

United States District Court

DISTRICT OF KANSAS

UNITED STATES OF AMERICA

v.

ORDER OF DETENTION PENDING TRIALLEONID KORNITS*Defendant*

Case Number: 10-20103-03-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

(continued on next page)

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: August 30, 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 are a series of factors I have to look at to determine whether there should be release or detention in this case.

The first factor is the nature and circumstances of the offense charged, including whether it involves a controlled substance. It clearly does, so that is a negative factor.

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

The next factor is the history and characteristics of the person, including their physical and mental condition. Obviously that is an issue and dispute in this case, but not something I think controls whether there should be release or detention.

Family ties are clearly positive.

Employment is negative since the defendant has not been able to work.

The next factor is financial resources. There is no indication of substantial resources that would assist the defendant to flee.

Length of residence in the community is positive.

Community ties are positive.

The next factor is past conduct, which includes history related to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings. As the report indicates, there have not been a lot of serious violations but there have been numerous violations with numerous failures to appear, which is a big problem.

The next factor is whether at the time of the current offense or arrest the person was on probation, parole, or other release. According to the report he clearly was, so that is a problem.

The final factor is the nature and seriousness of the danger to the person or the community that would be posed by the release. This is not a case with a showing that there would be a danger. I have to determine whether there are conditions that I think the defendant would comply with and that would result in his appearance. The problem here is that I have to have a basis to believe that the defendant will comply. That includes whether the defendant has been truthful with Pretrial Services and with the Court. There have been several contradictory statements made and there have been efforts to straighten them out, but that doesn't give me confidence that the defendant is capable of complying with conditions.

Additionally, there are two Johnson County cases that may be reinstated to cause further question about whether the defendant would be available to appear if released.

Considering all those factors, the defendant will remain detained.