C. DAVIDSON

U.S. Department of Justice
United States Attorneys Office
Eastern District of Tennessee
800 Market Street
Suite 211
Knoxville, Tennessee 37902-2312

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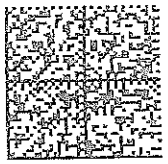

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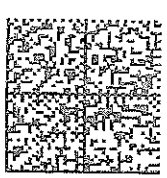

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

RANDALL KEITH BEANE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

No. 3:21-cv-375
Judge Varlan

RESPONSE IN OPPOSITION TO PETITIONER'S MOTION FILED PURSUANT TO 28 U.S.C. § 2255

The United States opposes petitioner Randall Beane's § 2255 motion because he has not established any basis upon which relief may be granted. His motion should be denied.

FACTUAL AND PROCEDURAL HISTORY[1]

"Faced with financial challenges and rising unpaid bills, . . . Beane, with Heather Tucci-Jarraf's assistance, tried to find a new source of assets: an alleged trust fund of government money in his name." *United States v. Tucci-Jarraf*, 939 F.3d 790, 791 (6th Cir. 2019). "But the money was not his," and he and Tucci-Jarraf "defrauded the United States of $31 million." *Id.* Among other things, Beane credited a theory—commonly espoused by sovereign citizens—that every government-issued birth certificate reflects the creation of a secret "straw man" Treasury account in the name of that individual. (Doc. 165, Trial Tr. at PageID# 16986-87.) Listing his Social Security number as the account number and the routing number of the Federal Reserve Bank as the funding source, Beane purchased jumbo certificates of deposit totaling $31 million through USAA Bank's website. (*Id.* at PageID# 16997, 17008, 17011-12, 17018-19; Doc. 162, Trial Tr., PageID# 16390-91.) Beane used that money to pay off some of his loans and make

[1] Unless otherwise specified, all record citations refer to the underlying criminal case, No. 3:17-cr-82.

significant purchases, including a new vehicle for $86,000 and a luxury motor home for nearly $500,000. (Doc. 165, Trial Tr. at PageID# 17025.) USAA Bank, in response, froze his accounts and attempted to rescind some of his payments. (*Id.* at 17015-16, 17019; Doc. 159, Trial Tr., PageID# 16091-92.) Throughout this process, Beane sought and followed Tucci-Jarraf's advice. (*E.g.*, Doc. 165, Trial Tr. at PageID# 17026, 17031.) Tucci-Jarraf, in turn, contacted the motor-home seller and a bank, representing herself as Beane's attorney. (*Id.* at PageID# 17026, 17035.) She also prepared trust documents for Beane, ensuring that her name appeared on them. (*Id.*)

In July 2017, a federal grand jury charged Beane with five counts of wire fraud, in violation of 18 U.S.C. § 1343, and one count of bank fraud, in violation of 18 U.S.C. § 1344; he was also charged, along with Tucci-Jarraf, with one count of conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h). (Doc. 3, Indictment.) "Beane and Tucci-Jarraf responded to their arrests with a flood of frivolous motions." *Tucci-Jarraf*, 939 F.3d at 793. The Sixth Circuit summarized their pretrial motions like this:

> They demanded hearings on their own identities, the identities of the arresting officers, and the identity of the presiding judge. They asserted that United States courts cannot hold anyone "except by their own consent" and that the United States . . . is a "bankrupt corporation." They submitted hundreds of pages of pointless Uniform Commercial Code filings, allegedly related to something called "The One People's Public Trust." They mailed the court an itemized bill seeking payment of over $46 quintillion dollars. On and on it went. Concerned that such conduct might confuse a jury, the judge granted a motion in limine that barred the defendants from raising similar arguments at trial.

Id. Beane and Tucci-Jarraf asked to represent themselves and waived their right to counsel. *Id.*

Throughout their eight-day trial, which started in late January 2018, Beane and Tucci-Jarraf each conferred with his/her respective elbow counsel, offered opening and closing statements, testified in his/her own defense, cross-examined witnesses (sometimes at great length), successfully submitted evidentiary exhibits, and moved to dismiss the case at the close

of the government's proof. (*E.g.*, Doc. 162, Trial Tr., PageID# 16300, 16340, 16344-47; Doc. 165, Trial Tr., PageID# 16971; Doc. 166, Trial Tr., PageID# 17061.) They explained their beliefs and acknowledged that those beliefs are generally met with contempt or criticism by government officials and the public alike. (Doc. 165, Trial Tr., PageID# 16988-90; Doc. 159, Trial Tr., 16107, 16144, 16157, 16169-77.) Beane clearly described his personal belief in the value of the individual and the desire to achieve personal wealth, and he highlighted Tucci-Jarraf's assistance in his scheme. (Doc. 165, Trial Tr., PageID# 16922, 17025-26.) The jury convicted Beane and Tucci-Jarraf as charged, having "rejected their array of fringe conspiracy theories." *Tucci-Jarraf*, 939 F.3d at 791.

The Court sentenced Beane to an aggregate term of 155 months' imprisonment, near the bottom of the applicable and undisputed Guidelines range, followed by five years' supervised release.[2] (Doc. 228, Judgment.) The Court entered a money judgment for $553,749.99 and ordered Beane to repay $510,589.02 in restitution. (*Id.*; Doc. 270, Forfeiture Order.)

