

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

UNITED STATES OF AMERICA,                    )  
  )  
  Plaintiff,                                    )  
  )  
  v.    ) Criminal Action No.  
  ) 10-00162-16-CR-W-FJG  
THEODORE S. WIGGINS,                        )  
  )  
  Defendant.                                    )

**DETENTION ORDER**

On June 9, 2010, the government moved to detain defendant Theodore Wiggins 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 distributing crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C). 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 Susan Dill. 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 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 Nick Zych, 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 Wiggins.

1. Defendant, 29, is a lifelong resident of Kansas City. Defendant has regular contact with his mother and four siblings, but infrequent contact with his father and other six siblings. Defendant is single but has an 11-year-old child who lives locally. Defendant's girl friend is expecting his second child.

2. Defendant has a tenth grade education. He has been unemployed for the past seven months. His employment history includes working in maintenance for two years. Defendant has no financial assets or liabilities.

3. Defendant is generally in good health. Defendant has a history of marijuana and PCP use but has used neither since 2001. Defendant tested positive for cocaine in January 2010. He subsequently enrolled in a drug treatment program but was unsuccessfully discharged on May 22, 2010. Defendant's girl friend reported that he has an anger management problem.

4. Defendant's criminal history includes the following:

Date	Charge	Disposition
02/12/1998	Dist/Del/Manuf controlled substance ( <b>Felony</b> )	10 years in prison

Defendant was placed on pretrial diversion on 1/29/99. He **failed to appear** for a diversion revocation hearing on 3/31/99 and a warrant was issued. On 5/20/99, he was **discharged from Pretrial Diversion**. On 8/1/00, he pled guilty and was sentenced to 10 years. He was placed on probation after a 120-day callback, and on 2/15/02 his probation was **revoked** and he was sentenced to ten years. Defendant was paroled on 8/24/09. He has been in **marginal compliance** with his parole due to positive drug test, recent discharge from drug treatment, and the instant offense. His parole officer will be recommending that a **parole violation warrant** be issued with a **no bond provision**.

02/18/1998	Simple assault	No prosecution
06/05/1998	Trespassing	Pay resolve
06/29/1998	Trespassing	Guilty
04/26/1999	Robbery	No further action
05/05/1999	1. Robbery 2nd ( <b>Felony</b> ) 2. Kidnaping	1. 10 years in prison 2. Dismissed

Court and MPP computer records indicate a female victim was confronted by the defendant and three other males as she got into her vehicle in a parking garage. The suspects entered her vehicle and instructed her to drive away to a specific location. At such location, two of the suspects grabbed the victim and threw her out of the vehicle. The suspects then got out and one of them said, "Don't move or I'll pop you." The suspects went through the victim's pockets, took some belongings, and then one suspect drove away in the vehicle while the other three suspects ran away. Further investigation revealed the suspects attempted to rob a dry cleaning store prior to becoming involved in the robbery/carjacking. On 1/11/00, the defendant was released on bond. On 10/26/00, the defendant was placed on probation for three years (120 day call back). On 2/15/02, his probation was **revoked** and he was sentenced to 10 years.

01/12/2000	Possession of controlled substance ( <b>Felony</b> )	4 years i prison
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Court and MPP computer records indicate the defendant sold \$100 worth of crack cocaine to an undercover police officer. On 2/1/00, the defendant was released on bond. On 11/15/00, the defendant was placed on probation for five years (120 day call back). On 5/10/01, a **probation violation warrant** was issued. On 9/21/01, the motion for probation revocation was withdrawn and the defendant was subsequently discharged from probation on 10/25/05.

11/02/2000	Simple assault, domestic	Dismissed
02/16/2001	<b>Armed robbery</b>	No further action

MPP computer records indicate the defendant was arrested and released after a 20-hour hold. Police reports indicate the victim picked up two individuals (suspects) and drove to two separate locations. At such time, one suspect exited the vehicle, came to the driver's door and produced a **revolver** while the other suspect stated, "give me your money" and pulled the keys from the ignition. MPP were unable to determine how the defendant was identified as a suspect and no charges were filed regarding this offense.

04/05/2001	<ol style="list-style-type: none"> <li>1. Robbery 2nd (<b>Felony</b>)</li> <li>2. Armed criminal action (<b>Felony</b>)</li> <li>3. Tampering</li> <li>4. Assault 1st</li> <li>5. Armed criminal action</li> <li>6. Assault 1st</li> <li>7. Armed criminal action</li> <li>8. Armed criminal action</li> <li>9. Armed criminal action</li> <li>10. Assault 1st</li> <li>11. Armed criminal action</li> </ol>	<ol style="list-style-type: none"> <li>1. 10 years in prison</li> <li>2. 3 years in prison</li> </ol>
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Court and MPP computer records indicate police officers were dispatched to a location regarding a carjacking. Upon arrival, the victim stated he was cleaning his vehicle at a car wash when two males approached him. He further stated one suspect pulled a **revolver** and **pointed it at his face** and demanded his wallet. The defendant was identified as the other suspect who demanded the victim's car keys and drove off in the vehicle. A short time later, plain-clothes officers located the vehicle and began to pursue it. **Shots were fired at the officers**, at which time a marked vehicle began pursuing the suspects. Officers returned shots striking the defendant who was the driver. The weapon used in the offense by the suspect was identified as a BB pistol. The defendant remained in custody throughout the pendency of this case. On 5/5/03, he was found guilty of all counts by a jury and was subsequently sentenced to a total of 45 years. On 8/9/07, the convictions in counts 1-2 and 4-11 were set aside while the verdict and sentence for count 3 remained in place. On 1/26/09, the defendant pled guilty to counts 1-2 and was sentenced to 10 years and 3 years respectively (concurrent). His sentence pursuant to the Armed Criminal Action expired on 6/26/09.

02/02/2010	Tampering	Unknown
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5. 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 up to 20 years in prison on the distribution 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 is facing possible revocation of his parole, a no-bond parole violator warrant will soon be issued, he has a recent history of cocaine abuse and was

unsuccessfully discharged from drug abuse treatment, and he has almost no employment history despite being 29 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 four felony convictions and violent behavior, he has had probation revoked in the past, he was discharged from Pretrial Diversion, he was involved in an incident which included shots fired at police officers, 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

