

United States District Court

DISTRICT OF KANSAS

UNITED STATES OF AMERICA

v.

ORDER OF DETENTION PENDING TRIALD'MARIO GRAY*Defendant*

Case Number: 08-20023-02-JWL-DJW

In accordance with the Bail Reform Act, 18 U.S.C. § 3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. § 3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. § 3156(a)(4).
- ☐ an offense for which the maximum sentence is life imprisonment or death.
- ☐ an offense for which a maximum term of imprisonment of ten years or more is prescribed in _____
- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. § 3142(f) (1)(A)-(C), or comparable state or local offenses.
- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an)other person(s) and the community. I further find that the defendant has not rebutted this presumption.

Alternative Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more is prescribed in _____
- ☐ under 18 U.S.C. § 924(c).
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternative Findings (B)

- ☒ (1) There is a serious risk that the defendant will not appear.
- ☒ (2) There is a serious risk that the defendant will endanger the safety of another person or the community.
- _____
- _____
- _____
- _____

Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by (clear and convincing evidence) (a preponderance of the evidence) that

(See attached pages)

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: June 12, 2008

s/ David J. Waxse*Signature of Judicial Officer***DAVID J. WAXSE, U.S. MAGISTRATE JUDGE***Name and Title of Judicial Officer*

Part II - Written Statement of Reasons for Detention

There is a set of factors I have to consider to determine whether there are conditions of release that will assure your appearance and the safety of the community.

The first is the nature and circumstances of the offense charged, including whether it is a crime of violence. It was a crime of violence and involved a firearm, which are negative factors.

The next factor is the weight of the evidence. There has been a Grand Jury Indictment so that is a negative.

The next factor is the history and characteristics of the person, including your character and physical and mental condition. There is nothing in the report or the proffers that indicate problems there.

Your family ties appear to be positive.

Your employment is positive.

Your financial resources, if the proffers are correct, are a big problem because if you still have the money from three bank robberies you certainly are in a position to flee.

Your length of residence is not a problem because you have been here your entire life except for those short periods of time.

Your community ties are positive.

The next factor is your past conduct which includes history relating to drug or alcohol abuse, criminal history, and record concerning appearances at court proceedings. There are obviously no serious criminal convictions but there are indications that you have been given tickets and failed to appear, which is a problem.

The next factor is whether at the time of the current offense or arrest the person was on probation, parole, or other release. It does not appear that you were.

Finally is the nature and seriousness of the danger to the community that would be posed by your release. This is the big problem because you are alleged to have committed three crimes with a handgun and luckily no one got hurt.

Considering all these factors, I think there is sufficient evidence that you are a danger to the community if released, and sufficient evidence that you would be a flight risk based not only on your having fled on several occasions but apparently having the money to do so. You will remain detained.