

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA, :  
 :  
vs. : DOCKET NUMBER  
 : 1:20-CR-0228-1  
MAURICE FAYNE A/K/A ARKANSAS MO, :  
 : ATLANTA, GEORGIA  
DEFENDANT. : FEBRUARY 4, 2021

**TRANSCRIPT OF ZOOM HEARING ON MOTION FOR BOND RECONSIDERATION  
PROCEEDINGS**

**BEFORE THE HONORABLE JUSTIN ANAND  
UNITED STATES MAGISTRATE JUDGE**

APPEARANCES OF COUNSEL:

**FOR THE GOVERNMENT:**

JOHN RUSSELL PHILLIPS  
UNITED STATES ATTORNEY'S OFFICE

**FOR THE DEFENDANT:**

SARALIENE DURRETT  
SARALIENE SMITH DURRETT, LLC

***MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED  
TRANSCRIPT PRODUCED BY:***

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**P R O C E E D I N G S**

**(Atlanta, Fulton County, Georgia; February 4, 2021.)**

**(The transcript begins with the audio-recording  
in progress, as follows:)**

MS. DURRETT: ...involved with witnesses or victims.  
And I know Mr. Fayne understands that.

As to the contact that he had with Ms. Cain in  
November, it is unclear to me from her text chain and from his  
text chain exactly what happened. The Government had stated at  
the last hearing that he had contacted her on November 2nd. I  
don't see information from her text chain about that. I don't  
see information from his text chain about that.

What I do see in his is her initiating contact with  
him on November 9 saying, I can't wait to work with the FBI to  
put you in jail. I can't wait to work with Attorney General  
Sara Oliver to put you in jail, basically and then  
inappropriate responses. There should have been no contact.  
There is no doubt about that.

But what I want the Court -- I hope the Court will  
understand is there may have been ambiguity as far as the  
instructions that Mr. Fayne received. And he, I think, is  
clear from the record was attempting to comply with all court  
orders. He wasn't failing drug tests or failing to appear for  
court. He repeatedly appeared for court because the indictment  
has been superseded several times.

1           So there was an initial indictment, a first  
2       superseding indictment, and a second. And he has always  
3       appeared for court. He has always appeared voluntarily to  
4       check in with his probation officer. There's never been any  
5       issue with that.

6           I have not heard other allegations of him trying to  
7       contact other witnesses or victims or doing anything else that  
8       would be inappropriate or would be a violation of this Court's  
9       order. So certainly he was attempting to comply with what he  
10      believed the Court's orders were.

11           I'm sorry? Oh.

12           So we would ask the Court to consider that.

13           In addition to that, he has now been in custody for  
14      44 days on the bond revocation. And certainly that is going to  
15      be a deterrent for any future idea that he might try to break  
16      the Court's orders. I don't think he has any plan to do  
17      anything that would put him back where he is right now.

18           Certainly the Court -- he made the reference, I  
19      think, at the last hearing to the fact that he's an asthma  
20      sufferer and has an inhaler. As you can see, he has got his  
21      mask on there at the facility. And so COVID is a concern.

22           I know the Court has had lots of defendants who have  
23      talked about that. But certainly it is an issue that I think  
24      is relevant to the Court's consideration.

25           So I know the Court made the finding at the last

1 hearing that he had inappropriate contact. For the reasons  
2 that I'm saying -- that I have stated, I think that there is a  
3 question about that.

4 But even if the Court says, look, I find by clear and  
5 convincing evidence that that was inappropriate contact, the  
6 second part of the statute that the Court has to look at is  
7 whether you can craft any conditions that would ensure his  
8 appearance in court and assure the safety of the community --  
9 certain persons and also the safety of the community in  
10 general.

11 I don't think there is any question that he is going  
12 to appear in court. He has done that from the beginning of the  
13 case. And I don't think there has ever been an issue with him  
14 not reporting to probation as required.

15 As I noted in the motion, the conditions of his -- of  
16 his bond were loosened at one point. So he didn't have to have  
17 a curfew, and he didn't have to have location monitoring. And  
18 it is my experience that that happens when defendants are  
19 complying. When they are doing what the probation office wants  
20 and what the Court wants, then we let them have a little bit  
21 more leeway.

22 So I wasn't on the case when that happened. But in  
23 general, that is my experience is that we let the people who  
24 are out and complying have more leeway. And that appears to be  
25 what happened in this case.

1           So I do think there are conditions that can be  
2     crafted that would ensure that he follows all the regulations  
3     of the Court and doesn't break any of the rules or contact any  
4     other witnesses.

