

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

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

**REPLY TO GOVERNMENT’S RESPONSE TO MOTION FOR  
PSYCHOLOGICAL EXAMINATION OF GOVERNMENT WITNESS**

Comes Defendant, William Horace “Billy” Long, by and through counsel and respectfully replies to the Government’s Response to Motion for Psychological Examination of the Government’s Witness, Clarence Eugene Overstreet. (Doc. 35). The hearing for this motion is set for Friday, August 15, 2008.

**FACTUAL BACKGROUND SECTION**

Initially, the defendant will respond to several of the factual allegations made by the Government in its Response that the defendant submits are erroneous. The Government asserted that “an FBI agent just happened to be visiting at the CW’s office when he overheard” a telephone conversation between the defendant and the cooperating witness. The defendant has reason to believe that the agent was investigating a separate public corruption case and was not simply “visiting.” The Government has refused to reveal the scope of Overstreet’s involvement in another possible public corruption conspiracy. When questioned by the defense about Overstreet’s involvement in the separate conspiracy pursuant to the informal rules of discovery in criminal cases in this district, the Government stated through written correspondence, “No comment. We will neither confirm nor deny,” and told counsel said information would have to be sought through motion. The defense not wishing to prejudice any ongoing investigation will pursue this matter in

a sealed motion, because it also brings the cooperating witness' credibility into issue.

The Government also asserts that "the defendant [] picked his friend, the CW, to be his partner in crime." (Govt.'s Resp. p. 1 ). The defendant submits that this is completely false. The CW approached the defendant during his campaign for sheriff and told the defendant that he had legitimate campaign supporters for him. The CW interjected himself into the defendant's campaign and election, and the CW, not the defendant, persisted in the continuation of their relationship beyond the election as it escalated into criminal acts.

### LAW AND ARGUMENT SECTION

The Government's central argument permeating through its response is that the cooperating witness is not a witness in the upcoming sentencing proceeding. This conclusion by the Government is premature. The sentencing hearing is set for October 27, 2008. As both parties file motions and responses, the Government may decide that it wishes to call the cooperating witness to testify. The fact that the defendant has not yet subpoenaed the cooperating witness for the sentencing hearing does not mean that he will not have a subpoena issued for the witness to appear. Also, the Court may determine that it wants to hear the testimony of the cooperating witness "in the interest of justice" before imposing a sentence and order the witness to appear. Mr. Overstreet, himself, understands that up until sentencing that he could be called to testify and told the Chattanooga Times Free Press on May 8, 2008, that "he would be happy to testify in person at the upcoming sentencing hearing." (Attachment 1).

The Government also argues throughout its response that the cooperating witness' credibility is irrelevant to sentencing. However, the defendant submits that the cooperating witness' credibility and mental status is relevant to sentencing. "No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court

of the United States may receive and consider for the purpose of imposing an appropriate sentence.” 18 U.S.C. § 3661. Additionally, the cooperating witness’s credibility and mental status will have a role in the sentencing entrapment, sentencing manipulation, and outrageous conduct arguments that will be made by the defendant. It is relevant to know how the cooperating witness’ personality and mental status affected the defendant’s own personality and mental status. The Government makes the arguments that sentencing entrapment and outrageous conduct are not issues in this case, however this is for the Court to decide. Also, the Government’s argument that the defendant has failed to show sentencing entrapment, sentencing manipulation, or outrageous conduct is a premature argument. The defendant will file the proper motions and memorandum with regard to these legal arguments at the proper time relating to those issues to be determined at sentencing.

The Government also argues that the defendant was “simply motivated by greed.” (Govt. Resp. p. 3). The defendant disagrees with this statement and submits that the psychological testing of the cooperating witness will help the defendant to show that the escalation of the offenses committed by the defendant were not motivated by greed.

The Government asserts that the cooperating witness “had nothing to do with how the investigation progressed or what he was to tell the defendant.” (Govt. Resp. p. 4). The Government also stated that all the conversations between the defendant and the CW were recorded, and some of these meetings or conversations lasted for significant amounts of time. The CW was solely responsible for many of the things that he said to the defendant and his personality and mental status would be especially relevant to those statements and conversations. The defendant does not doubt that the Government told the CW to work certain things into conversations - such as the drugs and the defendant’s service weapon - however, it is impossible that the statements and conversations

themselves could have been scripted in a way that restricted the CW from influencing the flow of the conversations or the statements themselves.

The Government argues that the defendant has provided no authority to support the “novel and disturbing idea that the Court should order a psychological evaluation of a citizen of this country.” (Govt.’s Resp. p. 4). The defendant did provide authority for having a witness examined in his Memorandum in Support of the Motion. (Doc. 28). The psychological testing of witnesses is nothing new. The Government phrases its argument in a way to make it sound as though the CW is an innocent citizen being swept into the case. The CW was a paid over \$18,000 through May 2008 (the Government will update this amount at the time of sentencing), and the main cooperating witness in this case for approximately one year. The CW is the main witness against the defendant, and we have a right to confront this witness, whether it be at trial or at sentencing. Although, this may be a first impression case of having a witness evaluated for sentencing purposes, the current federal system is set up in such a way that most cases never go to trial and sentencing becomes the most important part of many federal cases. The Government argues that “there is no case or statutory authority for [examination of witnesses] for a sentencing proceeding.” Implicit in this argument is the fact that there is also no case or statutory authority prohibiting the psychological examination of witnesses for sentencing proceedings.

Finally, the Government argues that if “anyone should be examined, it is the defendant; the newly elected sheriff who threw away one of the best paying, most powerful and respected positions in the state.” (Govt.’s Resp. p. 5-6). We agree, and the defendant has been examined by a licensed clinical psychologist in order to assist the defense in explaining why the defendant committed the offenses that he did, which shocked the community and those who truly knew the defendant. The



**CERTIFICATE OF SERVICE**

I hereby certify that on August 13, 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.

s/Jerry H. Summers

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