On appeal, represented by appointed counsel, Beane and Tucci-Jarraf argued that the Court "should have forced them to accept counsel in view of their unusual beliefs" and "saved them from themselves." *Tucci-Jarraf*, 939 F.3d at 792, 794. The Sixth Circuit rejected their arguments, finding that Beane and Tucci-Jarraf "knowingly and intelligently made th[e] choice

[2] Tucci-Jarraf was sentenced to 57 months' imprisonment. *Tucci-Jarraf*, 939 F.3d at 793. She completed that custodial sentence in January 2022. *See* Inmate Locator, Federal Bureau of Prisons, *available at* https://www.bop.gov/inmateloc/ (accessed Mar. 11, 2022). Beane notes that Tucci-Jarraf served part of her sentence on home confinement, but mistakenly assumes that "[t]he government acknowledged some of [its] wrong-doing and unlawful receipt" by doing so. (Doc. 271, § 2255 Motion at 59.) In fact, the Bureau of Prisons has transferred over 39,000 inmates to home confinement in the past two years, as authorized by the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 12003(b)(2), 134 Stat. 281, 516 (Mar. 27, 2020). *See* COVID 19 Home Confinement Information, Federal Bureau of Prisons, *available at* https://www.bop.gov/coronavirus/ (accessed Mar. 11, 2022).

[to represent themselves] and . . . self-lawyering does not require the individual to subscribe to conventional legal strategies or other orthodox behavior." *Id.* at 792. Beane did not seek a writ of certiorari from the Supreme Court, so his conviction became final on December 23, 2019. *See Clay v. United States*, 537 U.S. 522, 525 (2003) (a conviction affirmed on appeal becomes final upon expiration of the 90-day period for seeking a writ of certiorari).

Nearly two years later—in November 2021—Beane filed a § 2255 motion.[3] (Docs. 271 through 275, § 2255 Motion and Supporting Attachments.) The United States now responds, within the time period specified by the Court. (Case No. 3:21-cv-375, Doc. 12, Order.)

STANDARD OF REVIEW

The relief authorized by 28 U.S.C. § 2255 "does not encompass all claimed errors in conviction and sentencing." *United States v. Addonizio*, 442 U.S. 178, 185 (1979). Rather, to obtain relief, a petitioner must establish (1) an error of constitutional magnitude; (2) a sentence outside the statutory limits; or (3) an error of fact or law so fundamental as to render the entire proceedings invalid. *Moss v. United States*, 323 F.3d 445, 454 (6th Cir. 2003). He "must clear a significantly higher hurdle than would exist on direct appeal" and show a "fundamental defect in the proceedings which necessarily results in a complete miscarriage of justice or an egregious error violative of due process." *Fair v. United States*, 157 F.3d 427, 430 (6th Cir. 1998).

[3] In addition to the 22 enumerated grounds for relief in his § 2255 motion (Doc. 271, § 2255 Motion), Beane also filed a "petition of remonstrance and motion to expunge the case and record" (Doc. 272, Attachment #1) and a lengthy "formal grievance complaint and investigation demand" (Docs. 273-275, Attachment #2). Beane also claims to that he previously filed, as early as July 2021, a "Habeas Corpus and Void Judgment Petition of Remonstrance and Motion to Expunge the Case and Record with representatives of the Tennessee General Assembly and the United States Congress." (Doc. 271, § 2255 Motion at 5.) The United States has reorganized and consolidated Beane's arguments.

ARGUMENT

1. As a preliminary matter, Beane has not identified any basis for this Court's recusal. (*See* Case No. 3:21-cv-375, Doc. 10, Response at 3.)

"[A] judge is presumed to be impartial, and the party seeking disqualification 'bears the substantial burden of proving otherwise.'" *Scott v. Metro. Health Corp.*, 234 F. App'x 341, 352 (6th Cir. 2007) (quoting *United States v. Denton*, 434 F.3d 1104, 1111 (8th Cir. 2006)). A judge should "disqualify himself in any proceeding in which his impartiality might reasonably be questioned" or where "he has a personal bias or prejudice concerning a party." 28 U.S.C. § 455(a), (b)(1). But the relevant inquiry is whether "a reasonable, objective person, knowing all of the circumstances, would have questioned the judge's impartiality." *United States v. Tolbert*, 459 F. App'x 541, 545 (6th Cir. 2012) (quoting *United States v. Sammons*, 918 F.2d 592, 599 (6th Cir. 1990)). And "there is as much obligation upon a judge not to recuse himself when there is no occasion [for recusal] as there is for him to do so when there is." *Easley v. Univ. of Mich. Bd. of Regents*, 853 F.2d 1351, 1356 (6th Cir. 1988) (quoting *In re Union Leader Corp.*, 292 F.2d 381, 391 (1st Cir. 1961)).

