



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

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal Number 1:08MJ88
)	
WEISS RASOOL,)	
)	
Defendant)	

UNITED STATES' RESPONSE TO DEFENDANT'S
SENTENCING MEMORANDUM

The United States of America, in accord with 18 U.S.C. § 3553(a) and the United States Sentencing Guidelines, files this Response to Defendant's Sentencing Memorandum. The United States initially agreed with the calculations of the sentencing guidelines (0-6 months) completed by the United States Probation Office but now moves the Court to consider relevant factors in its determination as to whether to grant the defendant a two-level decrease for Acceptance of Responsibility. The defendant has failed to comply with the terms of his plea agreement and failed to accept responsibility for all of his criminal conduct.

A defendant must accept responsibility for all of his criminal conduct to be entitled to a reduction. Partial acceptance is insufficient. See United States v. Underwood, 970 F.2d 1336 (4th Cir. 1992); United States v. Gordon, 895 F.2d 932, 936 (4th Cir. 1990). On April 10, 2008, the defendant filed Defendant's Sentencing Memorandum and Position with Respect to Sentencing Factors. In it, the defendant maintains that he has no specific recollection of the unauthorized NCIC inquiries on June 10, 2005, yet he is able to remember that he did this after "a member of his congregation approached him with concerns about the cars." On October 17,



2007, FBI agents confronted the defendant with the three runs on June 10, 2005, and the phone call to an FBI target (hereinafter "target"). The defendant denied knowing the target and denied making the phone call. On March 6, 2007, the defendant admitted to his conduct on June 10th only after hearing the recording of the message he left for the target.

The defendant now comes before this Court and argues that had he taken the "simple administrative step" in filing a police report documenting the inquiries, "it is possible the case would not be before the Court today." This statement is a clear example of the defendant's consistent attempt to minimize his conduct and is simply not true.

In his Sentencing Memorandum, the defendant asserts that his NCIC inquiries into the three cars following the target and his immediate phone message to that target was a "normal response to a citizen inquiry that was not unusual or uncommon." As an experienced police officer, the defendant knew that the leasing company the three cars were registered to was used by law enforcement. When he was interviewed by the FBI in October 2007, the defendant stated that he knew that tags that were used by the FBI would be returned as "no record" or would come back to a leasing company. In his phone message to the target the defendant states, "as I told you, I can only tell you if it comes back to a person or not a person and all three vehicles do not come back to an individual person, so I just wanted to give you that much, uhh ok. Hope things work out for you." The defendant was not attempting to alleviate the concerns of a frightened citizen as there is nothing in that message that would allay someone's fears. Rather, the evidence is that the defendant was advising the target that he was being following by government vehicles. Certainly an experienced and trained officer would have concluded from the NCIC information that the target was possibly under investigation and would have never relayed that information to the target. Moreover, the defendant ran the target's vehicle on



November 24, 2005, two days after the target pled guilty in the Eastern District of Virginia. The defendant received a Terrorism Screening Center alert for the target. Later that evening, the defendant ran his own information. On November 27, 2007, the defendant ran the vehicle information on the target's former attorney and associate. Immediately after, the defendant ran his own information again.

The defendant conducted NCIC inquiries on himself approximately seventeen times over eighteen months. He stated to FBI agents that he did this because he wanted to see if he was on terrorism watch list. He stated that he became concerned when he learned of some of his associates on the watch list. The Fairfax County Police Department never authorized the defendant to use the NCIC computer system for this purpose.

A guilty plea does not necessarily entitle the defendant to a reduction for acceptance of responsibility. See United States v. Nale, 101 F.3d 1000, 1005 (4th Cir. 1996); United States v. Harris, 882 F.2d, 902, 905 (4th Cir. 1989); U.S.S.G. § 3E1.1, cmt. n.3 (guilty plea is evidence of acceptance of responsibility but "may be outweighed by conduct of the defendant which is inconsistent with an acceptance of responsibility"). The defendant contends in his Sentencing Memorandum that he has been cooperating with law enforcement. The FBI agents that participated in the two post-plea debriefings with the defendant do not believe that he has been truthful. The agents believe, based on their investigation, that the defendant has a specific recollection of his contact with the target and that he has not been forthright about it. The FBI also does not accept that the defendant's NCIC run of himself, two days after the target pled guilty, was a mere coincidence but rather a demonstration of the defendant's concern about the assistance he offered the target in providing him with information about the cars following him.

