

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 Gene Harrison. 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 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. 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 Penney Hodges, I find that:

1. Defendant, 38, is a lifelong resident of Kansas City. Defendant's mother and two siblings live locally. Defendant has

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 Brown.

never been married but has a nine-year-old son who lives locally.

2. Defendant was laid off on June 4, 2010. He had worked through the Labors Union since October 2008. Defendant has no significant financial assets or liabilities.

3. Defendant is generally in good health. He first used marijuana at age 12 and last used it four to five months ago. He first used cocaine at age 22 and last used it in February 2010.

4. Defendant's criminal history includes **six state felony convictions** for Possession of a controlled substance (1989), stealing a motor vehicle (1990), second degree **robbery** (1991), unlawful use of a **weapon** (1996), and trafficking in drugs first degree and trafficking in drugs second degree (1998). Defendant was sentenced to probation in these cases which was **revoked** for new offense conduct.

5. Defendant has **one federal felony conviction** for possession with intent to distribute cocaine. He was sentenced to 94 months in prison, and he began a five-year term of supervised release on July 22, 2008. He was **on supervised release** when the instant offense was committed. Defendant tested positive for cocaine in July 2008 and positive for marijuana use twice while on supervision. Judge Smith issued a **warrant for defendant's arrest** based on the instant offense conduct occurring while defendant was on supervised release.

6. Defendant has multiple municipal convictions for **failure to appear**, trespassing, and driving while suspended. He has arrests for first degree assault, simple assault, attempt to assault, robbery, possession of a controlled substance, and disorderly conduct, all of which occurred from 1989 through 1999.

7. If convicted, defendant faces a statutory minimum prison sentence of ten years and a statutory maximum prison sentence of life.

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 is facing possible revocation of his supervised release, he was convicted of failure to appear, 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 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, he has a long criminal history including seven felony convictions, he has had probation revoked in the past, he has committed new crimes while on supervision, he has used drugs while on supervision, and the instant offense was committed while defendant was on supervised release for a felony drug conviction. 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 15, 2010