The most common basis upon which a party can show bias or prejudice is a judge's reliance on extra-judicial sources. *Liteky v. United States*, 510 U.S. 540, 551 (1994). Beane has not even alleged that scenario; the Court learned of his offense through the parties' pleadings and court hearings. And the Court's rulings throughout the case—including its decision to allow the United States additional time to respond to Beane's § 2255 motion—do not amount to improper bias or prejudice. (*Contra* Case No. 3:21-cv-375, Doc. 10, Response at 3.) Nor do they reveal "a deep seated favoritism or antagonism that would make fair judgment impossible." *Union Planters Bank v. L & J Dev. Co.*, 115 F.3d 378, 383 (6th Cir. 1997); *accord Liteky*, 510 U.S. at 551, 554 (requiring recusal where a court displays a "clear inability to render fair judgment,"

even if its bias or prejudice "springs from the facts adduced or the events occurring at trial"). Beane has not demonstrated that this Court was or is unable to render fair judgment here; he simply demands that the Court "admit" that it lacked jurisdiction over his criminal case. (Case No. 3:21-cv-375, Doc. 10, Response at 5.) As explained below, the Court had jurisdiction over the criminal case, and Beane's arguments to the contrary are meritless. Because he identifies no other basis for recusal, his request for recusal should be summarily denied.

2. Beane's § 2255 motion should be dismissed as untimely.

Beane asserts—mistakenly, and without any citation to authority—that "[t]here is no statute of limitations for constitutional violations." (Doc. 271, § 2255 Motion at 59.) In fact, a one-year period of limitation applies to § 2255 motions and usually runs from the date on which the judgment of conviction becomes final, *i.e.*, "at the conclusion of direct review." *Johnson v. United States*, 246 F.3d 655, 657 (6th Cir. 2001). In this case, Beane's judgment became final on December 23, 2019, upon expiration of time to seek certiorari, after which he had one year—until December 23, 2020—in which to file a timely § 2255 motion. Instead, Beane prepared and signed his § 2255 motion in October 2021 and thereafter mailed it to the Court. (*See* Doc. 271, § 2255 Motion at 65.) His motion is clearly untimely under § 2255(f)(1).

Beane asserts that he "learned" of a conspiracy by the government and others to violate his constitutional rights "through the attached complaint March 2021," which was supposedly prepared by "S. Robinson and others." (Doc. 271, § 2255 Motion at 59, 61.) Beane arguably seeks to invoke an alternate limitations period from "the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence." 28 U.S.C. § 2255(f)(4). But he has not identified which facts were new to him and could not have been discovered earlier; the core claim in his § 2255 motion—that the Court allegedly

lacked jurisdiction—was raised before trial, so it is not newly discovered evidence that could restart the statute of limitations.

Beane also contends that he was "prevented from making a motion [earlier] as a result of governmental actions which blocked [him] from accessing information." (Doc. 271, § 2255 Motion at 60.) That allegation resembles 28 U.S.C. § 2255(f)(2), which provides that the statute of limitations runs from the date a petitioner is no longer encumbered by an "impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States." The "government impediment" alleged by Beane, however, is that he was "imprisoned and denied access to research and information." (Doc. 271, § 2255 Motion at 59.) After having been convicted and sentenced for multiple criminal offenses, Beane was rightly held in custody, and there is no constitutional or statutory right for prisoners to enjoy unrestricted library access. As a result, Beane cannot show that his motion was delayed by a government-created impediment "in violation of the Constitution or laws of the United States." 28 U.S.C. § 2255(f)(2). Beane also complains that he was prevented from representing himself on appeal (Doc. 271, § 2255 Motion at 60 (characterizing his appointed appellate attorney as a "traitor")), but he has not identified any unconstitutional government-created impediment to his ability to *file a § 2255 motion* before December 23, 2020.. His reliance on § 2255(f)(2) is thus misplaced.

The one-year statute of limitations for § 2255 motions is not a jurisdictional bar and may be tolled under limited, extraordinary circumstances. *Dunlap v. United States*, 250 F.3d 1001, 1007 (6th Cir. 2001). But equitable tolling is "used sparingly by federal courts," and "[t]ypically . . . applies only when a litigant's failure to meet a legally-mandated deadline unavoidably arose from circumstances beyond that litigant's control." *Jurado v. Burt*, 337 F.3d 638, 642 (6th Cir. 2003). A petitioner bears the burden of establishing that equitable tolling applies to his case.

Allen v. Yukins, 366 F.3d 396, 401 (6th Cir. 2004). That burden is a heavy one because, "[a]bsent compelling equitable considerations, a court should not extend limitations *by even a single day*." *Jurado*, 337 F.3d at 643 (citation omitted; emphasis added). To satisfy his burden, a petitioner must show "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Holland v. Florida*, 130 S. Ct. 2549, 2562 (2010); *accord Hall v. Warden*, 662 F.3d 745, 750 (6th Cir. 2011) ("*Holland*'s two-part test [is] the governing framework in this circuit for determining whether a habeas petitioner is entitled to equitable tolling."). Courts have consistently held, for example, that "allegations regarding insufficient library access, standing alone, do not warrant equitable tolling." *United States v. Stone*, 68 F. App'x 563, 565-66 (6th Cir. 2003); *see also Rucker v. Bell*, No. 1:07-cv-152, 2008 WL 56025, at *5-6 (E.D. Tenn. Jan. 3, 2008) (collecting cases); *Scott v. Johnson*, 227 F.3d 260, 263 n.3 (5th Cir. 2005) ("an inadequate law library does not constitute a 'rare and exceptional' circumstance warranting equitable tolling").

Beane's § 2255 motion should be summarily dismissed as untimely.

3. In any event, Beane's claims are procedurally defaulted and meritless, so he is not entitled to any § 2255 relief.

Any claim first raised in a § 2255 motion—other than a claim of constitutionally ineffective assistance of counsel—is procedurally defaulted, and Beane has not alleged any basis to excuse that procedural default here. *See Bousley v. United States*, 523 U.S. 614, 622 (1998). His motion should be dismissed on that basis. In any event, his arguments are meritless.

