

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

UNITED STATES OF AMERICA)	
)	
vs.)	Case No. 3:06-00204
)	Judge Robert L. Echols
BARRY R. STOKES)	Expedited Hearing Requested

**MOTION TO IMMEDIATELY RELEASE THE DEFENDANT PENDING TRIAL DUE
TO HIS PRESENT MEDICAL CONDITIONS AND LACK OF
APPROPRIATE MEDICAL TREATMENT**

Comes now Barry R. Stokes, by and through counsel of record, Paul J. Bruno, pursuant to 18 U.S.C. §3142(f), and hereby moves this Honorable Court to immediately release him pending trial so that he may obtain proper medical care to treat what has been preliminarily diagnosed as lymphoma. The trial of this matter is presently set to begin on Tuesday, September 9, 2008. As grounds for this Motion, the Defendant would state and show that his health condition since his pretrial incarceration began in October, 2006 has significantly deteriorated, that proper medical treatment is desperately needed for him, that the Davidson County Sheriff's Office is not properly addressing his serious medical issues, and that he will be able to obtain proper treatment only through private medical care while released. As further grounds for this Motion, Mr. Stokes would state and show that he is not a danger to society nor is he a flight risk. He has practically no assets and is in poor health. Mr. Stokes will agree to be placed on house arrest pending the trial of this matter with his being allowed to leave his residence for medical treatment, attorney visits, trial preparation and court appearances.

Brief History of Medical Issues and Treatment Prior to Incarceration

In July, 2004, Mr. Stokes was diagnosed with pancreatitis which was caused by a gallstone blocking a common bile duct. Mr. Stokes spent one week in the hospital, passed the

stone and went home. His blood sugars ran high after the bout with pancreatitis. However, the blood sugar levels were controlled by diet, exercise and Metformin tablets. He was never on insulin.

In April, 2006, Mr. Stokes suffered from kidney stones. The kidney stones were timely removed via surgery, and he made a full recovery.

In July, 2006, Mr. Stokes gall bladder was removed, and he made a full recovery.

In August, 2006, Mr. Stokes underwent a full physical when seeking to adopt a child, and he was given a clean bill of health, except that he needed to reduce his body fat.

History of Medical Issues and Treatment (or a lack thereof) While Incarcerated

Mr. Stokes was incarcerated due to this case on October 13, 2006. At the beginning of his incarceration, Mr. Stokes was denied his Metformin pills. His blood sugar levels began to run high, and the jail fed him a high carbohydrate, high fat diet. He then began walking five to seven miles a day and lost thirty pounds in the first two months. His blood sugar levels returned to normal.

In November, 2006, Mr. Stokes developed problems with urinating. Dr. Bazzell diagnosed his complaint as being caused by an enlarged prostate (BHP).

In January, 2007, Mr. Stokes started experiencing extreme pain in the prostate. Dr. Bazzell did not examine Mr. Stokes, but diagnosed him as having a urinary tract infection and prescribed Cipro. Mr. Stokes refused to take the Cipro until he was tested for the infection. His test results for an infection came out negative. Mr. Stokes was never properly treated for his pain.

In February, 2007, Mr. Stokes continued experiencing pain in his prostate and bladder. Dr. Bazzell prescribed Hytrin for the pain. The Hytrin provided some relief, but it did not

reduce the swelling in his prostate. Dr. Bazzell told Mr. Stokes that he would just have to live with the pain.

In June, 2007, Mr. Stokes injured his ankle, probably by tearing or stressing the tendon. It took two weeks for Mr. Stokes to get to see Dr. Bazzell. Dr. Bazzell gave him a one week supply of Tylenol for the pain. No additional medication was provided to Mr. Stokes, and the pain continued.

In October, 2007, Dr. Bazzell agreed to give Mr. Stokes a cortisone shot to the ankle for his pain. The cortisone helped the pain greatly, and he has not had much pain since.

