

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

vs.

CRIMINAL CASE NO. 5:06-cr-50064-JLH-1

HOLLIS WAYNE FINCHER

DEFENDANT

**MOTION FOR PROPER MEDICAL CARE OR ALTERNATIVELY
FOR REDUCTION OF BOND, AND FOR ONE DAY CONTINUANCE OF TRIAL**

Comes now Defendant and for his motion for proper medical care, or, alternatively, for reduction of bond states:

Defendant is in need of proper medical care. Katalina McMichael, an attorney licensed to practice in the state of Arkansas, went to the Sebastian County Adult Detention Center (jail) to interview Defendant this morning, January 5, 2007, in the jail at about 9:50 AM. Her verification of the facts stated herein is attached as Exhibit "1." She observed that he was sweating profusely for the duration of the interview. Defendant stated that he had lost 30-40 pounds since being jailed.

On January 2, 2007 Defendant began to experience vomiting, nausea, and chest pain. He was denied the opportunity to see a doctor at the time. Undersigned counsel called and also appealed for a trip to the doctor, to no avail. His condition continued to deteriorate, and he was taken to the hospital at 3:00 AM. Later that day, the doctor prescribed three medications, a pain medication, an antibiotic, and an anti-nausea medication. Defendant was discharged at about 3:00 PM Wednesday January 3, 2007.

Mr. Fincher also stated that on Wednesday morning, January 3, 2006, he was prescribed three medications; a pain medication, an antibiotic, and an anti-nausea medication. He could not recall

the name of the medications. Mr. Fincher stated that he has not been given the pain medication at any time, and that he was not given the antibiotic and anti-nausea medication until this morning, January 5, 2007, around 6:00 a.m.¹ Mr. Fincher further stated that he was told by the guards that he was not given his prescription medication earlier because his doctor had not called it in. Mr. Fincher stated that once he finally received the anti-nausea medication, he was finally able to keep food down.

Thursday, January 4, 2007, Mr. Fincher again requested to be taken to the hospital again for chest pain and vomiting, which he felt may be related to heart problems, but was refused by jail personnel.

Ms. McMichael asked Mr. Fincher about his other prescription medications. Fincher stated that he is prescribed Lasix, a diuretic, at the rate of one pill per day. Mr. Fincher stated that his doctor prescribed him Lasix to pull the water off of his heart, but that he had stopped taking it because he was dehydrated. He told McMichael that he was so dehydrated that the nurse had trouble trying to find a vein when he was in the hospital.

Mr. Fincher further stated that a guard, whose name is not currently known to him, brought him 4 (four) Lasix pills to take on Thursday morning, January 4, 2006. Mr. Fincher stated that he refused to take them.

Mr. Fincher also stated that he is on medication for his blood pressure and was given it regularly until he ran out, at which point he was forced to go without it for a period of three days until his wife was able to bring more to him.

¹ Mr. Dwayne Allen, US Marshal, told undersigned counsel on Thursday, January 4, 2007, that his understanding was that the prescribed medicine would have been given at 10:00 PM the same evening.

Mr. Fincher stated that he has been experiencing chest pains, nausea, vomiting, profuse sweating, and his blood pressure has been going as high as 230, and then low again. He stated his blood pressure has been "all over the place."

The government asked that the Defendant be held without bond. See page 33 of the transcript of bond hearing where BATF Agent Wade Vittitow said:

4 Q What can be done to allay your fears?

5 A To be detained.

6 Q Other than that?

7 A There are none.

Judge Stites fixed a \$250,000 bond but also said:

... Mr. Fincher and his wife are
25 going to post a deed to their property to the Court. What that
0044
1 means is if there's any violation of probation, if there's any
2 problem with another witness, if there's anything that you do
3 that the Court said don't do, you're promising me if I don't do
4 what you say, I will give up the dearest thing I have probably
5 next to my family and that is this property.

(Emphases added)

Defendant thinks that if he signs the deed over as bond, the government will look for reasons to forfeit his bond and take the family property. Therefore he has not posted the requested bond.

Defendant would not have any objections to a reasonable bond to secure his appearance. Nor does he have any objection to being punished conformably with the law if he should violate any condition of pretrial release. However, undersigned counsel now has great concern that the client may not be in suitable medical condition on Monday to adequately assist in his own defense.

Undersigned counsel has brought these facts to the immediate attention of Assistant US

Attorney Wendy Johnson, and pleaded that the Defendant be transported to a facility readily accessible to the Defendant's family physician, so that he may be assured of proper medication and care between now and trial. Ms. Johnson has indicated that she will not make such a directive.

Undersigned counsel has made firm and repeated requests to obtain the medical records and log entries pertaining to Fincher. On the evening of Thursday, January 4, 2007, Sgt. Gadeke of the Sebastian County Detention Center said this could not be done due to HIPAA regulations. Undersigned counsel said that he would in that case let Fincher ask for his own records. The answer continued to be a firm "no" even though one can hardly cite HIPAA to deprive an inmate of his own medical records. Sgt. Gadeke told undersigned counsel that he could get the records with a court order, which is part of the reason for this motion. Without the medical records and diagnoses, undersigned counsel does not know the seriousness of the current situation. Furthermore, most doctors want recent medical history before attempting further treatment of a medical condition.

For the reasons herein stated, Defendant prays the following relief, alternatively or cumulatively as the Court sees fit:

1. Reduction of bond, with the bond to be forfeited only if the Defendant wilfully fails to appear for trial, sentencing, or other hearing ordered by the Court. Defendant would respectfully request a \$25,000 signature bond, but would be grateful for any reduction or clarification of the terms.
2. An order that the medical records pertaining to Defendant be made available to the Defendant, his family physician or other chosen medical provider, or Defendant's counsel or any associate of counsel, without delay.
3. If bond is not reduced and met, an order that Defendant be immediately transported to a

hospital or other facility² recommended by Dr. Thorn, 479-442-2822, Wayne Fincher's family physician, for treatment and observation pending trial.

4. Defendant further requests that the trial be continued for one day so that Defendant's medical condition, from his family physician, can be obtained and relayed to the Court in the manner least likely to inconvenience the Court or the jurors. If serious medical problems become apparent upon medical examination, undersigned counsel then would inform the Court as soon as possible Monday, January 8, 2007, and request appropriate relief in a proper pleading.

Respectfully submitted,

By: /s/ Oscar Stilley
Oscar Stilley, Attorney at Law
701 S. 21st Street
Fort Smith, AR 72901
(479)573-0726
Attorney for Defendant

CERTIFICATE OF SERVICE

I, Oscar Stilley, by my signature above certify that I have this January 5, 2007 served the following by ECF:

Wendy L. Johnson
U.S. Attorney's Office
P.O. Box 1524
414 Parker Avenue
Fort Smith, AR 72902

² Probably Washington Regional Medical Center.