A. This Court had jurisdiction over Beane's criminal case. (Beane's Grounds One, Four, Seven, Ten, and Fourteen.)

"Federal courts have exclusive jurisdiction over offenses against the laws of the United States," and Beane was charged with and convicted of violating federal law. *United States v.*

Russell, 30 F. App'x 348, 351 (6th Cir. 2002); *accord United States v. McCaskill*, 48 F. App'x 961 (6th Cir. 2002); *see also* 18 U.S.C. § 3231 ("[t]he district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, or all offenses against the laws of the United States"). Beane contends that it is "not possible" to commit any "offense against the laws of the United States" (Doc. 271, § 2255 Motion at 16), but the record in this case clearly shows that Beane's actions (*i.e.* the offenses) were against (*i.e.*, in opposition to) laws of the United States—specifically, 18 U.S.C. §§ 1343, 1344, and 1956(h).

Beane contends, as Tucci-Jarraf did below, that the Court lacked jurisdiction because an allegedly unrebutted Uniform Commercial Code filing foreclosed on the federal corporation called the United States of America in March 2013. (Doc. 271, § 2255 Motion at 5-7; *see also* Doc. 61, Hr'g Tr. at PageID# 2810-15, 2843.) This Court has already considered and rejected that argument as legally baseless. (*E.g.*, Doc. 62, Report & Recommendation at 6-15; Doc. 69, Memorandum & Order; Doc. 90, Memorandum Opinion & Order at 6 ("arguments as to the Court's lack of jurisdiction and the nonexistence of the United States are frivolous").)

Contrary to Beane's claims, "the United States Constitution grants Congress the power to create, define, and punish crimes irrespective of where they are committed," *i.e.*, even within state borders. *Russell*, 30 F. App'x at 351-52. (*Contra* Doc. 271, § 2255 Motion at 10-11, 26.)

And the Court's jurisdiction is not dependent upon proof that the United States sustained an "injury in fact" from Beane's conduct. (*Contra* Doc. 271, § 2255 Motion at 9-10, 23.) That threshold standing requirement faced by civil litigants seeking federal judicial review is inapplicable here; "the injury to [the United States'] sovereignty arising from violation of its laws . . . suffices to support a criminal lawsuit by the Government." *United States v. Pryor*, 842

F.3d 441, 448 (6th Cir. 2016) (quoting *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 771 (2000)).

B. Consistent with this Court's orders, the magistrate judge had jurisdiction to issue reports and recommendations for this Court's review. (Beane's Ground Seven.)

Beane disputes the validity of every decision by the magistrate judge on the ground that magistrate judges are not qualified or authorized to try felony cases. (Doc. 271, § 2255 Motion at 18-19.) But Congress specifically authorized district courts to "designate a magistrate judge to hear and determine any pretrial matter," with few exceptions, and to "conduct hearings . . . and to submit to . . . the court proposed findings of fact and recommendations for the disposition, by . . . the court, of any [other] motion." 28 U.S.C. § 636(b)(1). That is precisely what happened here.

C. Beane has not established any violation of an international treaty, nor would any such violation provide any basis for relief here. (Beane's Ground Eleven.)

Beane seems to argue that his arrest was arbitrary and that his imprisonment stems from an alleged breach of contract, thereby violating the International Covenant on Civil and Political Rights, to which the United States is a party. (Doc. 271, § 2255 Motion at 23-25.) "[A]lthough the Covenant does bind the United States as a matter of international law, the United States ratified the Covenant on the express understanding that it was not self-executing and so did not itself create obligations enforceable in the federal courts." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 734-35 (2004); *see also United States v. Thetford*, No. 3:11-cr-30159, 2014 WL 7409515, at *15 (D.S.D. Dec. 31, 2014), *aff'd*, 806 F.3d 442 (8th Cir. 2015).

D. Congress legitimately enacted the criminal statutes under which Beane was charged and convicted. (Beane's Grounds Two, Seven, and Twenty-Two.)

Beane contends that the criminal statutes under which he was charged and convicted are invalid for several reasons. His arguments are factually and legally baseless.

Title 18—the federal criminal code—was legitimately enacted into positive law by Public Law 80-772, 62 Stat. 683 (June 25, 1948). *See United States v. Collins*, 510 F.3d 697, 698 (7th Cir. 2007) (describing challenges to the validity of Title 18 as "unbelievably frivolous"). It was not, as Beane alleges, a private and unconstitutional agreement forged by the U.S. Speaker of the House, the Office of the Law Revision Counsel, and the judiciary committee as an act of treason. (Doc. 271, § 2255 Motion at 32, 38, 47, 52-53, 56.) The Office of the Law Revision Counsel for the U.S. House of Representatives "prepares and publishes" the United States Code, but it does not create or enact it into law; Congress does that. *See, e.g.*, About the United States Code, Office of the Law Revision Counsel, *available at* https://uscode.house.gov/about_code (accessed Mar. 11, 2022); Detailed Guide to the United States Code, Office of the Law Revision Counsel, *available at* https://uscode.house.gov/detailed_guide (accessed Mar. 11, 2022) (explaining that Congress established the original organization of the Code in 1926 and has subsequently enacted 27 titles of the Code, including the Criminal Code in Title 18, into positive law).) The enacting clause for all federal criminal statutes appears at the beginning of Title 18, which negates Beane's claim that the statutes he was charged with violating lack an "enacting clause." (Doc. 271, § 2255 Motion at 7-8, 39.)

