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February 3, 2014

Honorable Joel Schneider  
US Magistrate Judge  
District of New Jersey  
Camden, NJ

Via facsimile copy only

Re: United States v. Morris Muse  
1:14-mj-02007-JS

Dear Judge Schneider:

At Your Honor's direction, I write to set forth my reasons for requesting that the government proceed with live testimony rather than by proffer at the preliminary hearing/detention hearing that is scheduled in the above-captioned case for February 7, 2014 at 1:30 p.m.

I read *United States v. Accetturo*, 783 F.2d 382, 288-89 (3d Cir. 1986), as holding that, under some circumstances, a judge has the discretion-if not the obligation- to require the government to call witnesses who can be cross examined as contemplated by both the Sixth Amendment and 18 U.S.C. § 3142 (f)(2). I submit that this case presents such circumstances.

The government has not filed a formal motion for detention, but it is my understanding that it will rely upon the affidavit submitted in connection with the arrests in this case to establish probable cause and grounds for detention.

The affidavit can be divided into three parts: events that occurred from January 13 to January 30, 2014 (part 1); events that occurred at a meeting at a pre-arranged location with the undercover agent (part 2); and events that occurred after the alleged co-conspirators left that location and were arrested (part 3).

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The first part of the investigation is described in pages 4 to the top of page 7 of the affidavit. It details interaction between the undercover agent, defendant Adams, and associates of Adams. Morris Muse is not mentioned in this part.

The second part is set forth on page 7 of the affidavit. Apparently, Adams met the undercover agent at a pre-arranged location on January 30, 2014 and was joined there by defendants Forman and Smith. Statements were made about what was about to happen, but the affidavit does not claim that Muse was present at that point. Indeed, other than saying that Muse arrived at the location, the affidavit does not claim that Muse ever entered the location, much less participated in or for that matter even overheard what was being said inside. This part closes with a description of the defendants following the undercover agent in two cars and their eventual arrest.

The third part of the investigation involves post-arrest statements allegedly made by the defendants, including Muse. Page 8 (¶ 36 e) of the affidavit quotes Muse as saying he understood the crew would rob the stash house of cocaine and his role in the conspiracy was to act as a lookout outside the stash house.

I submit that it is vitally important that a decision on probable cause and detention should not be based on such thin evidence. The Court should hear testimony regarding what, if anything, Muse did or said at the undercover location and what he said about his own involvement after he was arrested. I hasten to add that I am not asking the government to either call or reveal the identity of any informants; my request is limited to federal agents whose identities are known or will soon be known to the defense. *Cf. United States v. Accetturo, supra.* at 389.

Finally, regardless of how the Court rules on this issue, I believe I am entitled to any reports describing Muse's alleged involvement and post-arrest statements under Fed. Rule of Criminal Procedure 26.2 (g).

Respectfully submitted,

  
Gilbert J. Scutti

cc: AUSA Justin C. Danilewitz (via electronic transmission)  
Mr. Morris Muse