5           I listed some of those conditions in my motion. But  
6     that could be a return to either home detention, curfew,  
7     location monitoring, more frequent checks with probation, if  
8     that is necessary. He is willing to change his phone number.  
9     He is willing to do the things the Court tells him to do to  
10    make sure he is not receiving contact and that he is not making  
11    contact.

12           And so I do think there are conditions that could be  
13    crafted that would meet the requirements of the statute. And  
14    with that, I'll -- I'll take a break unless the Court has  
15    questions.

16           THE COURT: I mean, I may have some questions for you  
17    before we're finished. But let me first turn to Mr. Phillips.

18           MS. DURRETT: Okay.

19           MR. PHILLIPS: Thank you, Judge.

20           I disagree respectfully with defense counsel. I  
21    don't think there is any ambiguity in the instructions that  
22    Mr. Fayne received from probation. And this Court made clear  
23    at the bond revocation hearing that this Court, Your Honor,  
24    instructed Mr. Fayne personally that even if the Government did  
25    not provide him with a list of witnesses that he was under the

1 obligation not to have contact with any witness or any victim  
2 in the case.

3 And the Court repeated that several times during the  
4 revocation hearing and pointed out how you had looked him in  
5 the eye and you had instructed him personally. He was not  
6 relying on a list from the Government. And there is no  
7 ambiguity in this case at all about what the defendant was  
8 obligated to do. So that first part is just simply not true.  
9 It is not supported by the facts.

10 And to suggest that because the defendant was  
11 originally charged in a criminal complaint and only charged  
12 with bank fraud that somehow that that enters into this  
13 calculus is also misleading.

14 Let me just go over some of the important dates about  
15 the charging in this case. Mr. Fayne was charged in the  
16 criminal complaint on May 12th. He was indicted on June 24th.  
17 And in that June 24th indictment, he was charged with running a  
18 Ponzi scheme in violation of the wire fraud statute. So that  
19 has been in play ever since June 24th.

20 The contact that the Court revoked Mr. Fayne's bond  
21 for took place in November of 2020. So he was indicted in  
22 June. And the conduct that is at issue in this case took place  
23 in November, five months later. The fact that he was  
24 originally charged in May in a criminal complaint that didn't  
25 include a Ponzi scheme is a red herring.

1           Again, the indictment was superseded on July 28th.  
2     The Ponzi scheme was also included in that, of course. And on  
3     November the 19th, there was the second superseding indictment  
4     that fleshed out the Ponzi scheme in much more detail and added  
5     a conspiracy count that charged three of Mr. Fayne's  
6     co-conspirators with participating in that Ponzi scheme. And  
7     those would be Dan Jay and Mike Sargent and Mark Sargent.

8           So the defendant has been noticed -- on notice of  
9     this since June 24th that he was being charged in a Ponzi  
10    scheme. So to suggest otherwise is untrue and it is  
11    misleading. So that is the first part that deals with the  
12    timeline and the facts of that.

13           Also it -- the fact that defendant is now represented  
14    by counsel does not give him a second bite at the apple. This  
15    Court has made clear that a motion for reconsideration in a  
16    criminal case, quote, may not be used to present the Court with  
17    arguments already heard and dismissed or to repackage familiar  
18    arguments to test whether the Court will change its mind.  
19    That's exactly what is going on here, Judge.

20           This Court also said that, when evaluating a motion  
21    for reconsideration, a Court should proceed cautiously  
22    realizing that in the interests of finality and the  
23    conservation of scarce judicial resources, reconsideration of a  
24    previous order is an extraordinary remedy to be employed  
25    sparingly.

1 Under Local Rule 7.2(e), motions for reconsideration  
2 shall not be filed as a matter of routine practice. As  
3 indicated by the language of this rule, motions for  
4 reconsideration are not to be filed as a matter of course but  
5 only when absolutely necessary. That was Judge Martin in *Bryan*  
6 *vs. Murphy*, a 2003 case from this district.

7 Reconsideration is only absolutely necessary where  
8 one of the following things is in play: One, there is newly  
9 discovered evidence. We don't have any new evidence here.

10 Two, an intervening development or change in  
11 controlling law. That is not applicable either.

12 Or the third thing, a need to correct a clear error  
13 or a law -- I'm sorry -- a clear error of law or fact. There  
14 was no clear error of law or fact at the bond revocation  
15 hearing. And so there is no basis on which this Court should  
16 entertain a motion for reconsideration.

17 In addition, Your Honor, other courts in this  
18 district have said motions for reconsideration may not be used  
19 to present the Court with arguments already heard and dismissed  
20 or to repackage familiar arguments to test whether the Court  
21 will change its mind.