Moreover, even if Congress had not "approved the specific placement of the underlying legislation into . . . the U.S. Code" and thereby enacted it into positive law, that omission would not negate the validity of the statutes. *Goldsby v. United States*, 152 F. App'x 431, 440-41 (6th Cir. 2005) (rejecting such a claim as frivolous); *accord Wilson v. United States*, No. 90-6341, 1991 WL 216477 (10th Cir. Oct. 23, 1991). Indeed, "the United States Constitution does not require that federal laws contain an enacting clause." *White v. United States*, 175 F. App'x 292, 294 (11th Cir. 2006) (also noting that "[t]here is no federal authority for [the premise] that the

lack of an enacting clause on the face of a federal statute or in publication of that statute renders it invalid"). Beane's reliance on various state laws and court decisions is thus misplaced. (*E.g.*, Doc. 271, § 2255 Motion at 40-46.)

To the extent Beane contests the Court's jurisdiction because the indictment did not reference the enactment clause for Title 18, that claim is equally meritless. "Even omission of an element from an indictment or information does not deprive the Court of jurisdiction," *United States v. Cotton*, 535 U.S. 625 (2002), so "the notion that omission of the enactment clause from the information deprives the Court of jurisdiction is foreclosed *a fortiorari* by *Cotton*." *United States v. Judkins*, No. 3:01-cr-17, 2008 WL 906047, at *2 (S.D. Ohio Mar. 31, 2008).

Beane also argues that Congress could not have "passed a[ny] valid law" because it allegedly has too few representatives. (Doc. 271, § 2255 Motion at 17.) But the cited language from Section 2 of the U.S. Constitution requires at least one representative per state and *no more than* one representative for every 30,000 people; it did not mandate one representative for every 30,000 people. Again, Beane's claim stems from a flawed reading of the applicable law.

E. The indictment and federal arrest warrant were not defective. (Beane's Grounds Three, Five, Sixteen, and Eighteen.)

It is well-settled that "an indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense." *Hamling v. United States*, 418 U.S. 87, 117 (1974). Contrary to Beane's claim that the indictment contained only "evidence of the law" and not citations to "actual law" (Doc. 271, § 2255 Motion at 8), the citations to validly enacted criminal statutes satisfied the government's burden to give Beane notice of the charges against him and protect him against double jeopardy. By alleging that Beane violated specific statutes, the government also put him on notice that he

was being charged with felony offenses, *i.e.*, punishable by more than one year of imprisonment. The absence of the word "felony" or "felonious" was not a fatal omission. (*Contra id.* at 30-31 (citing an 1856 law dictionary for the proposition that the word "felony" or "felonious" is a "technical requirement" for a criminal indictment).)

Beane also complains that his federal arrest warrant was signed by a "fictitious deputy clerk" while Fed. R. Crim. P. only allows such warrants to be signed by "the clerk." (*Id.* at 9, 11, 28.) But every court to have considered this issue has found that a federal arrest warrant is valid where it was signed by a deputy clerk. *E.g.*, *Witchard v. United States*, No. 6:14-cr-112, 2017 WL 11439012, at *2 (M.D. Fla. July 3, 2017) ("the arrest warrant [signed by a deputy clerk] was not fraudulent and was not signed by a fictitious person or someone not legally authorized to sign it"); *see also United States v. McLain*, 559 F. Supp. 2d 983, 992 (D. Minn. 2008); *United States v. Giwa*, 617 F. Supp. 2d 1086, 1091 (D. Nev. 2007). Beane's complaints about his indictment and federal arrest warrant should be rejected as factually unfounded and legally meritless.

F. The criminal case was initiated by the United States, not a private corporation. (Beane's Grounds Twelve, Seventeen, and Twenty-One.)

Beane insists, as he and Tucci-Jarraf did below, that this case was prosecuted by a federal corporation impersonating the government. (Doc. 271, § 2255 Motion at 25, 30.) That argument —that "the United States is a corporation"—has been repeatedly rejected as "groundless" and "nonsensical." *E.g.*, *United States v. Beavers*, No. 3:12-cr-49, 2012 WL 6824151, at *5-7 (E.D. Tenn. Dec. 13, 2012), *report and recommendation adopted*, 2013 WL 126231 (E.D. Tenn. Jan. 8, 2013); *United States v. Neal*, 776 F.3d 645, 657 (9th Cir. 2015).

Beane's claim that he was "denied the true name of the Plaintiff" is likewise unfounded. (Doc. 271, § 2255 Motion at 32.) The plaintiff in this case, as listed on the caption of all court pleadings, was the United States of America—*i.e.*, the federal government, not a corporation.

