

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STEVEN D. GREEN,

Defendant.

DOCKET NO. 3:06-MJ-131

MOTION FOR PRELIMINARY
HEARING PURSUANT TO RULE 5.1(a)
& (b) OF THE FEDERAL RULES OF
CRIMINAL PROCEDURE

Defendant, Steven D. Green, by and through his attorneys of record, Claire Rauscher and Cecilia Oseguera, respectfully requests, pursuant to Rule 5.1(a) & (b) of the Federal Rules of Criminal Procedure, this Court conduct a preliminary hearing for Mr. Green in the Western District of North Carolina, at Charlotte. This motion is based on the attached Memorandum of Points and Authorities, argument of counsel presented at the hearing and such other evidence that may be presented at the hearing on this motion.

I. PROCEDURAL HISTORY

On June 30, 2006, a complaint was filed in the United States District Court for the Western District of Kentucky at Louisville. The complaint alleges that Mr. Green violated Titles 18 United States Code sections 7, 1111, 2241, and 3261(a)(2). The acts allegedly occurred on or about March 12, 2006, in Muhmudiyah, Iraq.

Mr. Green was arrested on June 30, 2006 in Marion, NC. He was taken to the U.S. District Court in Charlotte, NC for his initial appearance on July 3, 2006. At this hearing,

Mr. Green consented to detention and waived identity, but did not waive his preliminary hearing, pursuant to Rule 5.1. The preliminary hearing was scheduled for July 10, 2006 at 2:30 p.m.

On July 5, 2006, counsel for Mr. Green received notice that the preliminary hearing scheduled for July 10, 2006 in Charlotte, NC, had been terminated. Counsel was informed that Mr. Green was being transported to the Western District of Kentucky per the Magistrate Court's Transfer Order. Without a finding a probable cause, the Magistrate Court cannot order his transfer.

Mr. Green, who has not waived the preliminary hearing in this district, objects to the transfer and requests that his preliminary hearing be held in the Western District of North Carolina at Charlotte, pursuant to Rules 5.1(a) & (b) of the Federal Rules of Criminal Procedure.

II. APPLICABLE STATUTORY PROVISIONS

Rule 5.1(a) of the Federal Rules of Criminal Procedure states, "if a defendant is charged with an offense other than a petty offense, a magistrate judge **MUST** conduct a preliminary hearing unless: (1) the defendant waives the hearing; (2) the defendant is indicted; (3) the government files an information under Rule 7(b) charging the defendant with a felony; (4) the government files an information charging the defendant with a misdemeanor; or (5) the defendant is charged with a misdemeanor and consents to trial before the magistrate judge. Since none of the exceptions apply to the instant case, the magistrate court must hold a preliminary hearing.

Moreover, Rule 5.1(b), permits a defendant arrested in a non-charging district, the choice to have a preliminary hearing conducted either in the district where prosecution is pending or the district in which the defendant was arrested. Specifically, Rule 5.1(b), states that “a defendant arrested in a district other than where the offense was allegedly committed may elect to have the preliminary hearing conducted in the district where prosecution is pending.” This election is one that can only be made by the defendant and cannot be superseded by any other authority.

Since Mr. Green has not waived his preliminary hearing in the Western District of North Carolina, the Court, pursuant to Rule 5.1, must conduct this hearing and find probable cause before Mr. Green is transported to another district. Because he is in custody, this hearing must take place within 10 days of his initial appearance.

III. CONCLUSION

Based on the foregoing reasons, defendant Steven D. Green, respectfully requests this Court conduct a preliminary hearing in the above-entitled matter.

Respectfully submitted:

s/Cecilia Oseguera
Cecilia Oseguera
Attorney for Steven D. Green
Federal Defenders of Western North Carolina, Inc.
227 West Fourth Street, Suite 300
Charlotte, NC 28202
(704) 374-0720
(704) 374-0722 Fax
Cecilia_Oseguera@fd.org

DATE: July 5, 2006

CERTIFICATE OF SERVICE

I, Cecilia Oseguera, Assistant Federal Defender, hereby certify that on July 5, 2006, I served a copy of the attached Motion for preliminary hearing via electronic filing upon:

Gretchen Shappert
United States Attorney
U.S. Attorney's Office for the Western District of
North Carolina
227 West Trade Street, Suite 1700
Charlotte, NC 28202
Gretchen.Shappert@usdoj.gov

s/Cecilia Oseguera
Cecilia Oseguera
Attorney for Steven D. Green
Federal Defenders of Western North Carolina, Inc.
227 West Fourth Street, Suite 300
Charlotte, NC 28202
(704) 374-0720
(704) 374-0722 Fax
Cecilia_Oseguera@fd.org

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