

Judge Richard A. Jones

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

ROMAN V. SELEZNEV,

Defendant.

NO. CR11-0070RAJ

**GOVERNMENT’S MOTION FOR
ORDER OF RECOUPMENT OF CJA
EXPENSES**

**Note on Motion Calendar:
January 23, 2015**

I. INTRODUCTION

On January 15, 2015, at defendant’s request, the Court appointed the Federal Public Defender to represent the defendant at public expense. However, defendant is only entitled to publicly-funded counsel if defendant can establish he lacks resources to pay for his own attorney. The government’s investigation has revealed defendant has substantial assets that raise questions regarding his eligibility for public-funded counsel. Defendant’s financial affidavit, while extremely vague, itself acknowledges that defendant owns assets that alone would support an order directing defendant to reimburse the government for his costs of representation. Because defendant appears to have financial resources that would allow him to hire an attorney, the government moves this Court for an order directing defendant to repay the costs of court-appointed counsel.

II. APPLICABLE LAW

A. The Criminal Justice Act Permits Publicly-Funded Representation only if the Defendant Establishes he is Indigent.

A fundamental prerequisite for court appointed counsel is defendant's inability to hire an attorney. A person who has the financial resources to obtain counsel has no right to court appointed counsel. *United States v. Gravatt*, 868 F.2d 585, 591 (3rd Cir. 1989). Defendant bears the burden of proving that he or she is financially unable to obtain counsel. *See United States v. Ellsworth*, 547 F.2d 1096, 1098 (9th Cir.1976) (holding that "the burden of proof of financial status is on the defendant who seeks free appointed counsel").

When a defendant seeks to discharge his privately-retained counsel and proceed with court-appointed counsel, the district court must inquire into the defendant's financial eligibility for appointed counsel under the Criminal Justice Act. *See United States v. Rivera-Corona*, 618 F.3d 976, 981 (9th Cir. 2010). Determining "eligibility for representation under the CJA is a judicial function to be performed by the court or U.S. magistrate judge after making appropriate inquiries concerning the person's financial condition." Guide to Judiciary Policy § 210.40.20(a). "The person seeking appointment of counsel has the responsibility of providing the court with sufficient and accurate information upon which the court can make an eligibility determination." *Id.* § 210.40.20(f). The prosecution may present information concerning the defendant's eligibility to the court. *Id.* § 210.40.20(g). "A person is 'financially unable to obtain counsel' within the meaning of 18 U.S.C. § 3006A(b) if the person's net financial resources and income are insufficient to obtain qualified counsel. *Id.* § 210.40.30(a).

B. The Court May Order Repayment of Legal Fees if the Defendant Has the Ability to Pay.

District courts are permitted by statute to order recoupment of CJA expenses upon a finding that the defendant has funds available. *United States v. Lorenzini*, 71 F.3d 1489, 1492 (9th Cir. 1995); *see United States v. Danielson*, 325 F.3d 1054, 1077 (9th Cir

1 2003). Specifically, 18 U.S.C. § 3006A(f) provides that “whenever the United States
2 magistrate judge or the court finds that funds are available for payment from or on behalf
3 of a person furnished representation,” the court may order that the funds be paid “to the
4 court for deposit in the Treasury as a reimbursement” for the expense of furnishing
5 counsel. To so order, the court must find, based on the defendant’s assets, that the
6 defendant has the present ability to make the ordered payment. *Danielson*, 325 F.3d at
7 1077. A reimbursement order is an independent civil liability and not part of the criminal
8 sentence. *United States v. Standiford*, 148 F.3d 864, 870 (7th Cir. 1998).

9 **III. THE GOVERNMENT’S INVESTIGATION HAS REVEALED EVIDENCE**
10 **OF SUBSTANTIAL WEALTH**

11 **A. Defendant Earned Millions of Dollars Through His Criminal Enterprise.**

12 The investigation in this case revealed defendant utilized the e-currency service
13 Liberty Reserve to process payments from his co-conspirators who purchased stolen
14 credit card data from his dumps shops – Track2.tv and Bulba.cc. In 2013, U.S. law
15 enforcement seized the records of Liberty Reserve including records of accounts
16 maintained by defendant in connection with his credit card trafficking sites. Among the
17 Liberty Reserve accounts maintained by defendant were two accounts that received over
18 \$17.8 million U.S. dollars in payments for the sales of stolen credit card data. Notes for
19 the transactions such as “please transfer \$326 to my balance. want buy dumps”
20 demonstrate the accounts were being used for illegal credit card trafficking.