G. Beane was lawfully arrested. (Beane's Grounds Four, Five, and Six.)

Beane contends that his arrest relied solely on a "South Carolina misdemeanor traffic related warrant that [had been] disposed of two years prior." (Doc. 271, § 2255 Motion at 9.) The warrant, issued in 2014, was for resisting arrest after having been stopped for a traffic violation.[4] (Doc. 272, Attachment #1 at 103.) Contrary to Beane's claim that law enforcement agents in Tennessee "cannot lawfully execute a warrant from South Carolina because it is outside their jurisdiction" (Doc. 271, § 2255 Motion at 12), the Constitution provides that an individual found in another state after having been charged with a felony offense may be "delivered up" and removed to "the state having Jurisdiction of the Crime." U.S. Const., Art. IV. That authority necessarily allows officers to arrest and detain an individual with an arrest warrant from another state. Here, the warrant included language from both subsections of S.C. Code § 16-09-0320, which alternately criminalizes resisting arrest as a misdemeanor and as a felony. (Doc. 272, Attachment #1 at 103.) And the record shows that agents verified the validity of the warrant before executing it.[5] (Doc. 162, Trial Tr. at PageID# 16326-29, 16342, 16347-48.)

In any event, law enforcement agents had probable cause to arrest Beane even without a warrant, because they saw him "sitting in a vehicle purchased with stolen money with the vehicle running." (Doc. 162, Trial Tr. at PageID# 16306; *see also id.* at PageID# 16309-12, 16322-25, 16333.) Beane insists that a probable cause hearing must precede an arrest (Doc. 271, § 2255 Motion at 13), but a law enforcement agent may lawfully arrest a defendant upon probable cause

[4] A separate bench warrant had been issued in 2015 based on Beane's failure to appear in court. (Doc. 272, Attachment #1 at 104.)

[5] During cross-examination, Tucci-Jarraf elicited testimony that "an actual paper warrant or electronic warrant" was not presented to Beane or the other two individuals present at the time of his arrest, but the agent explained that "hand[ing] someone a warrant" for their arrest is "not general practice," except perhaps on television shows. (*Id.* at PageID# 16330, 16338-39.)

to believe that a felony has been committed (or that a misdemeanor has been committed in his presence). *E.g.*, *United States v. Watson*, 423 U.S. 411, 417-18 (1976). The inquiry is "not whether there was a warrant or whether there was time to get one, but whether there was probable cause for the arrest." *Id.* at 417. Beane's unhappiness with the order of events which resulted in his federal prosecution (*e.g.*, Doc. 271, § 2255 Motion at 13-16) and his mistaken belief that he was "kidnapped using fraudulent fictitious signed district court arrest warrants" (*id.* at 18-19) do not establish that his prosecution or conviction was unlawful.

H. Beane was not deprived of a detention hearing. (Beane's Ground Six.)

According to Beane, he was "forced" to waive a detention hearing at his initial appearance and, when he later sought one, the magistrate judge replied, "We can't get to that." (Doc. 271, § 2255 Motion at 14.) The cited hearing was in response to a motion by Beane's counsel to withdraw from further representation as requested by Beane, so the magistrate judge expected to "review the attorney/client relationship" and whether Beane should be permitted to represent himself. (Doc. 40, Hr'g Tr. at PageID# 1907-08.) During that hearing, however, when Beane was to be sworn in, he repeatedly responded, "I am source of all that is," so much so that the magistrate judge was unable to place him under oath or proceed with the hearing. (*Id.* at PageID# 1912-13.) After the magistrate judge indicated that it intended to reschedule the hearing for another date, Beane's counsel mentioned that Beane was "also *potentially* going to want to request some type of detention hearing." (*Id.* at PageID# 1913 (emphasis added).) Given Beane's unwillingness to be sworn, and the pending matter of whether Beane would be representing himself, the magistrate judge reasonably replied, "We can't get started, we can't get to that." (*Id.*) After the magistrate judge conducted a *Faretta* hearing and permitted Beane to represent himself, the magistrate judge noted that Beane might want to file additional motions,

and Beane agreed. (*Id.* at PageID# 1933-34, 1937.) Beane did not request a detention hearing at that time, nor he even alleged that any subsequent request for a detention hearing was denied.

I. Beane has not established any *Brady* violation. (Beane's Ground Nineteen.)

Beane summarily accuses the prosecution of violating *Brady v. Maryland*, 373 U.S. 83 (1963), by allegedly failing to disclose emails between Parker Still and True Brown, the "FBI Sentinel file," and the South Carolina bench warrant that had been resolved before his arrest. (Doc. 271, § 2255 Motion at 31.) First, the United States *did* disclose emails between Still and Brown to Beane in August 2017, as "documents . . . obtained from USAA Federal Savings Bank." (*See* Exhibit 1.) And Still was cross-examined at trial about his communications with Brown, which suggests that Beane (and Tucci-Jarraf) had reviewed those emails in advance; Still said he was primarily "talking with" Brown "by phone" but that he also received some information from Brown via email. (Doc. 162, Trial Tr. at PageID# 16308-11, 16284.) Second, SENTINEL is an automated case management system used by the FBI, *i.e.*, a mechanism for collecting, storing, and retrieving information. The United States *did* disclose all FBI 302 Reports to Beane (*see* Exhibit 1), and Beane has not established that SENTINEL contained any other information that was not disclosed to him. Finally, as for the bench warrant, it bears repeating that Beane has identified two separate arrest warrants stemming from the same South Carolina case: an initial arrest warrant was issued by a judge in 2014 for Beane to answer charges of resisting arrest (Doc. 272, Attachment #1 at 103), and a separate bench warrant was issued by a clerk in 2015 after Beane failed to appear for court (Doc. 272, Attachment #1 and 104). Beane was arrested based on the resisting-arrest warrant, not the bench warrant, so he cannot show that a bench warrant resolved years earlier contained information favorable to him and material to guilt or punishment, *Brady*, 373 U.S. at 87, or tending to impeach or discredit any

government witness, *Giglio v. United States*, 405 U.S. 150, 154-55 (1972). In short, Beane has not established any *Brady* violation.