In November and December, 2007, Mr. Stokes began to feel extremely tired and rundown. He put in a sick call, and his blood was drawn to test for anemia.

In January, 2008, Mr. Stokes sent in a sick call again because he was experiencing itching all over his body. He was given Benadryl for one week. Again, no additional medication was given, and the itching continues to this day.

In February, 2008, Mr. Stokes was diagnosed with Deep Vein Thrombosis (DVT-blood clot) in his right ankle. The Court may recall when he was suffering from this condition as he was on crutches at the February, 2008 court appearance. He was given Coumadin to dissolve the blood clot. Mr. Stokes experienced severe pain due to the blood clot, but again was only given Tylenol to alleviate it. His blood was drawn a second time to be tested.

Also, in February, 2008, Mr. Stokes put in a sick call again due to itching and was given hydrocortisone cream. However, the severe itching continues to this day.

In March, 2007, Dr. Bazzell met with Mr. Stokes for a consultation and informed him that he could possibly have leukemia. Dr. Bazzell came to that conclusion because of the results of the previously mentioned blood tests which showed that Mr. Stokes' white blood cell count

and his red blood cell count were approximately 25% of the normal range. Dr. Bazzell arranged an appointment at Meharry to have bone marrow drawn for testing. While at Meharry, Mr. Stokes was given four prescriptions for medications to treat his medical conditions. However, the Davidson County Sheriff's Office refused to fill the prescriptions and provide the medications to Mr. Stokes. A week after his bone marrow was drawn, Mr. Stokes went back to Meharry for the results. He was told that he did not have leukemia and that he would have to have a CAT scan conducted so that the doctors could look into other causes of his symptoms.

In May, 2007, Mr. Stokes had a CAT scan conducted. Dr. Bazzell told him that the CAT scan showed that he had lymphoma. He then had a follow up appointment with Dr. Wolff at Meharry who ordered a biopsy of his lymph nodes. Although the biopsy should have been performed immediately, the biopsy still has not been completed as of the filing of this Motion, approximately six weeks post CAT scan.¹

On June 17, 2007, Mr. Stokes put in a sick call again for what he believes to be a cracked rib. Fourteen days passed before he was seen by a nurse. The nurse advised that the cracked rib could possibly be a pathological fracture due to his medical condition. This condition still has not been treated as of the filing of this Motion.

On June 26, 2007, Mr. Stokes had a consultation with a surgeon from Meharry regarding his lymphoma. The surgeon told Mr. Stokes that a normal biopsy procedure would not be sufficient and that he would have to have surgery under general anesthesia to remove one of his lymph nodes. Mr. Stokes would be put to sleep during the surgery. Mr. Stokes is extremely concerned about having to undergo surgery at Meharry with follow-up treatment while incarcerated with the Davidson County Sheriff's Office, especially due to the lack of care he has

¹ Counsel for Mr. Stokes has been advised by the U.S. Marshal's office that Mr. Stokes will undergo surgery (under anesthesia) this week so that a lymph node can be removed to complete further testing.

already received (including the lack of pain medication for other ailments) and due to the potential of infection following his surgery.

Complaints Regarding Medical Treatment

Itching: Mr. Stokes has been mostly given Benadryl and Zyrtec for his itching. He received one round of Prednisone for five days and one round of Diflucan for four weeks. Then, after three weeks passed, Mr. Stokes received an additional round of Diflucan. Dr. Wolff prescribed medication for the itching, but Dr. Bazzell ignored the prescription order. Mr. Stokes was told that they were unable to treat this itching more aggressively because they were afraid of liver damage. However, no testing regarding potential liver damage has been conducted. Mr. Stokes has been and still is in severe pain for the itching.

DVT: Mr. Stokes was only given Tylenol to alleviate the pain of the Deep Vein Thrombosis (DVT) and that was only given to him for a few days. This treatment of a very serious condition is clearly inadequate.

