

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Criminal Action No.
) 10-00162-07-CR-W-FJG
CALAH D. JOHNSON,)
)
 Defendant.)

DETENTION ORDER

On June 9, 2010, the government moved to detain defendant Calah Johnson pending trial, and on June 14, 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 May 26, 2010, an indictment was returned charging defendant with one count of conspiracy to distribute cocaine and crack cocaine, in violation of 21 U.S.C. § 846, and one count of possessing a firearm after having been convicted of a felony in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Defendant appeared before me for a first appearance on June 9, 2010.

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 June 14, 2010. Defendant appeared in person, represented by Cynthia Dodge. 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 Nick Zych as the testimony he would give, under oath, if called as a witness. I took judicial notice of the statutory presumption against release¹. No other evidence was offered by either party.²

II. FINDINGS OF FACT

On the basis of the information contained in the report of Pretrial Services Officer Nick Zych, 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)."

²Detective Don Stanze testified at the joint detention hearing; however, none of his testimony was relevant to defendant Calah Johnson.

1. Defendant, 29, is a lifelong resident of the Kansas City area. He has lived with his grandmother and sister for the past year and a half. Defendant has no contact with his parents but regular contact with his three siblings who live locally. Defendant is single and has no children.

2. Defendant has a GED. He has been unemployed since December 2009. He previously worked as a laborer. Defendant's sole financial asset was the \$4,300 cash which was seized by agents at the time of his arrest. He has no significant financial liabilities.

3. Defendant is generally in good health. He last used marijuana a day before his interview with Pretrial Services and last used cocaine a week before his interview. He experimented with PCP 15 years ago.

4. Defendant's criminal history includes the following:

Date	Charge	Disposition
03/20/1998	Auto theft	Released
03/26/1998	Dist/Del/Manuf controlled substance (Felony)	10 years, released on probation, revoked , sentenced to 10 years, paroled on 10/6/08, last contact with parole officer was 1/20/10, parole violation warrant with no bond provision was issued on 3/10/10 and remains active (absconder status)
04/01/1998	Sale of drugs	Released

04/02/1998	Enter condemned building	Fined
05/13/1998	Destruction fo property	Unknown
05/13/1998	Narcotics violation	Released
05/16/1998	Receiving stolen property (Felony)	5 years in prison
05/30/1998	Burglary	Released
05/31/1998	Trafficking drugs 2nd degree (Felony)	10 years in prison, released on probation, revoked , 10 years
07/30/1998	Possession of controlled substance (Felony)	3 years in prison, placed on probation, revoked on 12/22/99 for cocaine and PCP usage
07/30/1998	Trafficking in drugs 1st degree (Felony)	10 years, released on probation, revoked , 10 years
08/11/1998	Dist/Del/Manuf controlled substance (Felony)	10 years, released on probation, revoked , 10 years
08/18/1998	1. Failure to appear 2. Dist/Del/Manuf controlled substance	Transferred
08/26/1998	Dist/Del/Manuf controlled substance (Felony)	3 years in prison
12/29/1998	Trespassing	Guilty
12/30/1998	Narcotics violation	Unknown
02/19/1999	Possession of controlled substance	Unknown
07/19/1999	Disorderly conduct	Fined
08/03/1999	Simple assault	1 month in jail
08/28/1999	Auto theft	Released
12/08/1999	Trafficking drugs 2nd degree (Felony)	150 months with a recommendation that he be placed in the log- term cocaine program.

09/03/2009	Criminal homicide	Released
03/07/2010	Poss/Manuf/Sell illegal weapon	Unknown (corresponds with count 12 of the instant indictment)
<p>Police officers were dispatched to a non-injury accident. Upon arrival, officers were notified by a citizen that a male was slumped over the steering wheel of his vehicle and may need medical attention. Officers responded to the vehicle and observed a black male, later identified as the defendant, in the driver's seat slumped forward and unconscious. Officers attempted to wake up the defendant by pushing him toward the back portion of the seat and when they did so, they observed a loaded pistol in the defendant's lap.</p>		

5. On June 9, 2010, defendant was arrested pursuant to the instant indictment. A **loaded handgun** was located in a coat pocket in the living room closet. The lessee of the apartment advised that defendant had a key to the apartment, defendant stays there overnight once a week, and the handgun did not belong to her.

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 possible ten-year prison sentence on the gun 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 outstanding no-bond parole

violation warrant, he has a history of substance abuse, he has a history of absconding, he has been arrested for failure to appear, and he has an unstable employment 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 and with a weapons offense, a loaded handgun was found in the residence where defendant was arrested, he has a lengthy criminal history with at least eight felony convictions and violent behavior, he has a history of arrest while on supervision, he was on supervision when the instant offenses were allegedly committed, and he has a history of illegal drug use. 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