

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 June 14, 2010. Defendant appeared in person, represented by Phillip Gibson. The government was represented by Assistant United States Attorney Brent Venneman. The parties stipulated that the court consider the information in the Pretrial Services Report of Pretrial Services Officer Susan Pinkerton as the testimony she would give, under oath, if called as a witness. I took judicial notice of the statutory presumption against release¹. Detective Don Stanze testified.

II. FINDINGS OF FACT

On the basis of the information contained in the report of Pretrial Services Officer Susan Pinkerton and the evidence presented at the hearing, I find that:

1. Defendant, 31, is a lifelong resident of the Kansas City area. Defendant reported living at 10744 Longview Parkway

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)."

with his three children; however, defendant's girl friend reported that she lives at that address with the three children and that defendant stays there sometimes. She said that for the past six months, defendant has been staying with her off and on, and she is unaware of his whereabouts when he is not staying with her.

2. Defendant has no contact with his father but has daily contact with his mother and sister who both live in Kansas City. Defendant has never been married but has been in a relationship with his girl friend for ten years. They have two biological children and he adopted her oldest child three years ago. Defendant has daily contact with his children.

3. Defendant has a GED. He has worked for Integrity Financial for the past six years earning \$85,000 per year. He also has a partnership providing lawn care service and entertainment, earning \$500 per week. Defendant has approximately \$498,000.00 in assets and \$413,900.00 in liabilities. Defendant reported having a mortgage on his primary residence, but his girl friend reported that she is leasing that residence "to own." Defendant receives \$1,600 per month from rental property. He filed for chapter 13 bankruptcy in 2009, a case that is currently pending.

4. Defendant is generally in good health. He began using marijuana at age 16 and last used it three years ago.

Date	Charge	Disposition
11/25/1996	Auto theft	Released
04/14/1997	1. Auto theft 2. Tampering II reduced to property damage II	1. Unknown 2. SIS, 1 year probation
04/22/1997	Possession of controlled substance (Felony)	2 years in prison
07/29/1997	1. Burglary of motor vehicle 2. Burglary of motor vehicle 3. Theft under \$500 4. Theft under \$500	Dismissed; defendant was initially released on bond, he failed to appear and was subsequently arrested and detained without bond.
07/29/1997	Burglary	Transferred
07/29/1997	1. Armed robbery 2. Fugitive from out of state	1. Released 2. Turned over to Johnson County, KS
12/15/1997	1. Possession of controlled substance 2. Failure to appear	Transferred to Johnson County, KS
12/16/1997	1. Aggravated robbery (Felony) 2. Theft greater than \$500, less than \$25,000	1. 46 months in prison 2. 5 months in custody
Defendant was paroled on 5/18/01, he absconded on 7/23/01 and was returned to custody on 1/4/02, reparaoled on 4/4/02, absconded on 6/2/03 and was returned to custody on 2/10/04. He was paroled on 5/10/04 and completed his sentence on 9/30/05.		
12/10/2001	1. Receiving stolen property, reduced to misdemeanor stealing 2. Burglary II (Felony) 3. Parole violation	1. 30 days in jail 2. 30 days in jail 3. Transferred
Defendant failed to appear twice. His bond was revoked once and then reinstated.		

04/04/2002	1. Burglary 2. Larceny over \$200	Sent to court
03/18/2003	Simple assault	Dismissed
05/15/2005	Stealing motor vehicle	Unknown

5. Defendant allegedly sold a total of just under 500 grams of crack cocaine to an undercover office on three different occasions. On November 12, 2009, officers responded to a call on a possible drug sale. Defendant's car was in the driveway. Officers observed inside the car a handgun and marijuana. Defendant's sister later claimed that the firearm was hers; however, defendant's identification was inside the car with the gun and officers had observed him driving the car in the past.

6. If convicted, defendant faces a statutory minimum prison sentence of ten years and a statutory maximum prison sentence of life on the conspiracy count and a minimum prison sentence of five years and a maximum prison sentence of 40 years on the three distribution counts.

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 a history of failing to appear and absconding, he has had bond revoked in the past, and he has a questionable residence history. 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 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 cocaine conspiracy as well as multiple substantive drug counts, he has a long criminal history including three felony convictions and violent behavior, a car known to be used by defendant contained a handgun along with defendant's identification, and he has shown a poor adjustment to supervision in the past. 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
June 14, 2010