

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Criminal Action No.
) 10-00320-07-CR-W-DGK
 BENITO CASTILLO GUTIERREZ,)
)
 Defendant.)

DETENTION ORDER

On November 19, 2010, the government moved to detain defendant Benito Gutierrez pending trial, and on November 23, 2010, I held a detention hearing. I find by a preponderance of the evidence that defendant poses a flight risk and that no single condition or combination of conditions of release will reasonably assure the appearance of defendant as required. In addition, I find by clear and convincing evidence that defendant poses a danger to the community and that no single condition of release or combination of conditions of release will reasonably assure the safety of the community.

I. BACKGROUND

On November 18, 2010, an indictment was returned charging defendant with one count of conspiracy to distribute cocaine, crack cocaine, and marijuana, in violation of 21 U.S.C. § 846; and one count of conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(I) and (h). Defendant appeared before me for a first appearance on November 19, 2010.

During the first appearance proceeding, counsel for the government filed a motion for a detention hearing and a motion to continue the hearing for three days. Those motions were granted, and defendant was remanded to the custody of the United States Marshal pending the hearing.

A detention hearing was held before me on November 23, 2010. Defendant appeared in person, represented by David Johnson. The government was represented by Assistant United States Attorney Bruce Rhoades. The parties stipulated that the court consider the information in the Pretrial Services Report of Pretrial Services Officer Van Hecke as the testimony he would give, under oath, if called as a witness. I took judicial notice of the statutory presumption against release¹. DEA Special Agent Joseph Geraci testified.

II. FINDINGS OF FACT

On the basis of the information contained in the report of Pretrial Services Officer Van Hecke and the evidence presented during the hearing, I find that:

¹18 U.S.C. § 3142(e) states in pertinent part as follows: "Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq)."

1. Defendant, 33, is a lifelong Kansas City area resident. He has infrequent contact with his father but regular contact with his mother and one sibling who live locally. Defendant has never been married but has been in a relationship for the past four years. Defendant lives with his girl friend, his 11-year-old child, and his girl friend's 13-year-old child. Defendant's girl friend is five months pregnant with his child.

2. Defendant has a GED. He has been employed in the warehouse of a printing and mailing company since 2006. He previously worked as a laborer and a cook. Defendant has no significant financial assets but owes at least \$16,000 in credit card debt.

3. Defendant is generally in good health. He began using alcohol at the age of 13, uses it once or twice a week, and last used it the day before his arrest. He began using marijuana at age 13 and used it daily until about nine years ago. He began using cocaine at age 19, uses it occasionally, and last used it the day before his arrest. Defendant previously completed a 120-day institutional drug treatment program and an outpatient drug treatment program as a condition of community supervision.

4. Defendant's criminal history includes the following:

Date	Charge	Disposition
03/07/1996	Unlawful use of a weapon (Felony)	SIS, 2 years probation

05/16/1996	Minor in possession of liquor	10 days in jail, 1 year probation
09/20/1997	1. Aggravated burglary 2. Aggravated burglary 3. Criminal damage	Dismissed
04/11/1998	Stealing motor vehicle	Unknown
03/19/1999	1. Possession of controlled substance w/intent to distribute (Felony) 2. Possession of controlled substance w/intent to distribute (Felony) 3. Sale of controlled substance (Felony)	1. 15 years DOC 2. 15 years DOC 3. 15 years DOC Released on five years probation after completing 120-day program.
Defendant's probation was revoked on 10/25/2001 for PCP use three times, cocaine use, failure to report, failure to attend drug treatment and failure to pay court costs. Defendant was paroled on 12/23/2005. He has incurred one new law violation. Defendant's parole officer intends to issue a no-bail parole violation warrant based on the instant offense.		
08/23/2000	1. DWI 2. DWLS/R	Unknown
12/28/2000	1. Child endangerment 2. DWI 3. DWLS/R 4. No insurance	1. 1 year in jail 2. 6 months in jail 3. Dismissed 4. Dismissed
10/22/2001	Distribution, delivery, manufacture controlled substance (8 counts)	Unknown
08/02/2008	DWI	Guilty

Defendant has **five outstanding warrants** with a total bond of \$1,055.

5. Defendant faces a minimum ten-year prison sentence and a maximum sentence of life if convicted of conspiracy, and he

faces a maximum prison sentence of 20 years on the money laundering count.

III. CONCLUSIONS

I find by a preponderance of the evidence that no single condition of release or combination of conditions of release will reasonably assure the appearance of defendant as required. Defendant is facing a minimum ten-year sentence and a possible life sentence in this case. He has five outstanding warrants, his parole officer plans to obtain a no-bond parole violator's warrant, and he has a long history of illegal drug use. I also find that defendant has failed to rebut the presumption provided for in 18 U.S.C. § 3142(e) that there is no condition or combination of conditions of release that will reasonably assure the appearance of defendant as required.

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 participating in a large drug conspiracy and a money laundering conspiracy, his criminal history includes four felony convictions for drugs and a firearm offence, his criminal history includes assaultive/dangerous behavior, he has had probation revoked in the past, he has a long history of illegal drug use, and he continued using illegal drugs after having participated in multiple drug treatment programs. In addition, I find that

defendant has failed to rebut the presumption provided for in 18 U.S.C. § 3142(e) that there is no condition or combination of conditions of release that will reasonably assure the safety of the community.

It is, therefore

ORDERED that the defendant be committed to the custody of the Attorney General or his authorized representative for detention 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 the 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 the 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
November 24, 2010