The defendant's plea agreement requires him to cooperate fully and truthfully with the



United States, including the voluntary submission of a polygraph examination. On April 14, 2008, the defendant appeared for a polygraph examination conducted by an FBI examiner but was not fully compliant with the test procedures despite warnings from the examiner to cease in his behavior. Because of the countermeasures deliberately used by the defendant during the test, the FBI examiner was unable to conduct a true polygraph examination. We would ask the Court to consider this deceptive behavior at sentencing. See United States v. Ruhe, 191 F.3d 376, 388 (4th Cir. 1999) (the 4th Circuit left open “whether the district court should have considered polygraph evidence at sentencing”).

The defendant has received the benefit of the plea agreement with the United States but has been unwilling to comply with the terms of that agreement or to accept responsibility for all of his criminal conduct, charged and uncharged, in this case. A defendant has the burden to prove, by a preponderance of the evidence, that he is entitled to a reduction for acceptance of responsibility. See United States v. Harris, 882 F.2d 902, 907 (4th Cir. 1989). The defendant continues to offer that the evidence produced by the FBI’s investigation reveals coincidences that reflect poorly on the defendant. The defendant also maintains that he has no independent recollection of the facts of this case but he states to the Probation Department that the target “asked if I could investigate who it is that is following him and if I may tell those persons to stop following him or inquire why they are following him.” None of the defendant’s actions in 2005 were consistent with this recent version of the events. The defendant did not use the information to conduct an investigation into the company or contact them. The defendant did not report the “citizen’s” concern to his superiors. Finally, the defendant’s message to the target was not that of an experienced police officer reporting back to a concerned citizen.



Conclusion

Wherefore the United States respectfully requests that the Court deny the defendant's request for acceptance of responsibility an sentence the defendant accordingly.

Respectfully submitted,

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United States Attorney

By:

/s/

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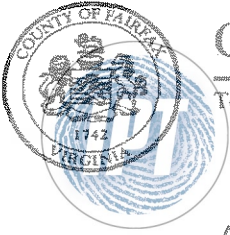


CERTIFICATE OF SERVICE

I hereby certify that on the 21th day of April, 2008, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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_____/s/_____
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County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods, and diverse communities of Fairfax County

April 17, 2008

Colonel
David M. Rohrer
Chief of Police

The Honorable Barry R. Poretz
United States Magistrate Judge
United States District Court
for the Eastern District of Virginia
401 Courthouse Square
Alexandria, VA 22314

Lt. Colonel
Suzanne G. Devlin
Deputy Chief of Police
for Investigations/
Operations Support

Your Honor:

Lt. Colonel
Charles K. Peters
Deputy Chief of Police
for Patrol

I have reviewed the character references submitted on behalf of Sergeant Weiss Rasool by current and previous employees of the Fairfax County Police Department. The Fairfax County Police Department, specifically the Internal Affairs Bureau, is in the beginning stages of an administrative investigation into the actions of Sergeant Rasool. Any comments contained in the character references should be considered the opinion of the author based on their interactions with Sergeant Rasool and not a statement from the Fairfax County Police Department.

Lt. Colonel
Stephen L. Sellers
Deputy Chief of
Police for
Administration

As mentioned, our investigation is still in the information gathering phase and any statements about individual actions, possible violations or disciplinary actions would be completely premature.

Major
James A. Morris
Commander, Internal
Affairs Bureau

The individuals that provided you letters do not have any investigative involvement with the Internal Affairs Bureau's investigation nor will they have a role in reviewing the finished investigation or determining disciplinary action if appropriate.

If you have any further questions feel free to contact me at 703-246-4279.

Sincerely,

Major James A. Morris
Commander, Internal Affairs Bureau

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