J. Beane has not proven that the Court erred by allowing evidence and certain prosecutorial statements during trial. (Beane's Grounds Nine and Thirteen.)

Beane complains broadly of "prejudicial statements" (Doc. 271, § 2255 Motion at 20-23, 26), but he has not explained why the complained-of statements were prejudicial, nor why the Court should excuse his failure to contemporaneously object to many, if not all, of those statements. The facts of a defendant's guilt are inherently prejudicial, but such facts are not objectionable; only *unfairly* prejudicial evidence is to be excluded, and evidence is not unfairly prejudicial simply because it may be "damag[ing] to a defendant's case." *United States v. Bilderbeck*, 163 F.3d 971, 978 (6th Cir. 1999).

Beane primarily faults prosecutors and witnesses for describing his actions as, in essence, robbery or theft (Doc. 271, § 2255 Motion at 21-22), but the Sixth Circuit has, in other contexts, found no error in explicit comparisons between fraud and robbery or theft. *E.g.*, *United States v. Bacon*, 617 F.3d 452, 460 (6th Cir. 2010). Beane cannot show any prejudice from those remarks, because the jury was specifically instructed that it was only to consider the charges in the indictment.

K. The Court's inclusion of a good-faith jury instruction was not inappropriate. (Beane's Ground Eight.)

Beane faults this Court for instructing the jury to consider whether Beane had a good-faith defense to the charges. (Doc. 271, § 2255 Motion at 20; *see also* Doc. 272, Attachment #1 at 7-8 (insisting that the instruction means the Court was operating in "admiralty jurisdiction").) Citing UCC § 1-304, which "imposes an obligation of good faith in [the] performance and enforcement" of "[e]very contract or duty" within specified provisions of the Uniform

Commercial Code, Beane asserts that "good faith is a uniform commercial code standard" inapplicable to criminal cases. (*Id.*)

But because good faith is also "inconsistent with an intent to defraud," it can be a defense against criminal charges of wire fraud, for example, with which Beane had been charged. Sixth Circuit Pattern Jury Instruction 10.04, *available at* https://www.ca6.uscourts.gov/sites/ca6/files/pattern_criminal_jury_full-22.pdf (accessed Mar. 11, 2022). The Sixth Circuit has thus specified that, "If there is any evidence at all of good faith, the court should refer to Instruction 10.04 Fraud – Good Faith Defense." Sixth Circuit Pattern Jury Instruction 10.02. When considering Beane's Rule 29 motion at the close of trial, this Court found "sufficient evidence of intent [to defraud], although some evidence . . . suggests that . . . Beane believed the money he took was his own." (Doc. 167, Trial Tr. at PageID# 17355.) Because good faith encompasses "a belief or opinion honestly held," Sixth Circuit Pattern Jury Instruction 10.04(4), the Court correctly issued a good-faith instruction to the jury. (Doc. 181, Trial Tr. at PageID# 18137-38.)

According to Beane, the good-faith instruction "ensure[d] a guilty verdict." (Doc. 271, § 2255 Motion at 20.) Not so. The instruction described a "complete defense" to the charge of wire fraud; if the jury had found that Beane acted in good faith, it would have acquitted him as to that offense. Beane thus cannot possibly show any prejudice in the Court's decision to instruct the jury about good faith, consistent with the Sixth Circuit Pattern Jury Instructions.

L. Beane's convictions do not stem from any nefarious conspiracy or "frame-up." (Beane's Grounds Fifteen, Sixteen and Twenty.)

Beane insists that he and Tucci-Jarraf are "victims of a Tennessee organized crime syndicate that involved FBI investigators, federal prosecutors, federal judges, sheriff office and others." (Doc. 271, § 2255 Motion at 5; *see also id.* at 26-30.) But merely asserting something

does not make it true, and Beane's complaints stem from his own misunderstandings about the applicable law. The record establishes that Beane was fairly charged, tried, and convicted.

4. Finally, Beane is not entitled to summary judgment.

Beane contends that he is "entitled to judgment"—and immediate release from custody—because the government "has failed to address [his] assertions of facts" in a timely manner. (Case No. 3:21-cv-375, Doc. 13, Motion for Summary Judgment at 2, 23-24.) He overlooks the fact that "[d]efault judgments are not ordinarily available in habeas cases and § 2255 motions." *Turner v. United States*, No. 2:12-cv-2266, 2015 WL 13307565, at *2 (W.D. Tenn. June 8, 2015). Default judgment is unavailable because a petitioner can only obtain § 2255 relief upon satisfying his own burden "to show that he is in custody in violation of the Constitution of the United States." *Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970); *accord United States v. Collins*, 172 F. App'x 242, 243 (10th Cir. 2006). Beane has not satisfied that burden here.

CONCLUSION

For the foregoing reasons, Beane's § 2255 motion should be denied as meritless.