22 Also, a reconsideration motion may not be used to  
23 offer new legal theories or evidence that could have been  
24 presented in conjunction with the previously filed motion or  
25 response, unless a reason is given for failing to raise the

1 issue at an earlier stage of litigation.

2 That is not the case here. Mr. Fayne said he didn't  
3 get a list. And then he lied to this Court -- he flat-out lied  
4 when he told you that there was no connection between Ms. Cain,  
5 the person that he contacted, and the Ponzi scheme that he is  
6 charged with in this case.

7 And I'll go into that in more detail in a minute.  
8 And it is a little bit lengthy, but I think it is important for  
9 the Court to see exactly what is going on here and to realize  
10 that this defendant is desperate. He is a dangerous man -- a  
11 very, very dangerous man. And he will do and say anything to  
12 try to get out of jail.

13 And this Court has also said that if a party presents  
14 a motion for reconsideration under any of these circumstances  
15 the motion must be denied. This defendant has not met the  
16 standard required by this Court to get reconsideration of the  
17 Court's previous order.

18 In the bond revocation hearing, this Court expressly  
19 questioned defendant about whether Jimia Cain was involved in  
20 the Ponzi scheme that the defendant is charged with in this  
21 case. And I would like to go into a little bit of detail about  
22 that.

23 I pointed out to the Court at that time that Ms. Cain  
24 had filed a civil lawsuit against the defendant in Washington  
25 state. And the defendant, you will recall, told this Court the

1 following: He said that Ms. Cain actually reached out to me  
2 first. So that is another argument that he is repackaging and  
3 bringing back for reconsideration today. And he said, my only  
4 conversations with Ms. Jimia Cain had nothing to do with this  
5 case whatsoever, not one single word, conversation. It was  
6 strictly on a civil case that we have in the State of  
7 Washington.

8 And the Court said, is she not a potential witness in  
9 this case in the Ponzi scheme? And the defendant said, no,  
10 sir, no, sir. We had a separate total civil matter going on in  
11 Washington prior to the indictment ever happening.

12 And then he went on to say, and then as far as the  
13 other set of communications that was to her attorney, that was  
14 in reference to the civil case. Had nothing to do with this  
15 indictment in any form or fashion. Now, the Government has sat  
16 here and said numerous things, false allegations of things that  
17 I have done or supposedly done. I can assure this Court that I  
18 respect this Court. Ever since the original release in May, I  
19 have not violated any bond conditions.

20 Keep that in mind. That is going to come up later  
21 too. He said my probation officer, Mr. Tudor, gave me a list  
22 of people that I do not need to contact. And I have followed  
23 their list thoroughly. I have not contacted not one single  
24 person on that list not one single time. So that is the same  
25 argument he is bringing back today for reconsideration.

1           He said these text messages that are at issue between  
2 him and Ms. Cain -- it is about a legal suit. She's not suing  
3 me in this indictment. This is not me -- this is not her  
4 versus me or anything. It has nothing to do with this court  
5 case whatsoever.

6           He said two things: Jimia Cain had a crush on me.  
7 She was a lady that was trying to be intimate with me. So he's  
8 misleading the Court.

9           Now let's talk about the actual document. Let's talk  
10 about the lawsuit that is at issue in this case. If the Court  
11 will just give me one second, I'll bring that up.

12           This is styled Jimia Cain and the name of her  
13 companies -- this is the first amended complaint against Fayne  
14 Trucking, LLC, specifically named in the indictment in this  
15 case. That is Defendant Fayne's company that he was using --  
16 one of the companies he was using to commit this Ponzi scheme  
17 and also naming Maurice Fayne and Fayne's wife or possibly  
18 ex-wife, according to him, Karlie Redd, R-E-D-D.

19           MS. DURRETT: Your Honor, if I could just -- I'm  
20 sorry to interrupt. I don't have a copy of this. I don't know  
21 what he is reading from. I haven't seen it. I would love to  
22 have a copy of it.

23           MR. PHILLIPS: You do have it. It is in the  
24 discovery that I gave you. It is in the witness folder for  
25 Jimia Cain.

1 MS. DURRETT: Okay. That came to me on February 2nd.  
2 So I have it.

3 MR. PHILLIPS: That is not my fault. Your client had  
4 the discovery shipped to him --

5 THE COURT: Okay.

6 MR. PHILLIPS: -- at the very beginning, and he  
7 rejected it. He sent it back to me. So that is not my fault.

8 THE COURT: Hold on. Hold on, Mr. Phillips.  
9 Mr. Phillips, were these exhibits in the original hearing?  
10 Could they be identified that way?

