzilli, Official Federal Court Reporter,
do hereby certify that the foregoing transcript, Pages 1
through 12 inclusive, was recorded by me stenographically at
the time and place aforesaid in Magistrate No. 13-2162, United
States of America v. Robel Phillipos, and thereafter by me
reduced to typewriting and is a true and accurate record of the
proceedings.

Dated this 6th day of May, 2013.

/s/ Lee A. Marzilli

LEE A. MARZILLI, CRR
OFFICIAL COURT REPORTER