

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

UNITED STATES OF AMERICA : **CASE NO. 1:08-cr-23**
:
v. :
:
WILLIAM HORACE (“BILLY”) LONG : **JUDGE MATTICE/LEE**
:

**MEMORANDUM IN SUPPORT OF MOTION FOR
APPLICATION OF SAFETY VALVE**

Comes the defendant, **WILLIAM HORACE (“BILLY”) LONG**, by and through counsel, and respectfully submits this Memorandum of Law in support of his Motion for Application of the Safety Valve pursuant to United States Sentencing Guidelines § 5C1.2. Mr. Long entered a guilty plea on May 5, 2008, to twenty-seven counts which included: (1) Counts One through Nineteen, charging extortion in violation of Title 18, United States Code, Section 1951; (2) Counts Twenty through Twenty-Five, charging money laundering in violation of Title 18, United States Code, Section 1956(a)(3); (3) Counts Twenty-Six, charging providing a firearm to a convicted felon in violation of Title 18, United States Code, Section 922(d); and (4) Count Twenty-Seven, charging possession with intent to distribute more than five kilograms of cocaine hydrochloride in violation of Title 21, United States Code, Section 841(a)(1), (b)(1)(A).

Count 27 carries a mandatory minimum sentence of imprisonment of ten years. It is one of the enumerated offenses under United States Sentencing Guidelines § 5C1.2 in which the safety valve can apply. The initial burden of proving eligibility for the safety valve is on the defendant to show by a preponderance of the evidence. United States v. Haynes, 468 F.3d 422, 427 (6th Cir. 2006). For the safety to apply, five criteria must be met as listed in 18 U.S.C. §

3553(f)(1)-(5):

(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines before application of subsection (b) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category);

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

Factors (1), (3), (4), (5) are clearly satisfied in this case, and the defendant believes that

the Government will not object to the safety valve on these four grounds. Mr. Long has no criminal history. No one was injured or died as a result of these offenses. Mr. Long was not an organizer or leader in these crimes. Mr. Long has met with Government agents and provided all information and evidence that he had concerning this offense.

Factor (2) provides the issue to be resolved by the Court in determining if the safety valve should apply. In the plea agreement, the parties agreed that the Court would decide if the points for possession of a firearm would apply under U.S.S.G. §2D1.1(b)(1). The Court must determine if the firearm was used in connection with the offense. U.S.S.G. §5C1.2(a)(2). Mr. Long did not use violence or credible threats of violence, therefore, the only way the safety valve would not apply in this case is if Mr. Long possessed a firearm in connection with the offense.

The firearm at issue is Mr. Long's service weapon that was found in Mr. Long's truck on the day of his arrest. Mr. Long carried his service weapon as part of his capacity as the Sheriff of Hamilton County. Mr. Long kept the service weapon in his truck and at no time removed it from his truck in relation to this case. The service weapon was first mentioned on the day of the drug trafficking offense after the cocaine had been delivered and Mr. Long and the confidential witness had returned to the confidential witness's place of business. After returning to the business, Mr. Long and the confidential witness were in the office counting money and talking. The confidential witness interjected Mr. Long's service weapon into the conversation by stating

And then I wasn't too worried anyway. You had your gun. If anybody come in here that tried to start some stuff, I ain't worrying about that.

(Attachment 1 - Transcript (2/2/08), p. 14).

It is clearly improbable that Mr. Long's service weapon was connected to this offense.

Mr. Long carried this service weapon in his official capacity as sheriff, and this offense had nothing to do with him carrying that gun. In fact, Mr. Long was not even aware that this offense was going to occur when he went to meet the confidential witness on that day. The confidential witness under the ruse of having a broken arm and being injured, asked Mr. Long to place a box in his trunk and then followed him to drop off a car. Mr. Long followed the confidential witness but parked in a nearby parking lot and did not follow the confidential witness to the drop location. The service weapon was not even mentioned until after the cocaine was dropped off, and they had returned to the confidential witness's place of business. Additionally, the service weapon was not in the same car as the cocaine. The confidential informant did not ask Mr. Long to bring his service weapon with them for protection. The confidential informant assumed that because of Mr. Long's capacity as sheriff, he had a gun with him.

“To show that the firearm was possessed ‘in connection with’ the offense, the government must demonstrate that the firearm either facilitated or had the potential to facilitate the felony offense.” United States v. Rodney Colbert, No. 07-4296, 2008 WL 110912, at *2 (4th Cir. Jan. 9, 2008). The Government will be unable to demonstrate either. This crime was a government created crime that involved no one but the FBI, the confidential witness, and the defendant. This was a created crime that in no way was facilitated or had the potential to facilitate the crime by the defendant's having his service weapon in his car. The Government created this crime so that the defendant would follow the confidential witness in his own car containing his service weapon. It is likely that FBI agents instructed the confidential informant to make a statement regarding the defendant's service weapon. The only potential role or effect that the defendant's service weapon could have in this offense is if the Court allows it to affect

sentencing. The service weapon played no role in the offense and should play no role in the sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2008, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

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