

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
v. : CRIMINAL NO. 09-00496-03
JOSEPH LIGAMBI :

THE UNITED STATES' RESPONSE
TO DEFENDANT'S MOTION TO AMEND
THE PRETRIAL DETENTION ORDER

I. INTRODUCTION

The United States respectfully submits this response to the motion of defendant JOSEPH LIGAMBI to amend the pretrial detention order previously entered in this case by Magistrate Judge Timothy R. Rice, which both this Court and the United States Court of Appeals for the Third Circuit affirmed, and order his release on conditions pending trial pursuant to 18 U.S.C. § 3142(c). As set forth more fully below, LIGAMBI has failed to demonstrate any changed circumstances that would warrant amendment of the detention order or LIGAMBI's release on conditions. Indeed, the most significant change of circumstance that has occurred since the Pretrial Detention Order was entered confirms that pretrial detention of LIGAMBI is necessary: the government has proven beyond a reasonable doubt, by numerous guilty verdicts and guilty pleas, the existence and operation of the racketeering enterprise known as the Philadelphia La Cosa Nostra ("LCN"). Moreover, eleven members and associates of the enterprise have been convicted of racketeering and related felony charges. All of this weighs in favor of the continued detention of LIGAMBI, and against his release on conditions. Accordingly, the Court should deny Ligambi's request for bail pending trial.

II. FACTUAL BACKGROUND

The Indictment

On January 5, 2011, the grand jury returned an indictment charging LIGAMBI and twelve other defendants with multiple crimes based upon their association with and participation in the affairs of the Philadelphia LCN Family. The indictment charged LIGAMBI and nine co-defendants with racketeering conspiracy, in violation of 18 U.S.C. § 1962(d). Count One of the indictment averred that the defendants agreed to participate in the Philadelphia LCN Family through a pattern of racketeering activity that included extortion, loansharking, gambling, money laundering, and obstruction of justice. The indictment also charged LIGAMBI with two counts of loansharking, in violation of 18 U.S.C. §§ 892 & 894, three counts of illegal gambling, in violation of 18 U.S.C. § 1955, and obstruction of justice, in violation of 18 U.S.C. § 1512.¹

The Pretrial Detention Order

The government moved for pretrial detention of LIGAMBI (ECF Document No. 48). Judge Rice conducted a detention hearing on May 26, 2011. At the conclusion of the hearing, Judge Rice ordered that LIGAMBI be detained pending trial, finding that the defendant posed a substantial danger to the safety of the community:

I agree with [defense counsel] that based on the charges in the indictment, Mr. Ligambi is not Nicky Scarfo or John Stanfa or John Gotti for that matter.

¹ On April 18, 2012, the grand jury returned a second superseding indictment. The second superseding indictment added two new defendants to the racketeering conspiracy, and included new charges that LIGAMBI committed theft from an employee benefit plan. The grand jury returned a third superseding indictment on July 25, 2012, which did not alter the pending charges against LIGAMBI.

However, I find that he had demonstrated as least as alleged by [government counsel] in his motion, a pattern of intimidating witnesses, potentially obstructing a federal grand jury investigation. He has an extensive criminal history, including his 1988 federal conviction.

The fact that the grand jury alleges that he is the leader of an organized crime family in this city, which has conducted a ten-year pattern of racketeering activity, I am going to find that based on the evidence there is clear and convincing evidence that no condition or combination of conditions can assure the safety of the community as required, and I am going to order him held without bail.

Transcript of Detention Hearing, dated May 26, 2011, at 27-28 (ECF No. 137).

Judge Rice entered a Pretrial Detention Order on the same date (ECF No. 61). (A copy of the Pretrial Detention Order is attached as Exhibit 1.) In support of his finding that LIGAMBI posed a danger to the community, Judge Rice noted there was probable cause to believe that LIGAMBI had violated 18 U.S.C. §§ 1962, 371, 892(a), 1512(b) and 1955. Judge Rice made the following findings based upon the government's proffered trial evidence:

- LIGAMBI was a long-standing member of the Philadelphia LCN Family, who had served as the current boss since 1999, and rose to the top position after serving as underboss and acting boss. See Exhibit 1, at 2.

