

United States District Court
DISTRICT OF KANSAS

UNITED STATES OF AMERICA

v.

ORDER OF DETENTION PENDING TRIAL

MARTIN LEAHY

Defendant

Case Number: 12-20084-25-CM-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: January 23, 2013

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

The statute provides a series of factors I have to look at to determine whether or not there are conditions that I think can be set and followed that will assure your appearance and the safety of the community.

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

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

The next factor is the history and characteristics of the person, which includes your character and physical and mental condition. Those do not appear to be a problem, so those are positive.

Family ties appear to be positive.

Employment is somewhat mixed since you do not actually have a job with someone else but you are taking care of property.

The next factor is financial resources. There is no indication that you have liquid resources that would assist you in fleeing so that is a positive.

Length of residence in the community and community ties are positive.

Your problem is past conduct, which includes history relating to drug or alcohol abuse, criminal history, and record concerning appearances at court proceedings. There are numerous times you have failed to appear when you are ordered to appear and you failed to comply with conditions.

The next factor is whether at the time of the current offense you were on probation, parole, or other release. You were, so that is another problem.

The final factor is the nature and seriousness of the danger to any person in the community that would be posed by your release. Any time you are charged with distributing illegal substances that is a danger.

Taking all of those factors into consideration, it does not appear to me that there are conditions I can set that I think you will comply with so you will remain detained.