11 MR. PHILLIPS: No, Your Honor. This is not an  
12 exhibit in the original hearing. This is to talk about the  
13 fact that Mr. Fayne lied to this Court to try to get out on  
14 bond. When this Court was asked to revoke his bond when the  
15 probation office brought that -- that charge against Mr. Fayne  
16 for contacting this witness and the Court found that the  
17 Government had presented clear and convincing evidence of that,  
18 we didn't bring it up at that time.

19 But now that the defendant is coming back for another  
20 bite at the apple and he is trying to relitigate these same  
21 issues, I'm pointing out that the defendant lied to this Court  
22 at the bond revocation hearing.

23 And if the Court will just bear with me for one  
24 second and let me point out how clear it is in that lawsuit  
25 brought by Ms. Cain that it has to do with the exact same facts

1 that is the subject of the Ponzi scheme charged in this  
2 indictment, the Court will understand that defendant lied. To  
3 suggest that he had some sort of a romantic relationship with  
4 her and that this lawsuit was somehow brought against him out  
5 of jealousy because Mr. Fayne had reconciled with his wife,  
6 Karlie Redd, is preposterous. It is a lie. And there is no  
7 other way to say that.

8 This lawsuit, this complaint says that on April 18,  
9 2019, Ms. Cain met in Seattle with a man named Deon Garnett and  
10 that he was a loan broker. And the purpose of their meeting  
11 was to discuss a truck leasing investment in which this man  
12 said he was involved.

13 This gentleman told Ms. Cain that he and others had  
14 invested with Maurice Fayne and Fayne Trucking and had made  
15 money on their investments with him. And he referred Ms. Cain  
16 to another man named Tyriece Vaughn. And Tyriece Vaughn is an  
17 unindicted co-conspirator. He is a middleman who was  
18 recruiting investors for this Ponzi scheme, just like the folks  
19 who are charged in the indictment, Dan Jay and Mike Sargent and  
20 Mark Sargent.

21 And if the Court will look at the -- the text that  
22 the Court had Ms. Evans send out to counsel yesterday that  
23 documented the names on that list that Mr. Tudor, the former  
24 probation officer, had provided to the defendant, one of those  
25 people is Tyriece Vaughn.

1 And so he is expressly named in this civil lawsuit as  
2 a person who was a middleman who recruited Ms. Cain into this  
3 Ponzi scheme.

4 And so this gentleman told Ms. Cain to talk to  
5 Tyriece Vaughn and he could provide her more detail about the  
6 investments with Mr. Fayne and his trucking company.

7 See, they talk about the trucking company investments  
8 over and over and over. That is the sole subject of this civil  
9 lawsuit. And yet that defendant, Mr. Fayne, sat in court and  
10 lied to you, Judge. He lied to you at the bond revocation  
11 hearing when he told you that there was no connection between  
12 Jimia Cain and the Ponzi scheme that is charged in this case.

13 They go on to allege that beginning in April 2019 Ms.  
14 Cain who spoke to Mr. Vaughn in Miami -- Ms. Cain was in the  
15 State of Washington. They talked over interstate telephone  
16 network. And Mr. Vaughn -- Tyriece Vaughn said he owned a  
17 company called Ground Level Logistics. And he told Ms. Cain  
18 that his company was a trucking brokerage company and that he  
19 was working with Fayne on a huge contract with Amazon.

20 And he said that in his experience investors were  
21 realizing great returns by leasing trucks pursuant to this  
22 Amazon contract and that they would be paid a weekly return on  
23 their investment.

24 And he described himself as Mr. Fayne's, quote,  
25 partner, close quote. And he and Ms. Cain discussed the truck

1 leasing business and the potential investment in Fayne  
2 trucking. And he also told her that he had made money with  
3 Fayne and was getting a good return on his investments. That  
4 was obviously not true.

5 He described the investment and how much she would  
6 have to put in and told her how much she would get back. I  
7 won't read every word of that. But it is in the document. If  
8 the Court would like to see it, I'm happy to provide it.

9 And they allege that these representations were false  
10 and that Vaughn knew they were false and he had never  
11 successfully invested any money with Fayne or Fayne Trucking  
12 and had no basis to believe that these investments were  
13 legitimate and would be profitable.

14 Then they go on to allege that in May of 2019, the  
15 next month, Mr. Fayne talked to Ms. Cain personally over the  
16 phone. Mr. Fayne represented himself as a self-made  
17 millionaire who had founded and operated Fayne Trucking, which  
18 he described as a well-respected trucking company out of  
19 Arkansas and Texas.

20 He asked her to invest \$100,000 with his company,  
21 Fayne Trucking. And he said that he had a lucrative contract  
22 with Amazon for which he needed 200 trucks and that the money  
23 would be used to acquire those trucks. And so one thing led to  
24 another. And she decided to invest.