21 These two accounts have been conclusively tied to defendant through log-in
22 credentials for Liberty Reserve found in a list of user names and passwords that
23 defendant maintained in plain text on the laptop computer seized from him at the time he
24 was taken into custody. Although these Liberty Reserve accounts were used by
25 defendant to traffic in stolen credit cards several years ago (between 2010 and 2013,)
26 defendant subsequently collected additional revenues for sales he made from 2pac.cc, the
27 website he operated at the time of his arrest.
28

1 **B. Evidence Seized From Defendant Upon Arrest Establishes Substantial**
2 **Wealth.**

3 A search of the devices seized from defendant when he was taken into custody (a
4 laptop computer and iPhone) revealed substantial evidence of defendant's wealth.
5 Defendant's iPhone, for example, contained numerous photographs of stacks of cash
6 including a photograph of one of defendants' associates at what appears to be a bank
7 teller window with large piles of cash ready for deposit, similar bundles of cash in the
8 back seat of a car, and a stack of 5000 ruble notes – each worth approximately \$77.00 US
9 dollars at today's exchange rate despite the recent slide in the value of the ruble. *See*
10 Attachment A. Notably, defendant's financial affidavit indicates he has checking
11 accounts with unknown balances. Other photographs and videos show high-end
12 automobiles owned by defendant and his associates. *See e.g.* Attachment B.

13 Defendant also appears to have been living an extravagant lifestyle with frequent
14 travel to Indonesia and other destinations. Immediately before his capture, defendant
15 paid \$20,924 in US dollars to stay at a Maldives hotel. *See* Attachment C. A review of
16 MasterCard records for a credit card in defendant's name seized from him at the time of
17 his arrest, shows he spent over \$130,000.00 on personal expenses between December
18 2012, and July 2014 on that card alone. Over this period, defendant spent approximately
19 \$40,000 on air travel and approximately \$22,000 on hotels in Indonesia and Russia.

20 Defendant also owns substantial real property assets that may be available to fund
21 his defense. As defendant admits in his financial affidavit, he owns property in
22 Vladivostok, Russia and Bali, Indonesia. His statements in his affidavit are vague and
23 obfuscate regarding the valuation of these properties. However, an e-mail recovered
24 from the iPhone seized from defendant reveals that defendant paid \$790,000.00 US
25 dollars for the two apartments in Bali alone. *See* Attachment D. Even if the value of
26 these properties has substantially diminished, they alone should be more than sufficient to
27 provide funding for defense counsel.

1 **IV. CONCLUSION**

2 Defendant's financial affidavit does not provide the Court with sufficient accurate
3 financial information to permit a finding that he lacks the ability to pay for counsel.
4 Defendant's assets, including his bank accounts, cash, real estate and personal property,
5 all remain outside the reach of U.S. law enforcement. The evidence discussed above
6 establishes that defendant does have the ability to pay. The government should not pay
7 for the legal representation of a person who owns real property worth hundreds of
8 thousands of dollars. Accordingly, the government respectfully requests that the Court
9 enter an order finding that defendant shall be required to repay CJA for the expense of
10 furnishing counsel.

11 DATED this 15th day of January, 2015.

12
13 Respectfully submitted,

14 ANNETTE L. HAYES
15 Acting United States Attorney

16 s/ Norman Barbosa
17 NORMAN BARBOSA
18 Assistant United States Attorney

19 s/ Seth Wilkinson
20 SETH WILKINSON
21 Assistant United States Attorney

22 United States Attorney's Office
23 700 Stewart Street, Suite 5220
24 Seattle, Washington 98101-1271
25 Telephone: (206) 553-7970
26 Email: Norman.Barbosa@usdoj.gov
27 Email: Seth.Wilkinson@usdoj.gov
28

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney of record for the defendant.

s/Janet K. Vos
JANET K. VOS
Paralegal Specialist
United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271
Phone: (206) 553-5041
Fax: (206) 553-0755
E-mail: Janet.Vos@usdoj.gov