

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

UNITED STATES OF AMERICA,                    )  
  )  
  Plaintiff,                                    )  
  )  
  v.    ) Criminal Action No.  
  ) 10-00162-15-CR-W-FJG  
MYLIN D. SMITH,                                )  
  )  
  Defendant.                                    )

**DETENTION ORDER**

On June 9, 2010, the government moved to detain defendant Mylin Smith 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. 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 Alex McCauley. 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 Tim Hair as the testimony he would give, under oath, if called as a witness. I took judicial notice of the statutory presumption against release<sup>1</sup>. No other evidence was offered by either party.<sup>2</sup>

## **II. FINDINGS OF FACT**

On the basis of the information contained in the report of Pretrial Services Officer Tim Hair, I find that:

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<sup>1</sup>18 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)."

<sup>2</sup>Detective Don Stanze testified at the joint detention hearing; however, none of his testimony was relevant to defendant Smith.

1. Defendant, 26, is a lifelong resident of Kansas City. Although defendant told Pretrial Services that he was living at 2208 Agnes, his mother reported that defendant has been living in South Kansas City for the past year.

2. Defendant's father is deceased. He has regular contact with his mother and no contact with his three siblings. Defendant has never been married but reported that he has two children. Defendant's mother reported that defendant has four children.

3. Defendant has a GED. He has been unemployed for the past year. His employment history is very limited in that he briefly worked at Sonic but has had no other job. Defendant has no significant financial assets or liabilities.

4. Defendant is generally in good health. He has used marijuana and alcohol daily for the past several years. He has a long history of cocaine use and last used it two months ago.

5. Defendant's criminal history includes the following:

Date	Charge	Disposition
11/29/2000	Sale of drugs ( <b>Felony</b> )	SIS, 3 years probation
Probation was <b>revoked</b> on 7/13/04 and he was sentenced to five years in prison with a 120-day call back. He was released to community supervision on 11/9/04. His probation was <b>revoked</b> on 2/2/06. He was paroled on 1/16/09.		
03/10/2001	Possession of controlled substance ( <b>Felony</b> )	SIS, 3 years probation
Defendant's probation was <b>revoked</b> on 7/13/04 and he was sentenced to five years in prison.		

08/22/2001	Tampering with motor vehicle	No further action
07/07/2002	Tampering with motor vehicle	Released
10/05/2002	Disorderly conduct	Fined
07/22/2003	Possession of controlled substance	Released
10/05/2003	2nd degree drug trafficking ( <b>Felony</b> )	5 years in prison
<p>Defendant was released after a 120-day call back. His probation was <b>revoked</b> and on 11/16/06 the five-year sentence was imposed. Defendant was paroled on 1/16/09. Defendant has had numerous <b>violations</b> primary for illegal drug use. His parole officer is in the process of obtaining a <b>parole violation warrant (no bond)</b> as a result of the instant offense.</p>		
02/06/2004	Sale of drugs	Released
03/25/2004	Simple assault	2 years probation
06/30/2004	Simple assault	2 years probation
02/22/2005	<b>Rape</b>	Released
10/10/2005	Domestic assault	Dismissed
09/29/2006	1. Hit and run 2. DWI	Bench warrant issued, remains active with \$2,000 bond
05/16/2009	Possession of marijuana	Pending

6. Defendant was asleep when the instant arrest warrant was executed. Police recovered a **handgun** underneath the bed on which defendant was lying.

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 parole, it is unclear exactly where defendant has been living for the past year, he has a long history of drug abuse, and he has almost no employment history despite being 26 years of age. 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 three felony convictions and arrests for violent behavior, he has had probation revoked four times in the past, he has a history of illegal drug use while on probation, he uses marijuana and alcohol daily, he has a long history of cocaine use, he has a history of arrests while on supervision, the instant offense allegedly occurred while defendant was on parole, and he possessed a handgun at the time

of his arrest. 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