25 And they allege that on May 30th of 2019, Mr. Fayne

1 sent Ms. Cain a text message telling her that he needed the  
2 money by June 1st. So the following day or two days later, he  
3 needed the money; said he would repay it next week.

4 So as a result of these misrepresentations, she  
5 started investing in Fayne's company starting with a  
6 100,000-dollar investment and then more amounts later on. And  
7 she describes the bank where she sent the money. We have  
8 reviewed those bank records. We have those.

9 They show that Fayne was taking money from investors  
10 all over the country and that he took at least \$5 million,  
11 which he blew at a casino in Oklahoma. We have records to  
12 prove that.

13 Then they allege that on June 7th Mr. Fayne again  
14 texted Ms. Cain and told her that he had another deal on ten  
15 more trucks. And he asked her to invest more money and said  
16 this was all related to the Amazon contract. And he made  
17 additional misrepresentations to her, which caused her to  
18 invest even more money.

19 They go into great detail about the promises that he  
20 made and how the money would be repaid. He never paid her any  
21 money back. Not one penny. And in June of 2019, he started  
22 making excuses about why he couldn't repay her. He falsely  
23 told her that he had received a check from Amazon and that she  
24 would be getting her money in five days. Of course, that was  
25 not true.

1           And then he insisted that she give him another  
2     \$50,000 so that he could obtain the monies that others owed to  
3     him. And she was very nervous about this. She knew that it  
4     was probably a scam. But she was concerned that if she didn't  
5     do it she wouldn't get any of her original investment back. So  
6     she put in even more money in the company because of these  
7     lolling representations, these additional false  
8     representations.

9           And then she wired money to Fayne Trucking at  
10    SunTrust Bank in Atlanta, Georgia, on August 22, 2019. She  
11    executed a number of documents, loan agreements and so forth,  
12    related to these various investments, all of which had to do  
13    with the trucking business.

14           Then on April 22nd, 2020, after she texted the  
15    defendant's wife, Karlie Redd -- I'm sorry. On April 30th of  
16    2020, she was approached by two men at her home. And they  
17    asked her if she was Jimia Cain. And she said yes. And one of  
18    the men stated that, quote, if you know what is good for you,  
19    you will drop this bullshit case if you know what is good for  
20    you. You know what I'm talking about. And then they made  
21    disparaging references to her and called her a, quote, dumb,  
22    fucking bitch and left.

23           And so that is important for this Court to know the  
24    kind of people that the defendant is using to do his bidding.  
25    And he is a dangerous person, Your Honor. And if you let him

1 out, this community is in danger. People all over this country  
2 will be in danger.

3 And then they go on to point out in this lawsuit that  
4 the frauds that the defendant and Tyriece Vaughn committed  
5 against Ms. Cain were not isolated crimes. And they point out  
6 a number -- I'm talking about one, two, three, four, five, six,  
7 seven, eight -- eight other frauds that this defendant had  
8 committed against other people. One of them was for over  
9 \$2 million, which was the PPP loan in this case.

10 So they went into great detail about that. There is  
11 nothing in that lawsuit that would indicate that that was just  
12 a woman who was jealous of the defendant's relationship with  
13 Karlie Redd. It clearly involves the same facts and the same  
14 circumstances as the Ponzi scheme that is alleged in this case.

15 And so for the defendant to lie to you at the bond  
16 revocation hearing is just inexcusable. And now to come back  
17 and ask for a second bite at the apple with no new evidence,  
18 but to simply repackage the arguments that he has already made  
19 does not meet the standard that the United States District  
20 Court for the Northern District of Georgia and the Eleventh  
21 Circuit have set for motions for reconsideration.

22 And that is just -- that is just part of it, Your  
23 Honor. My presentation is actually quite lengthy. And the  
24 Court should know that we have obtained Defendant Fayne's jail  
25 calls from RAD. When this Court revoked his bond on December

1 the 22nd of 2020, the defendant was still committing fraud. He  
2 has been committing fraud while he was on bond. We didn't know  
3 about this at the time of the original reconsideration --  
4 revocation hearing. But because he filed this motion for  
5 reconsideration, we continued to dig and we found that out.

6 We found out that he has been committing additional  
7 fraud against the United States Department of Transportation.  
8 He has committed fraud against a man named Rod Darby who owns a  
9 trucking company in South Carolina. He has used people on the  
10 outside while he has been locked up through his cell phones  
11 that were in someone else's possession, which he has now  
12 provided to his current counsel. And she's used -- she's got  
13 the PIN codes for them. And she has been using them to get  
14 information for this hearing.