- LIGAMBI's leadership position in the Philadelphia LCN Family was corroborated by an April 2002 recording of a conversation among LCN member Damion Canalichio, LCN associate Louis Barretta, and "Victim A" involving an extortionate collection of an usurious loan. During this conversation, Canalichio threatened Victim A, and told Victim A they were attempting to collect "Uncle Joe's money," meaning LIGAMBI. Canalichio

described the relationship between the loansharking and LIGAMBI by stating that “everything goes back to him.” See Exhibit 1, at 2.

- Surveillance evidence confirmed LIGAMBI’s association with and position in the Philadelphia LCN Family. Among other surveillance evidence, Judge Rice found that LIGAMBI met on many occasions with other high ranking members of the Philadelphia LCN Family at a bar operated by Joseph Massimino. Judge Rice also noted that LIGAMBI was observed at the wedding of Anthony Staino, Jr.. See Exhibit 1, at 2-3.

- LIGAMBI participated with Massimino and Staino in the extortion of the owners of an electronic gambling device business. See Exhibit 1, at 3.

- LIGAMBI attempted to tamper with a grand jury witness, through intimidation, threats and corrupt persuasion, by inducing the witness to withhold physical evidence from a federal grand jury. See Exhibit 1, at 5.

- LIGAMBI was a convicted felon, having been convicted of gambling charges in 1988 and sentenced to imprisonment, and had a history of other arrests. See Exhibit 1, at 6.

- LIGAMBI had no steady employment and his stake in businesses such as JMA Industries were “little more than a front for his illegal activities as the boss of the Philadelphia LCN crime family. See Exhibit 1, at 6.

Judge Rice concluded:

The strength and nature of the case against the defendant, combined with the strong likelihood that the defendant will be incarcerated for a significant period of time, establishes the defendant’s danger to the community and increases, the high risk that he defendant will not appear as required by the Court.

See Exhibit 1, at 6.

LIGAMBI's Motion to Revoke Pretrial Detention

LIGAMBI moved to revoke the Pretrial Detention Order (ECF Nos. 152 & 153).

The Court conducted a hearing on the motion on June 29, 2011 (ECF No. 205) (A copy of the Transcript of the June 29, 2011 hearing is submitted as Exhibit 2). At the conclusion of the hearing, the Court made the following findings under 18 U.S.C. § 3142(c):

- With respect to the defendant's history and characteristics, the Court found that LIGAMBI was a convicted felon, having been charged with and pled guilty to racketeering and gambling in 1988. See Exhibit 2, at 41-42.

- With respect to the nature and circumstance of the charged offense, the Court found that LIGAMBI was charged with serious offenses, all of which "revolved around either the actual use or threatened use of violence." Exhibit 2, at 42. The Court found LIGAMBI was charged with conspiracy in Count One, which "increases the danger to the community and that persons acting in concert leverage the danger to the community by those actions." Exhibit 2, at 43. The Court also noted that LIGAMBI was charged with being the leader of the conspiracy. See Exhibit 3, at 43.

- With respect to the strength of the evidence, the Court acknowledged that the case was in the early stages and LIGAMBI was not in a strong position to challenge the evidence. However, the Court noted that the grand jury had found probable cause to believe the crimes had been committed, and that the government's trial evidence would include cooperating witnesses, recorded conversations, and surveillance. See Exhibit 2, at 43-44.

- With respect to ties to the community, the Court noted that LIGAMBI was a long time resident of the community, and that his family was located in the community.

However, LIGAMBI had no current employment and no other obvious or lawful means of income or employment. See Exhibit 2, at 44-45.

Finally, the Court considered conditions of release, but found that there was no way to assure the community would not be at risk from the danger posed by the defendant:

The Court has considered alternative arrangements awaiting trial, such as home detention subject to electronic monitoring. Because the crimes involved in this case as alleged by the indictment and (sic) require the communications and coordination of a number of individuals, the availability of cell phones or computers in this day and age makes such communication and coordination feasible under the circumstances of detention and electronic monitoring.

There appears to be no practical way of ensuring that the defendant, if he is ordered to home detention, there doesn't seem to be a practical way in which to prevent the defendant from having access to those devices.

Under those circumstances, it cannot be said that the public can be protected or that potential witnesses in this case may not be subject to possible intimidation.

Exhibit 2, at 45.

