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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

UNITED STATES OF AMERICA,

Case No: 6:12-cr-260-01-AA

v.

CAREL JUNE CODY,

Defendant.

**GOVERNMENT'S MEMORANDUM
IN SUPPORT OF
PRETRIAL DETENTION**

The United States of America, through S. Amanda Marshall, United States Attorney for the District of Oregon, and Helen L. Cooper, Special Assistant United States Attorney, seeks detention of the defendant pending trial as a danger to the community and a flight risk. The government hereby submits the following memorandum in support of defendant's pretrial

detention.

I. PROCEDURAL BACKGROUND

On May 16, 2012 a federal Grand Jury returned an Indictment charging defendant with Theft of Government Funds, Aggravated Identity Theft, and False Statements to a Government Agency. A warrant was issued and defendant was arrested on May 17, 2012.

Defendant will make her first appearance in this matter on Friday, May 18, 2012.

II. FACTUAL BACKGROUND

Law enforcement in Douglas County received information that defendant may have been involved in the death of John Arnold in the 1990s, had concealed his death, and has been unlawfully collecting his Social Security benefits. Specifically, the information received by the local law enforcement was that defendant had been Mr. Arnold's care-giver and had physically abused him. Mr. Arnold subsequently died from abuse or neglect and, instead of alerting authorities, defendant enlisted the assistance of her mother and two friends, and buried his body.

The Social Security Administration (SSA) Office of Inspector General (OIG) began an investigation and determined that according to SSA, Mr. Arnold was currently receiving retirement benefits and residing with defendant. Mr. Arnold would be approximately 92 years old. The investigation also determined that defendant previously worked as an adult care-giver through the Oregon Department of Human Services (DHS), but experienced difficulty in being able to maintain DHS's approval and eventually ceased working with DHS and began doing adult care on her own.

SSA OIG contacted defendant and her husband, co-defendant Cook, on April 17, 2012, and inquired who was currently residing at their residence. Defendant and Cook told the federal agent that Mr. Arnold was alive and lived with them, but was currently out of town with a relative. Approximately two weeks later, after coordinating the investigation with the Douglas County District Attorney's Office for a possible homicide investigation, defendant, Cook, and additional witnesses were contacted and questioned about Mr. Arnold's death. The two witnesses who had allegedly assisted with the burial of Mr. Arnold's body were contacted and readily admitted that Mr. Arnold was dead and that they had assisted defendant with his burial sometime between 1994 and 1996.

One witness described the incident stating that defendant called her and requested her assistance with disposing of Mr. Arnold's body. She described defendant as having a rope tied around Mr. Arnold's leg and of defendant pulling the body from the bed of a pick-up truck and into a shallow grave that had been dug on rural property owned by defendant's family. She further described defendant asserting that defendant would create a "paper trail" to throw off any investigation into his disappearance and that she intended to continue to collect his Social Security benefits.

Defendant was also interviewed and admitted concealing Mr. Arnold's death. She stated she knew DHS would be critical of her living conditions and the fact that she had a pet monkey, so she chose to bury the body instead of alerting authorities. She further admitted to stealing Mr. Arnold's Social Security benefits.

Several witnesses told investigators where Mr. Arnold's body was buried and digging

commenced on the property, but the body has not yet been located.

One witness also told investigators of an occasion prior to Mr. Arnold's death where defendant had called her for her assistance in moving the body of another gentleman that had been in defendant's care and had died, naked, in defendant's yard. The witness helped defendant move the body to the gentleman's bed before defendant alerted anyone of his death.

Investigators have also identified a disabled gentleman currently receiving Supplemental Security Income (SSI) and presently in defendant's care. M.B. has been in defendant's care since approximately 1994 and remembers Mr. Arnold. M.B. advised that he was told that Mr. Arnold went someplace else to live. When briefly questioned by investigators during this investigation, M.B. advised that he does not know how much he receives in SSI benefits, that he never sees his check, and defendant never gives him any money. M.B. also told investigators that defendant told him not to talk with investigators. DHS has attempted to evaluate the safety of M.B., but defendant has interfered with its investigation by relocating M.B. to a relative's residence and refusing to make M.B. available to be interviewed by DHS.

A witness told investigators that M.B. was in a care facility in the early 1990s and the care facility would not release M.B. to defendant's care out of concern for M.B. Defendant convinced M.B. to marry her in Reno as the care facility would have to release M.B. to defendant if they were married. Defendant and M.B. were married, consummated the marriage with a hand-shake, and then shortly thereafter obtained a quick divorce.

The investigation is on-going with the hope to locate Mr. Arnold's body and to identify additional wards who have died in defendant's care.