15 And he talks about that in his jail calls that he has  
16 provided -- he didn't discuss any communications with her.  
17 There is nothing privileged about it. He is talking to someone  
18 else and saying that he's going to give her the phones.

19 Those phones were in someone else's possession. And  
20 Mr. Fayne has repeatedly made calls to this person whose name  
21 is Will; that he tells other people that this is his brother.  
22 I don't know whether it is his real brother or he just says  
23 that. But he uses Will and various other people to continue to  
24 run his criminal enterprise while he is locked up.

25 And on one of the calls, he calls Will. And then

1 Will connects Mr. Fayne on a three-way call, which is  
2 prohibited by jail rules. But he did it anyway. And they  
3 talked to Rod Darby on one of these calls.

4 And Mr. Fayne says, quote, anything Will asks for,  
5 that is good to go because that is coming directly to me. He  
6 wouldn't have your number if I wasn't cool with it. And then  
7 as far as DOT -- that is the Department of Transportation --  
8 you need to call them to see if they going to cancel out so we  
9 know if we need to do this other company yet or not. My name  
10 ain't on none of this shit. So I don't know. I don't know the  
11 address. I don't know the PIN number. I ain't -- I ain't got  
12 access to none of that. You know what I'm saying? So you are  
13 going to have to handle that part so we keep everything going  
14 in transition. That is \$4000 a week profit just off that one  
15 truck.

16 Okay. Lots of things going on there. Number 1,  
17 Mr. Fayne told this Court that he had no money to hire his own  
18 attorney. And so now the taxpayers are paying for Ms. Durrett  
19 to represent him. And he tells this man on the phone that they  
20 are making \$4000 a week profit on just one truck.

21 He goes on and tells Will in another call to try to  
22 get him a lawyer. And he says not for the case --

23 MS. DURRETT: Your Honor, I just want to -- I'm -- I  
24 don't understand if we're on a new petition that the Government  
25 is trying to file to suggest there have been other violations.

1 The Government is the one saying we can't come back on this  
2 first violation. But now it sounds like it is alleging new  
3 violations, which I am not privy to at this point.

4 So I don't -- I'm not sure exactly where we're going.  
5 I haven't seen the lawsuit. I haven't heard the jail calls.  
6 There was no notice that the Government wanted to try to  
7 violate him on some of these other allegations that it is  
8 making. So I just want to make that clear in the record.

9 I don't have any ability to respond to what the  
10 Government is saying because they haven't given me notice that  
11 they are going to be raising these issues.

12 THE COURT: I understand.

13 All right. Here is what I think makes sense to do at  
14 this point. Let me just make the initial comment here -- it  
15 sounded like, Mr. Phillips, you were quoting from something  
16 that I have issued before. I don't know what case or what  
17 context that was in.

18 I think the issue of reconsideration under an issue  
19 of bond is governed more specifically by the Bail Reform Act,  
20 which is Title 18 U.S. Code 3142, Subsection (f), which states  
21 that a detention order can be revisited at any time prior to  
22 trial or the hearing to be reopened before or after any  
23 determination by the judicial officer at any time before trial  
24 if the judicial officer finds that information exists that was  
25 not known to the movant at the time of the hearing and has a

1 material bearing on the issue of whether there are conditions  
2 of release that would reasonably assure the appearance of such  
3 person as required and the safety of the community.

4 And so -- and, you know, I think while there does  
5 have to be a showing of new and material evidence as that  
6 states, we're also in the context of pretrial detention, which  
7 is something that the Court does have to err on the side of  
8 caution in every respect to make sure is warranted.

9 And so if there is any question about new evidence or  
10 evidence that was not fully in the record previously, I think I  
11 have the discretion to make sure -- before we keep someone  
12 detained that is presumed innocent that we make sure we fully  
13 hear all of that.

14 So I'm not sure the context of all those other quotes  
15 in the Eleventh Circuit. The general rule on motions for  
16 reconsideration I don't believe applies to the extent it  
17 conflicts with the Bail Reform Act.

18 The -- is there new and material evidence? I mean,  
19 we'll get to all the things Mr. Phillips just alleged in a  
20 second. But the communications from Mr. Tudor are not new I  
21 mean in the sense that they were referenced in the original  
22 bond hearing. Although I didn't have them. And maybe I should  
23 have asked Mr. Tudor at the time for them. I did not. They  
24 existed. But I didn't have them in the record.

25 The fact that the May 18 text does not reference Ms.

1 Cain specifically is not a new fact. It was undisputed that  
2 the defendant had never been told specifically not to contact  
3 her by name. However, I think the wording of the text now that  
4 I have it is something that I am a little concerned about in  
5 that, while it does not negate what I had told the defendant  
6 during his bond hearing, in other words, that he's not to  
7 contact anyone who he has reason to believe may be a potential  
8 witness or victim in the case regardless of whether they are  
9 specifically listed or not in any communication.

