

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Criminal Action No.
) 10-00320-17-CR-W-DGK
GILBERT LUPERCIO,)
)
 Defendant.)

DETENTION ORDER

On November 19, 2010, the government moved to detain defendant Gilbert Lupercio 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 Nickalaus Seacord. 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 Penney Hodges as the testimony she 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. Defendant proffered the following: He is engaged to the mother of his child, and he is settling his child support arrearage.

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)."

II. FINDINGS OF FACT

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

1. Defendant, 30, is a lifelong resident of Kansas City. Defendant has been living off and on with his mother and his girl friend. Defendant has never been married but has a five-year-old child who lives locally.

2. Defendant has been working as a self-employed painter since 2000. On November 1, 2010, defendant was rehired by a painting company he worked for from 1997 through 2002. Defendant has no significant financial assets or liabilities other than an unknown amount of back child support.

3. Defendant is generally in good health. He began using marijuana at age 15 and last used it a week before his arrest. He began using cocaine at age 20 and last used it three weeks before his arrest.

4. Defendant's criminal history includes the following:

Date	Charge	Disposition
11/17/1997	Narcotics violation	Released
08/02/2000	Violation of animal ordinance	\$30 fine
10/20/2004	1. Possession of controlled substance (Felony) 2. Possession of marijuana 3. Simple assault	1. SIS, 3 years probation 2. SIS, 2 years probation 3. Dismissed

11/07/2004	Diving while revoked/suspended	Unknown
02/04/2009	Simple assault	2 years probation

5. Defendant has an outstanding bench warrant (\$250) from Kansas City, Kansas; a \$250 cash-only bond for littering, and a failure-to-appear warrant from Clay County, Missouri.

6. 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 an unstable residence history, scant verifiable employment history, few ties to the area through property ownership, outstanding warrants including one for failure to appear, and 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 a felony drug conviction and arrests for assaultive behavior and additional drug offenses. 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 29, 2010