

***U.S. v. Nwokoro*, U.S. Court of Appeals for the District of Columbia, No. 11-3046, 8/3/11**

Charged with aiding and assisting in the preparation of false tax returns, Onuoha Nwokoro was ordered held without bail by the U.S. district court on the basis that there were no conditions or combination of conditions of pretrial release that could reasonably assure his appearance in court. In making this determination, the district court noted that Nwokoro had substantial financial assets in his native Nigeria and had transferred hundreds of thousands of dollars more into Nigerian accounts. Nwokoro appealed this decision to detain him.

The appeals court began its analysis of this case by noting that the federal Bail Reform Act requires that a pretrial detention order “include written findings of fact and a written statement of the reasons for the detention.” 18 U.S.C. § 3142(i)(1). Moreover, court rules require that the record of the detention hearing “evinces a clear and legally sufficient basis for the court’s determination” to detain. The court concluded that the record of the detention hearing did not meet this standard “for it fails to demonstrate that the district court considered all of the statutory factors and made a reasoned decision that appellant constituted a ‘serious risk’ of flight.”

The court noted that the district court failed to consider, as required by the Bail Reform Act, any counterbalancing factors that might suggest that Nwokoro was likely to return to court. According to the appeals court, however, there appear to be several such factors. “When given the opportunity to flee the area, appellant has not. He does not presently have assets under his control in the United States (his bank account in the United States has been frozen), and he does not have possession of his U.S. or Nigerian passports (which are in government custody) with which to leave the country, much less to enter Nigeria. He has never failed to appear in court when notified, and he has never failed to check in with the Pretrial Services Agency as he was previously required to do on a weekly basis. Indeed, after the magistrate judge dismissed the initial criminal complaint against him, appellant made no apparent attempt to flee prior to his arrest on a new indictment five days later. Appellant was released on his own recognizance two days later and again made no apparent attempt to flee between then and the detention hearing four weeks later.”

The court concluded that “[a]t this point, the district court’s reasoning is terse and conclusory, and its factual findings regarding appellant’s resources in Nigeria, his ability to retrieve those resources, and his ability to leave the United States appear in part to be without foundation in the record.” The court remanded the case to the district court for that court to consider all the facts relevant to Nwokoro’s appearance in court, make the appropriate findings of fact, and either provide a statement of reasons in support of Nwokoro’s detention or order his release subject to appropriate conditions.

Costa v. Mackey, Court of Appeals of Arizona, No. 1 CA-SA 11-0145, 7/26/11

Ricardo Costa was charged with continuous sexual abuse of a child. The prosecution moved to have Costa detained without bond court under the provisions of the Arizona Constitution. The court conducted a three-day hearing on this motion and concluded that Article 2, Section 22(A)(1) of the Arizona Constitution does not prohibit the court from setting bail on a defendant facing this charge. The court then set bail at \$75 million, cash only. Costa appealed this bail, arguing that it violated the excessive bail clause of the state's constitution. He also argued that the trial judge should be removed from the case since the bail it set was so extreme that the judge had a clear bias against him.

On the excessive bail issue, the appeals court began by noting that the government did not even offer any arguments on appeal supporting such a bail amount. The court then noted that the purposes of bail are to assure the defendant's appearance at trial, protect against intimidation of witnesses, and protect any victims or the community. "[A]ny bail set at an amount greater than necessary to achieve these purposes is excessive within the meaning of our constitution and is therefore prohibited." The court concluded that the bail amount set by the trial court "was vastly greater than necessary" to achieve the purposes of bail. "At best, only a handful of extraordinarily wealthy individuals would be able to post \$75 million in cash to secure release pending trial," the court wrote. "Nothing suggests that Costa, an unemployed man dependent upon others for financial assistance, falls anywhere near inclusion in such an elite group. Although (the trial court judge) ruled Costa was bailable, the oppressive requirements she imposed effectively constituted a denial of bail. This she could not do under Article 2, Section 22 of our constitution." The court vacated the bail and directed the trial court to issue a new release order that includes "the least restrictive" conditions necessary to assure court appearance and community safety.

On the issue of the trial court's removal, the appeals court noted that Arizona law presumes that judges are unbiased and puts the burden of proving a judge's bias on the defendant. The court noted that the only evidence of bias offered by Costa, that the trial court judge set an excessive bail, was not sufficient to establish the court's bias against the defendant.