10 The -- I would have liked it if it had -- if this  
11 text had been less specific. In other words, it says that he's  
12 advised not to have contact with these specific people. And  
13 then defendant responds, thanks, I didn't know that. I won't  
14 make contact in the future, presumably meaning with these  
15 people.

16 Well, again, I had told him previously it is not  
17 limited to specific people. It is anyone who he has reason to  
18 believe may be a potential victim or witness. But I do believe  
19 there can be the potential for misunderstanding or  
20 miscommunication.

21 And I had also told him that the pretrial officer,  
22 Mr. Tudor, is an agent of the Court and speaks for the Court.  
23 And I don't know that it is impossible that there could be a  
24 source of miscommunication here.

25 And then at this point in time, I don't believe the

1 Ponzi scheme charges were yet pending, which isn't to say that  
2 he should have -- meaning the defendant -- been excused for not  
3 later remembering that I had told him nobody that is a  
4 potential victim or witness in the case can be contacted, even  
5 if the case expands at a future time.

6 But the fact is when I said those words the case did  
7 not include the Ponzi scheme allegations, I don't believe.  
8 Again, is that a potential source for some miscommunication?  
9 That is why I set this hearing with an open mind to hearing  
10 argument about.

11 Now, there's all this new stuff that Mr. Phillips had  
12 talked about, which Ms. Durrett has not had a chance --  
13 opportunity to respond to. And she's entitled to that.

14 I cannot -- I mean, if I was able to sit here and say  
15 none of that is relevant, it is all gravy, in other words that  
16 I don't have to even reach any of that because I'm not going to  
17 grant the Government -- the defendant's motion anyway, then we  
18 wouldn't have to cross that bridge.

19 I'm not able to make that determination. I may  
20 ultimately make it. I haven't made a final ruling on anything.  
21 But I can't sit here and say it is so clear now that I look at  
22 this text that there might not be conditions of release that I  
23 could add perhaps relating to communications restrictions that  
24 might not warrant release. In other words, I can't say that I  
25 wouldn't find that detention is not necessary at this time and

1 reconsider or reopen that question.

2           So all this new stuff is important and would meet the  
3 criteria of new material information that is not previously  
4 known, it sounds like. But I can't make a finding on that at  
5 this point because Ms. Durrett has just heard it for the first  
6 time and presumably the defendant as well.

7           So I think the only thing I can do here now is to  
8 have the Government file a response to the motion for  
9 reconsideration that lays this out. And we can reconvene once  
10 that has been presented and the defense has an opportunity to  
11 prepare an argument in response. This is all new stuff that I  
12 cannot ask them to respond to at this time.

13           So how quickly, Mr. Phillips, would you be able to  
14 respond?

15           MR. PHILLIPS: Well, I'll do whatever the Court  
16 orders me to. I can say that there's a good bit more to the  
17 phone calls than the part that I have already told the Court  
18 about. There is some very, very significant, very troubling  
19 things that show ongoing felonies being committed.

20           I'm talking about wire fraud conspiracy, obstruction  
21 of justice, income tax violations, a variety of things that  
22 these phone calls shed light on. And they certainly show that  
23 someone is -- that Mr. Fayne is a danger to the community,  
24 regardless of whether, you know, the Government would decide to  
25 go ahead and file charges on any of those other things. I

1 don't think that is necessary. That is not the standard.

2 I'm happy to brief it. The calls are lengthy. It  
3 is -- you know, there is no way around it other than to just  
4 play them one at a time. There are quite a few of them. And  
5 each one of them kind of leads you down a little bit different  
6 rabbit hole.

7 So I haven't finished listening to all the calls yet.  
8 There are a good many of them still to go. And I think that I  
9 would probably need, you know, two weeks at least to be able to  
10 listen to all of that and brief that appropriately for the  
11 Court.

12 I will also say that there is a lot going on where  
13 the defendant is using people to create fictitious trucking  
14 companies, that he is violating federal DOT regulations by  
15 providing false and misleading information and causing other  
16 people to provide false and misleading information to the DOT  
17 to create these companies. So it is a -- it is a very complex,  
18 troubling process.

19 But what these calls show -- this is a man who is  
20 locked up who doesn't have a cell phone who is beating the  
21 system.

22 THE COURT: And we don't need more argument on it  
23 right now. Because, again, I can't make any findings based on  
24 this. I just wanted to see where we go from here. It sounds  
25 like you think you would be able to serve a response in two

1 weeks.

