

# United States District Court

## DISTRICT OF KANSAS

UNITED STATES OF AMERICA

v.

**ORDER OF DETENTION PENDING TRIAL**KELLY J. WINEGAR*Defendant*

Case Number: 09-20149-01-JWL-JPO

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: January 12, 2010

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 series of factors I have to look at in determining whether or not there are conditions of release that will adequately assure your appearance and the safety of the community.

The first factor is the nature and circumstances of the offense charged and whether it is a crime of violence or involves a controlled substance. This case involves both a gun and drugs so those are both negatives.

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

The next factor is the history and characteristics of the person, including your physical and mental condition. There is nothing there that would impact on your ability to be placed on conditions.

Your employment is a big problem because you have not had employment for years and years.

Your financial resources are not a problem in terms of it does not appear you have substantial funds that would enable you to flee.

Your length of residence in the community is a positive.

Your community ties are positive.

Your past conduct, which includes history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings, are obviously a big problem because you have substantial convictions and substantial failures to appear.

The next factor is whether at the time of the current offense you were on probation, parole, or other release. Clearly you were.

The final factor is the nature and seriousness of the danger to any person in the community

if you were released. I think there are conditions that could be set but I have no confidence that you are in a position to comply with them because you failed to comply with either probation or release time and time again, so you will remain detained.