The Court found the government had proven by clear and convincing evidence that no condition or combination of conditions would reasonably assure the safety of any other person and the community. See Exhibit 2, at 45-46. By Order dated June 30, 2011, the Court denied LIGAMBI's motion (ECF No. 168).

LIGAMBI's Appeal of the Pretrial Detention Order

LIGAMBI appealed the Pretrial Detention Order and the Court's denial of his motion to revoke pretrial detention by applying for release in the Court of Appeals. By Order dated October 12, 2012, the Third Circuit denied LIGAMBI's application (ECF No. 245).

The Jury Trial and Verdicts

Trial against LIGAMBI and six co-defendant commenced on October 9, 2012. On February 5, 2012 the jury found LIGAMBI not guilty of two loansharking transactions (Counts 39 & 42), theft from an employee benefit plan (Counts 51 & 52), and sports bookmaking (Count 49). The jury was unable to reach a unanimous verdict on the charges of racketeering conspiracy (Count One), operation of an illegal gambling business (Counts 43 & 44), and obstruction of justice (Count 50).

II. ARGUMENT

LIGAMBI has the burden to establish grounds to amend the Pretrial Detention Order. As set forth more fully below, LIGAMBI has failed to establish any changed circumstances that would warrant revoking pretrial detention and releasing him on conditions. The only changed circumstance he cites is the jury's mixed verdict following the first trial in this matter. However, those verdicts do not undermine the previous findings of Judge Rice and the Court supporting the Pretrial Detention Order. To the contrary, all of the factors which the Court previously found under § 3142(g) justified pretrial detention of the defendant, remain in full force. Indeed, the trial evidence and the jury's verdicts support those findings.

A. THE NATURE AND CIRCUMSTANCE OF THE CHARGED OFFENSES.

The jury's verdict does not change either the nature or the circumstances of the charged offense from when Judge Rice entered the Pretrial Detention Order and the Court and the Third Circuit affirmed that order. LIGAMBI stands before the Court charged with racketeering conspiracy. As the Court previously found, racketeering is a very serious offense which poses a significant danger to the community, a danger magnified by LIGAMBI's ability to

the leverage the concerted action of members and associates the Philadelphia LCN Family to achieve its illegal objectives. The Philadelphia LCN Family poses a particularly high danger to the community, because much of the charged racketeering activity involves crimes of violence: extortion and extortionate credit transactions.

The risk of danger posed by the Philadelphia LCN Family is no longer a hypothetical threat. By its verdict, the jury found that the Philadelphia LCN Family enterprise exists and that Massimino, Canalichio, and Battaglini agreed to further its criminal objectives through a pattern of racketeering activity. By their guilty pleas, co-defendants Martin Angelina, Gaeton Lucibello, Louis Monacello, Louis Fazzini, Louis Barretta, and Curt Arbitman have confirmed the existence of the Philadelphia LCN Family, and acknowledged their participation in its criminal endeavors such as extortion, loansharking, and gambling.

LIGAMBI asserts that the mixed verdict supports an inference that the jury did not believe LIGAMBI was the boss of the Philadelphia LCN Family. However, an equally reasonable inference from the jury's inability to reach a verdict on Count One with respect to LIGAMBI is that members of the jury *did* believe LIGAMBI was the boss of the Philadelphia LCN Family, and refused to compromise that belief through four weeks of deliberation. In any event, the jury's mixed verdict does not repudiate the government's trial evidence showing that LIGAMBI was the leader of the enterprise.

LIGAMBI attempts to undercut the prior judicial findings regarding LIGAMBI's history of witness tampering and obstruction of justice, by noting that the government's witness acknowledged that LIGAMBI was "laughing" and "joking around" when he directed the witness to withhold evidence from the grand jury. LIGAMBI fails to explain what the joke is, or what's

funny about obstruction justice. Undoubtedly, LIGAMBI views the rule of law in our society as a joke; the trial evidence established that. When Massimino informed LIGAMBI that several members of the Philadelphia LCN Family had been served grand jury subpoenas, LIGAMBI responded: “Fuck the fucking subpoenas.” Government Exhibit 1-208. LIGAMBI’s self-proclaimed disdain for the rule of law weighs in favor of pretrial detention, not release. LIGAMBI will accord no more respect to a judicial order delineating his conditions of release than he did to judicial subpoenas.