2 And then, Ms. Durrett, you tell me how you want to  
3 proceed. I was thinking that at that point we could -- I mean,  
4 you are free to file something in reply or -- and/or we just go  
5 ahead and schedule an additional hearing here.

6 And if this is going to get more involved, then I  
7 mean, I'm happy to do it in this format if everyone agrees.  
8 But I think the defendant would have the right to come into  
9 court if he wants to instead. So we can do it in court as  
10 well.

11 So let me look at my calendar here. I'm sorry. One  
12 problem with Zoom is I've got to get out of Zoom and pull up  
13 Outlook. And that way if we're here in court and if there's  
14 things that need to be played, then we can play them.

15 All right. Mr. Phillips, why don't I give you until  
16 Friday the 19th -- that will be two weeks and a day, because  
17 there is also a holiday in the middle there -- to file your  
18 response? And then things are a little bit tight.

19 But are y'all free Monday, March 1st?

20 MR. PHILLIPS: Yes, Your Honor.

21 THE COURT: Let's say 9:30. I have something at  
22 9:30. But I think we can move that. It is just a pretrial  
23 conference.

24 Ms. Durrett, does that work for you?

25 MS. DURRETT: It does, Your Honor. I would ask that

1 we are in person, if that is possible at that time, if it is  
2 going to be an extended hearing.

3 And I also -- just as a courtesy, I would ask the  
4 Government to point me to the calls it is going to rely on so  
5 that I can prepare more quickly if there are specific calls.  
6 It sounds like there are a lot of calls in general. And so if  
7 there are specific calls that they are relying on that they are  
8 going to play for the Court, I would ask -- not that I'm only  
9 going to listen to those. But it would help me if I had a  
10 heads-up about exactly which calls they were going to be  
11 focusing on so I could listen to those too.

12 THE COURT: Well, I mean, I'm expecting their  
13 response on the 19th to put you on notice of the arguments and  
14 evidence. That is what the response -- the purpose would be.  
15 So I'm expecting that would be served by the response on the  
16 19th.

17 MR. PHILLIPS: Judge, is the defendant going to file  
18 a reply brief to my response before the hearing so that we can  
19 tee up all of those issues?

20 THE COURT: Ms. Durrett, do you -- do you want to be  
21 able to file -- do you want to file something before?

22 MS. DURRETT: Sure. I can file something on the  
23 26th, if that is okay.

24 THE COURT: Yeah. That is fine by me. I can't  
25 promise to have studied it in as much detail as if it was

1 earlier. But I know that you are jammed there too on that  
2 timing. So that should be fine.

3 MR. PHILLIPS: Does that give us enough time for the  
4 hearing on March 1st since that is just the -- the next  
5 business day?

6 MS. DURRETT: If the Court finds that is not enough  
7 time, I would prefer not to file a reply. My client is sitting  
8 in custody. He has the right to have this issue heard, and he  
9 wants to be heard sooner rather than later. So I will file it  
10 on the 26th if the Court permits that. But if not, I'm happy  
11 to go to --

12 THE COURT: I mean, I'll permit it. There is no  
13 downside in you doing it. If you find you are able to do it a  
14 day or two earlier, that might be more helpful. But that's  
15 asking a lot. So I won't require that.

16 And if you are electing to have the hearing earlier  
17 rather than later understanding I will have a little bit less  
18 time to digest the reply brief, that's -- I think you are  
19 within your rights to make that election.

20 And I'll read it. It is not like I won't be able to  
21 read it. It is just a business day. So -- and the reality is  
22 I'm on criminal duty for part of the rest of March and my  
23 calendar gets a little complicated. So -- so really the 1st  
24 would be the best time.

25 So let's say 9:30 on the 1st. And we'll do it in

1 court unless there is a change of heart on that from the  
2 defense side because I think the defendant has the right to --  
3 would have to consent and waive his right to be present if  
4 he -- so we'll just assume it is in court and calendar it that  
5 way.

6 All right. Anything else then for today?

7 MR. PHILLIPS: Not --

8 MS. DURRETT: No, Your Honor.

9 MR. PHILLIPS: -- from the Government.

10 THE COURT: All right. Very good. Thank you. We'll  
11 be in recess.

12 MS. DURRETT: Thank you.

13 THE COURT: Bye-bye.

14 **(The audio-recorded Zoom proceedings were**  
15 **thereby concluded.)**

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C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of the United States District Court, for the Northern District of Georgia, Atlanta Division, do hereby certify that the foregoing 30 pages constitute a true transcript of said audio-recorded Zoom proceedings had before the said Court, held in the City of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 26th day of February, 2021.

*Shannon R. Welch*

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SHANNON R. WELCH, RMR, CRR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT

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