

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 18-10131-JWB

JUSTIN MASHANEY,

Defendant.

MEMORANDUM AND ORDER

This case comes before the court on the Government's motion to revoke the magistrate's order of release. (Doc. 20.) Defendant was arrested on September 26, 2018, pursuant to a complaint. (Doc. 6.) On October 10, 2018, Defendant was indicted pursuant to 18 U.S.C. § 922(g)(1). (Doc. 13.) The indictment charges Defendant with one count of felon in possession of a firearm, which allegedly occurred on or about September 24, 2018. Defendant was initially detained on October 3 after a detention hearing. Defendant then moved to reconsider Magistrate Judge Birzer's detention order on October 10.

On October 26, Magistrate Judge Birzer held a hearing on Defendant's motion for reconsideration of the prior detention order. (Doc. 14.) Based on the evidence proffered at that hearing, Magistrate Judge Birzer ordered Defendant to be released with conditions, including a curfew and electronic monitoring. (Doc. 23.) The Government moved to revoke the order. (Doc. 20.) The court held an evidentiary hearing on November 1, 2018. Both the Government and Defendant made certain proffers during the hearing. Defendant declined to testify. Defendant did offer the affidavit of Cameron King, who attested to his knowledge regarding the ownership of the firearms seized from Defendant's vehicle. The court then continued the hearing so that Cameron King could be located and brought before the court to testify as to the statements in his affidavit.

On November 5, prior to the scheduling of a subsequent hearing, the court received information from the United States Probation Office that Mr. King had repudiated the statements made in his affidavit.¹ Later that same day, Defendant filed a notice of withdrawal of request for release. (Doc. 27.) In that notice, Defendant states that he withdraws his opposition to detention pending trial and will advise the court if there is a material change in circumstances at a later date. (*Id.*)

As Defendant has now withdrawn his opposition to detention, and based on the evidence proffered at the hearing on November 1, 2018, the court adopts the previous findings in Magistrate Judge Birzer's order of detention dated October 3, 2018, regarding the factors under 18 U.S.C. § 3142(g). (Doc. 11 at 3-5.) Although there is not a rebuttable presumption of detention in this matter, the court finds, by clear and convincing evidence, that there are no conditions or combination of conditions which will reasonably assure the safety of the community if Defendant were to be released. (See Doc. 11 at 3-5.)

The Government's motion is accordingly GRANTED. (Doc. 20.) Magistrate Judge Birzer's order setting conditions of release is hereby REVOKED. (Doc. 23.)

IT IS SO ORDERED this 16th day of November, 2018.

s/ John W. Broomes
JOHN W. BROOMES
UNITED STATES DISTRICT JUDGE

¹ Mr. King never appeared to testify, and the court never received any formal evidence into the record regarding this assertion. Accordingly, the court makes no findings at this time regarding this issue.