

as the testimony he would give, under oath, if called as a witness. I took judicial notice of the affidavit attached to the criminal complaint as well as the testimony adduced during the preliminary hearing. No additional evidence was offered by either party.

II. FINDINGS OF FACT

On the basis of the information contained in the report of Pretrial Services Officer Tim Hair, the affidavit supporting the criminal complaint and the evidence adduced at the preliminary hearing, I find that:

1. Defendant, 43, is a lifelong resident of Kansas City, Kansas. Defendant currently lives with his girlfriend and son.

2. Defendant maintains occasional contact with his parents and sister. He has been married and divorced once, and has been in a relationship with his current girlfriend for approximately three years.

3. Defendant has a 12th grade education. He has been employed part time at the Jenek Company for the past two years, relating he primarily does stage preparation for concerts and other special events. Defendant works an average of twenty hours a month and makes approximately \$400/month. Defendant previously worked for a landscaping company and repaired motorcycles.

4. Defendant states his health is poor. He has a torn rotator cuff, a torn hamstring, and a leg injury. He stated he suffered two motorcycle accidents in 2005 and 2007 that led to a variety of injuries that also impaired his ability to work full time. Defendant is not taking any prescribed medications.

5. Defendant advised he first used marijuana when he was a teenager and occasionally used the substance for several years, until ten years ago.

6. Defendant's criminal history includes the following:

Date	Charge	Disposition
02/16/90	Violation of Animal Ordinance	03/21/90 - Dismissed
08/08/95	(1) Possession of Controlled Substance (FELONY) (2) Possession of Paraphernalia (3) Possession Hashish	(1) 08/09/95 - Sentenced 2 years (suspended) (2) Dismissed (3) 1 year probation
Defendant advised his case was transferred to Wyandotte County, Kansas, for probation supervision. Defendant stated he completed two years of probation without a violation.		
07/21/99	Drink in Public	08/25/99 - Fined /\$100
08/20/09	Assault 1 st Degree	Unknown
According to the case agent, law enforcement is investigating an allegation involving intimidation and assault of another witness.		

7. According to the affidavit in support of the criminal complaint, Defendant is a member of the Galloping Goose Motorcycle Gang.

8. The instant alleged offense involves a threat made to a former motorcycle gang member, Michael Hensley. Mr. Hensley had entered into a cooperation agreement with the government whereby he agreed to provide information regarding criminal acts that were committed by members of the El Forastero and Galloping Goose Motorcycle Gangs. Consistent with the agreement, Mr. Hensley testified against a known gang member at trial.

As a result, it is well known that Mr. Hensley was cooperating with law enforcement.

On August 31, 2009, Defendant is alleged to have approached Mr. Hensley at his residence. Mr. Hensley advised that when Defendant saw him Defendant stated, "Oh, you're out." Mr. Hensley informed Defendant he had ben out of prison for about a month. Defendant then stated "that's what snitching will get ya, you can get out." Defendant went on to state, "Well, as far as I am concerned the club and I consider you a dead man walking." When Mr. Hensley asked Defendant what he was trying to say, Defendant replied "well, I consider you a walking dead man." Before Defendant left Mr. Hensley's property he told Mr. Hensley again, "well you heard what I said, consider yourself a dead man walking."

III. CONCLUSIONS

I find by clear and convincing evidence that no single condition or combination of conditions of release will reasonably assure the safety of the community. Defendant is charged with threatening a witness. The instant alleged offense involves Defendant going to Mr. Hensley's residence and informing him multiple times he was a "dead man walking." Defendant has one prior felony conviction and is a member of the Galloping Goose Motorcycle Gang. His criminal history includes a recent arrest for first degree assault involving intimidation and assault of another witness.

It is, therefore

ORDERED that Defendant be committed to the custody of the Attorney General or his authorized representative for detention pending grand jury action and, if an indictment is returned, pending trial. It is further

ORDERED that Defendant be confined in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. It is further

ORDERED that the Attorney General or his authorized representative ensure that Defendant is afforded reasonable opportunity for private consultation with his counsel. It is further

ORDERED that, on order of a court in the Western District of Missouri, the person in charge of the corrections facility where Defendant is confined deliver Defendant to a United States Marshal for his appearance in connection with a court proceeding.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
September 8, 2009