LIGAMBI’s suggestion that he did not threaten the witness because he was “laughing” is itself laughable. When the boss of an organized crime enterprise walks in to your place of business, puts his hand on your shoulder, and directs you to disobey a grand jury subpoena, you have been threatened, even if you are unable to admit as much in open court before the boss. The Court need only recall the demeanor of the government’s witness during his testimony to recognize the Hobson’s choice the witness faced: disobey the law and face criminal sanctions, or disobey LIGAMBI and face street justice.²

B. THE WEIGHT OF THE GOVERNMENT’S EVIDENCE

As the Court has noted in earlier detention proceedings in this case, consideration of the weight of the evidence under § 3142(g)(2) involves not only the quantity of the evidence but also the quality of the evidence. At this juncture, the Court has had the opportunity to hear

² LIGAMBI’s contends the photograph the witness withheld from the grand jury was an “innocuous personal photograph ... not indicative of any criminal conduct [which] had nothing to do with the government’s investigation.” This assertion begs the question: why then did LIGAMBI not want the grand jury to see it. The answer is the photograph itself, which is prima facie evidence of the existence of the criminal enterprise charged in Count One. See Government Exhibit 3.N.4-1. (A copy of photograph is submitted as Exhibit 3.)

the government's trial evidence and can more clearly evaluate its weight, as to both quality and quantity. While the jury's not guilty verdicts are entitled to some consideration in evaluating the weight of the government's evidence, those verdicts are not controlling. LIGAMBI contends the jury's not guilty verdicts prove that "NINETY PERCENT OF THE GOVERNMENT'S CASE ... HAS BEEN OBLITERATED." Motion, at 5. LIGAMBI's mathematical hyperbole overlooks the reality of the jury's verdicts. An objective consideration of the jury's mixed verdict confirms the prior findings that the government's evidence in this case is indeed strong.

LIGAMBI's assertion that the jury's not guilty verdicts repudiated most of the government's charged racketeering activity is simply incorrect. The not guilty verdicts address only five of the racketeering activities averred in Count One: (a) Staino's involvement in the collection of loanshark payments from Victim C during the period January 2006 through September 2007 (Counts 2 through 23); (b) loansharking activities involving Louis Monacello, and Associate #1 (Counts 26 through 39, and 42); (c) the operation of a sports bookmaking business after January 2006 (Count 49); (d) Canalichio's involvement in the First Ward Republican Club gambling business after March of 2006 (Count 47); and (e) LIGAMBI's theft from an employee benefit fund (Counts 51 & 52). The jury's not guilty verdicts do not address the many other racketeering activity charged in Count One, which include:

- loansharking activity involving Victim A;
- loansharking activity involving Victim B;
- loansharking activity involving Victim C before January 2006;
- loansharking activity involving Victim D;
- loansharking activity involving "Dino;"

- loansharking activity involving JC;
- extortion of the owners of a video poker machine business;
- extortion of Bookmaker A;
- extortion of “street tax” from bookmakers;
- the JMA illegal gambling business;
- the illegal gambling business at Lou’s Crab Bar;
- the illegal gambling business at the First Ward Republican Club;
- the illegal gambling business at DiNicks and Cholly Bear’s;
- the sports bookmaking business before January 2006; and
- witness tampering and obstruction of justice.

In sum, the majority of the racketeering activity charged in Count One does not fall within the ambit of a not guilty verdict. Moreover, much of the foregoing racketeering activity involves crimes of violence, in which the co-conspirators used threats of violence and economic harm to advance the illegal objectives of the Philadelphia LCN Family.

Ligambi does not explicate his formula for calculating that 90% of the government case has been obliterated. A more accurate measure of the weight of the government’s evidence is the number convictions in this case. The indictment charged fifteen members and associates of the Philadelphia LCN Family. Another LCN associate was charged with racketeering conspiracy in a criminal information. To date, ten of the defendants have been convicted, by trial or guilty plea. One defendant was acquitted of the only charge against him. The jury was unable to decide all of the charges against three defendants, including one defendant who was convicted of loansharking. Three defendants were severed from the first trial

and have not had their cases adjudicated.³ Thus, of the eleven defendants whose cases have been adjudicated so far have, ten of them have been convicted. Of those ten, nine defendants have been have been found guilty of the most serious charges against them.