Lymphoma: Although the timeline for the diagnosis related to lymphoma should have been relatively short, the diagnosis time has now been extended to approximately 3 or 4 months with no definitive final diagnosis scheduled at this time.

Sick Call Response Time: Although stated jail policy provides for a three day response time to respond to sick calls, some response times for Mr. Stokes have been as long as two weeks.

Mr. Stokes' Diet

From October, 2006, to March, 2007, Mr. Stokes was under a 2600 calorie diet. His 2600 calorie diet included a mid-morning snack which consisted of a white bread sandwich and an orange. In March, 2007, the sandwich was dropped and not replaced with another food. Each

meal that Mr. Stokes received had high glycemic, starchy foods such as white bread, potatoes, rice and grits. This diet is not consistent with the proper treatment required for diabetics.

In May, 2008, Mr. Stokes' diet was changed. He stopped receiving protein for breakfast. Instead, Dr. Bazzell ordered a protein supplement for 14 days. The kitchen, however, only sent up the supplement for 9 days. Mr. Stokes wrote a grievance about this issue, and it was ignored.

Law Regarding Reconsideration of Release

This Court clearly has jurisdiction to reopen the detention hearing in this case and re-evaluate whether Mr. Stokes still needs to be detained. 18 U.S.C. §3142(f) states, "The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community." The new information which exists that was not known to the movant at the time of the hearing includes Mr. Stokes preliminary diagnosis of lymphoma, his lack of proper treatment related thereto, and his other medical conditions which have arisen since his last detention hearing.

Basis for Release

Mr. Stokes needs to be medically treated the same as any other person with similar ailments. He should not receive less than adequate care for his medical conditions simply because he is being detained pretrial, never having been convicted of any crime. His preliminary diagnosis of Lymphoma is significant, and an immediate final diagnosis and treatment plan is necessary. However, the Davidson County Sheriff's Department is not *timely* treating Mr.

Stokes' condition. Mr. Stokes' needs to get timely proper medical care and can do so only through private care.

The trial of this case is rapidly approaching. The anxiety, worry, and fear regarding this ongoing, delayed diagnosis is keeping Mr. Stokes from being able to properly focus on trial preparation.

More relevant to the standard for the Court's decision regarding this Motion, Mr. Stokes is in no way a danger to society or a flight risk. He has no criminal history. He is willing to live under house arrest pending trial. His medical condition requires him to maintain constant contact with physicians, requiring him to remain in the Middle District of Tennessee to continue his treatment. Mr. Stokes has no significant assets with which he could flee the District.

At this point, releasing Mr. Stokes is a matter of basic human decency. Mr. Stokes deserves adequate medical treatment in a timely fashion. The Davidson County Sheriff's Office has failed him.

The filing of a claim under 42 U.S.C. §1983 is not an appropriate remedy at this time given the urgency of Mr. Stokes' medical condition and the availability of his release with conditions which would provide him with the ability to obtain immediate appropriate care.

This Court should immediately release him.

Relief Requested

Mr. Stokes requests the Court to release him immediately so that he can receive proper medical treatment. Mr. Stokes will agree to remain on house arrest pending trial, except that he may leave his residence for medical treatment, attorney visits, trial preparation, and court appearances.

Alternatively, Mr. Stokes requests the Court to conduct an expedited evidentiary hearing regarding this Motion, at which hearing the testimony of Dr. Bazzell and Dr. Wolff will be needed to explain the lack of proper treatment in this case.

Respectfully Submitted,

/s/ Paul J. Bruno
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing *Motion to Immediately Release the Defendant Pending Trial Due To His Present Medical Conditions and Lack of Appropriate Medical Treatment* has been electronically delivered to Courtney Trombly, Assistant United States Attorney, 110 Ninth Avenue, South, Suite A961, Nashville, TN 37203-3870, on this the 14th day of July, 2008.

/s Paul J. Bruno
Paul J. Bruno