Respectfully submitted,

Francis M. Hamilton III
United States Attorney

By: *s/ Cynthia F. Davidson*
Cynthia F. Davidson
Assistant United States Attorney
800 Market Street, Ste. 211
Knoxville, TN 37902
Cynthia.davidson@usdoj.gov
BPR #016099

CERTIFICATE OF SERVICE

I certify that on March 11, 2022, this response was filed electronically and a true copy was sent to petitioner by regular United States mail, postage prepaid, addressed as follows:

Randall Keith Beane
No. 52505-074
FCI Elkton
P.O. Box 10
Lisbon, OH 44432

s/ Cynthia F. Davidson
Cynthia F. Davidson
Assistant United States Attorney

United States Department of Justice

United States Attorney
Eastern District of Tennessee

Headquarters: 800 Market Street, Suite 211
Knoxville, Tennessee 37902
865.545.4167
www.usdoj.gov/usao/tne

1110 Market Street, Suite 515
Chattanooga, Tennessee 37402
423.752.5140

220 West Depot Street, Suite 423
Greeneville, Tennessee 37743
423.639.6759

August 3, 2017

Bobby E. Hutson, Jr.
Federal Public Defender's Service
800 S. Gay Street
Suite 2400
Knoxville, TN 37929

Re: *United States v. Randall Keith Beane*
Criminal No. 3:17-cr-82

Dear Bobby:

In order to comply with Rule 16 of the Federal Rules of Criminal Procedure and the Court's discovery order in the above-styled case, enclosed you will find the following:

1. One DVD (password: **Beane-17cr82**) containing the following items:

A. Seizure Warrant documents and photographs regarding the seizure of a 2017 Entegra Cornerstone 45B motor home in case number 3:17-MJ-1067;
B. Financial records, documents and recordings obtained from USAA Federal Savings Bank;
C. Financial records and documents obtained from Whitney Bank;
D. Documents obtained from Buddy Gregg Motor Homes, LLC;
E. FBI-302 Report regarding the arrest of Randall Beane on July xx, 2017;
F. FBI-302 Reports pertaining to the interviews of:
   a. Ashley Barnwell
   b. Don Forbes
   c. Dwayne Griffith
   d. Eric Bivens
   e. Jerald Byrne
   f. Lauren Palmisano
   g. True Brown;

G. FBI-302 regarding information obtained from Lee Hancock;
H. FBI-302 Report regarding a conference call between Tucci-Jarraf and Buddy Gregg Motor Homes staff on July 10, 2017.

2. One DVD containing electronic evidence.

Any items that were seized are available for your inspection. If you would like to do so, please contact me so that I can arrange a mutually convenient time with the case agent.

This letter is intended to comply with Rule16 of the Federal Rules of Criminal procedure, including Rule 16(a)(1)(G), as well as the Court's discovery order. If you believe I have failed to comply with these rules in any way, please let me know immediately.

Finally, please accept this letter as a request for all reciprocal discovery provided for under the Federal Rules of Criminal Procedure and the Court's discovery order.

Sincerely,

Nancy Stallard Harr
United States Attorney

By: _____
Cynthia F. Davidson
Assistant United States Attorney

CFD/smg
Enclosure

United States Department of Justice

United States Attorney
Eastern District of Tennessee

Headquarters: 800 Market Street, Suite 211
Knoxville, Tennessee 37902
865.545.4167
www.usdoj.gov/usao/tne

1110 Market Street, Suite 515
Chattanooga, Tennessee 37402
423.752.5140

220 West Depot Street, Suite 423
Greeneville, Tennessee 37743
423.639.6759

January 12, 2018

Stephen G. McGrath, Jr., Esquire
Elbow Counsel for Randall Keith Beane
9111 Cross Park Drive, Suite D-200
Knoxville, TN 37923

Re: *United States v. Randall Keith Beane*
Criminal No. 3:17-cr-82

Dear Stephen:

In further compliance with Rule 16 of the Federal Rules of Criminal Procedure and the Court's discovery order in the above-styled case, enclosed you will find the following:

1. One CD (password: **Beane-17cr82**) containing the following items:

   A. FBI-302 Report regarding interviews at Advantage Innovations with Kelly Miller, Sara Miller and Rachel Hall.

   B. Jail Calls:
      a. FBI-302 Report regarding review of jail calls dated 11/24/17 and 11/27/17
      b. Audio recordings of jail calls dated 11/24/17 and 11/27/17

   C. Marble Alley:
      a. FBI-302 Report regarding interview with Lee Hancock
      b. FOB reader log for dates 6/05/17 through 7/10/17
      c. Photographs at gate entrance dated 07/05/2017 and 07/06/2017

   D. USAA Bank Recordings:
      a. Clutter1
      b. Eichelberger1
      c. Jimenez1
      d. Ponce1

Please provide this discovery to the defendant. Because the defendant is detained, we are providing it to you as elbow counsel to facilitate it reaching the defendant as quickly as possible.

This letter is intended to comply with Rule16 of the Federal Rules of Criminal procedure, including Rule 16(a)(1)(G), as well as the Court's discovery order. If you believe I have failed to comply with these rules in any way, please let me know immediately.

Finally, please accept this letter as a request for all reciprocal discovery provided for under the Federal Rules of Criminal Procedure and the Court's discovery order.

Sincerely,

J. Douglas Overbey
United States Attorney

By: *s/Cynthia F. Davidson*
Cynthia F. Davidson
Assistant United States Attorney

CFD/js
Enclosure