III. LEGAL ARGUMENT

Under the Bail Reform Act (the “Act”), a judicial officer shall detain a defendant pending trial if “no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.” 18 U.S.C. § 3142(e). Detention is appropriate where a defendant is either a danger to the community or a flight risk; it is not necessary to prove both. *See United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985); *United States v. Kouyoumdjian*, 601 F. Supp. 1506, 1508-10 (C.D. CA 1985). A finding that a defendant is a danger to the community must be supported by clear and convincing evidence. *See* 18 U.S.C. § 3142(f). A finding that a defendant is a flight risk need only be supported by a preponderance of the evidence. *See Motamedi*, 767 F.2d at 1406.

The “rules concerning the admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the [detention] hearing” 18 U.S.C. § 3142 (f)(2)(B). *See also* Fed. R. Evid. 1101(d)(3). The parties may proceed by way of proffer or otherwise, *id.*, and hearsay is permitted. *E.g., United States v. Windsor*, 785 F.2d 755, 757 (9th Cir. 1986). Moreover, the government is not required to “spell out in precise detail how the government will prove its case at trial, nor specify exactly what sources it will use.” *United States v. Martir*, 782 F.2d 1141, 1145 (2d Cir. 1986). *See also United States v. Motamedi*, 767 F.2d 1403, 1408 (9th Cir. 1985) (“the [Bail Reform Act] neither requires nor permits a pretrial determination that the person is guilty”).

In determining whether pretrial detention is warranted, the court should consider four

factors: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against defendant; (3) the history and characteristics of defendant; (4) and the nature and seriousness of the danger posed by defendant's release. *United States v. Townsend*, 897 F.2d 989, 994 (9th Cir. 1990); 18 U.S.C. § 3142(g).

SUMMARY OF FACTORS FAVORING DETENTION

Using the factors from 18 U.S.C. Section 3142(g) mentioned above, these factors weigh in favor of detention.

1. *Nature and Circumstances of the Offense*

Cody systematically stole Mr. Arnold's Social Security benefits for 16 years by repeatedly forging his name on checks. Despite being in a position of trust as his care-giver, she concealed his death to be able to keep the funds flowing. Each month defendant had an opportunity to stop stealing, but each month she made the deliberate choice to continue to convert the benefits to her own use, stealing more than \$200,000.00.

Defendant is currently charged with only one count of Aggravated Identity Theft, Theft of Government Funds, and False Statements, but the government anticipates superseding with additional Aggravated Identity Theft charges as well as charges of Wire Fraud that will more accurately reflect the extent and breadth of defendant's criminal conduct.

Furthermore, the investigation is ongoing. Based on information obtained from M.B., who currently resides with defendant and receives Supplemental Security Income, it is probable that this witnesses' benefits are also being stolen by defendant.

If convicted as currently charged, the 24-month mandatory prison sentence for

Aggravated Identity Theft must run consecutive to any other sentence. In this case, defendant could receive a sentence of 24-30 months for Theft of Government Funds based on the loss amount being greater than \$200,000 and the offense involving defendant's abuse of position of trust. That term of imprisonment combined with the 24-month Aggravated Identity Theft conviction would result in a sentence of at least 48 months. Therefore, defendant is facing a substantial term of imprisonment as presently charged.

The weight of the evidence against the person

The weight of the evidence against Cody is strong. Mr. Arnold has not been seen since 1996. Witnesses who assisted defendant with the burial of Mr. Arnold have confirmed Mr. Arnold's death and recall defendant's assertion shortly after his death that defendant intended to steal his benefits. Bank records include photos of defendant at ATM machines depositing checks in which Mr. Arnold's signature is forged. Additionally, defendant has admitted that she concealed Mr. Arnold's death and stole his Social Security benefits.

3. *The history and characteristics of the person*

Cody demonstrated her true character when she disposed of Mr. Arnold's body with little concern or remorse. According to defendant, she chose to conceal his death, dig a grave, and dump his body rather than have DHS discover that she had a pet monkey and unsanitary living conditions. Prior to Mr. Arnold's death, another gentleman died in her care under suspicious circumstances, and she concealed the exact nature of his death by moving the body to a different location before alerting authorities.

She has also shown her ability to defy authority and circumvent rules by marrying M.B.

when the care facility refused to release him to her care and by interfering with investigators' attempts to interview him. In addition to moving M.B. to a different location to prevent DHS's attempts to verify his safety, M.B. advised investigators that defendant told him not to talk with investigators.

Defendant's history reflects a disturbing pattern of targeting the elderly and disabled who have little or no contact with family and are receiving public benefits.

4. *The nature and seriousness of the danger to a person or the community*

Multiple people have died while in defendant's care. It is possible that these people died of natural causes, but defendant's actions following the deaths and her current obstructionist behavior reflect her feelings of guilt and her desire to conceal the truth.

CONCLUSION

The defendant has an incentive to flee the district because of the overwhelming evidence against her and the likelihood of a lengthy prison sentence. She has been linked to at least two suspicious deaths. There is no condition or combination of conditions that will reasonably assure the appearance of the defendant as required.

Dated this 17th day of May, 2012.

Respectfully submitted,

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United States Attorney
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/s/ Helen L. Cooper
HELEN L. COOPER, OSB #87195
Special Assistant United States Attorney