In sum, the convictions which the government has obtained to date confirm the earlier judicial findings that the government's evidence against LIGAMBI is strong. The government called numerous cooperating witnesses with personal knowledge of the racketeering activities of the Philadelphia LCN Family. The government introduced approximately 200 recordings of intercepted communications of the co-conspirators, including LIGAMBI. The government introduced surveillance testimony, photographs, and videotapes showing LIGAMBI's association with members and associates of the enterprise. The government introduced seized gambling equipment, records, and proceeds. Both as to quantity and quality, the government's trial evidence remains strong.⁴

C. DEFENDANT'S HISTORY AND CHARACTERISTICS

As noted, the Court found that LIGAMBI is a convicted felon, based upon his 1988 conviction. The Court gave no weight to LIGAMBI's arrest record. See Exhibit 2, at 42. Thus, LIGAMBI's complaint that Judge Rice overstated his criminal history by considering his arrest record, is moot.

³ One of these defendants is scheduled to plead guilty on February 27, 2013.

⁴ LIGAMBI incorrectly states the government's racketeering evidence of prior bad acts committed by the defendants was offered to prove extortion counts that are no longer in the case. Motion, at 6-7. As the Court's September 4, 2012 Memorandum (ECF No. 849) makes clear, the government's racketeering evidence is admissible to prove the elements of Count One, and remains relevant to the charges pending against LIGAMBI.

The Court fully considered LIGAMBI's community and family ties during the June 29, 2011 hearing. LIGAMBI adds nothing new to this analysis. The fact that LIGAMBI may be able to post real estate to secure his release does not address the significant risk of danger his release would pose to the community. So too, the fact that LIGAMBI may finally have an offer of legitimate employment does not mitigate the danger he poses to the community.⁵

Finally, LIGAMBI's advancing age does not undermine the prior findings that LIGAMBI poses a significant risk of danger to community. As the government's expert testified at trial, in the world of organized crime advancing age is an indicia of dangerousness. Only a cunning and vicious gangster can survive the many snares and dangers an LCN member encounters, from law enforcement and the LCN itself, in a life of crime in the mob and which tend to cut a gangster's run short. In any event, LIGAMBI can still assert his leadership and control of the Philadelphia LCN Family regardless of his age.

D. NATURE AND SERIOUSNESS OF THE DANGER TO THE COMMUNITY

A significant factor in the Court's earlier decision to deny LIGAMBI bail was the recognition that no practical or technologically reliable means could assure that the defendant would not continue his criminal association with the Philadelphia LCN Family. LIGAMBI has proffered nothing new to alleviate the Court's concern. The jury's verdicts only increase the danger of releasing LIGAMBI at this time. The identities of the government trial witnesses are now known to the Philadelphia LCN Family. Moreover, the conviction of some of the

⁵ LIGAMBI asserts he has an offer of employment from "the CEO of a respected Philadelphia-based Corporation," but does not identify the CEO, the corporation, or the position. The government will require that LIGAMBI produce his prospective employer at the hearing so that the government can test these allegations.

defendants in this case raises questions about the future of the enterprise, and its leadership, that must be addressed if the enterprise is to continue. Permitting LIGAMBI to be released on bail pending trial, in light of the fact that no condition of release would preclude his association and communication with members and associates of the Philadelphia LCN Family, increases the likelihood that the defendant would play a role in sorting out the future of the Philadelphia LCN Family.

CONCLUSION

The Court should deny LIGAMBI's motion to amend the Pretrial Detention Order.

Respectfully submitted,

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ORDER

AND NOW, this ___ day of February 2013, after consideration of the defendant's motion to amend the pretrial detention order, and the government's response to the motion, it is ORDERED AND DECREED that the motion is DENIED.

BY THE COURT:

EDUARDO C. ROBRENO, J.
United States District Court

CERTIFICATE OF SERVICE

FRANK A. LABOR III, certifies that a copy of the United States' Response to Defendant's Motion to Amend the Pretrial Detention Order and supporting Exhibits, were served on counsel for the defendant by ECF on February 21, 2013.

/s/ Frank A. Labor III

FRANK A. LABOR III

Assistant United States Attorney