

United States District Court
DISTRICT OF KANSAS

UNITED STATES OF AMERICA

v.

ORDER OF DETENTION PENDING TRIAL

ALFONZO D. SMITH

Defendant

Case Number: 09-20048-01-KHV-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.

Four horizontal lines for additional findings or notes.

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: April 24, 2009

s/ David J. Waxse

Signature of Judicial Officer

DAVID J. WAXSE, U.S. MAGISTRATE JUDGE

Name and Title of Judicial Officer

\*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. § 801 et seq.); (b) Controlled Substances Import and Export Act (21 U.S.C. § 951 et seq.); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. § 955a).

## **Part II - Written Statement of Reasons for Detention**

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

One is the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a controlled substance. By law, when you are charged with possessing guns it is a crime of violence and when you are charged with having controlled substances that obviously is a controlled substance violation, so those are negative factors.

The next factor is the weight of the evidence against the person. There has obviously been a prior probable cause determination which is a negative factor.

The next factor is the person's character, physical, and mental condition. There is nothing that has been presented that indicates problems, so that would be positive.

Family ties is a little confusing but there clearly are some family ties, so that is a positive.

The employment that you had and are offered to return to is positive.

The next factor is financial resources. There is no indication that you have substantial resources that would enable you to flee, so that is not a problem

Length of residence in the community is positive.

Past conduct, which includes history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings are problems. As you are fully aware you have had numerous run-ins with law enforcement in the past with several convictions; some for felony, some for misdemeanors. The record also indicates that on occasion you have not appeared when you are supposed to appear. According to the Report there are several warrants outstanding for your failure to appear on previous traffic violations; some from 2006 and some more current.

The final factor is whether at the time of the current offense or arrest the person was on probation, parole, or other release. Apparently you were not.

The ultimate question is the nature and seriousness of the danger to the community that would be posed by your release. Anytime you are charged with firearm violations and possession and manufacture of narcotics, that is a danger to the community. If this were the first time that you had been in this situation I would have more faith that conditions would keep you from getting in this situation again, but it appears that it has been a big part of your life to be involved with guns and drugs and that is a danger to the community.

Considering all these things together, I am not going to find that there are any conditions that I can set that will protect the community sufficiently so you will remain detained.