

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT E. STEWART,

Defendant.

)
)
)
)
)
)
)
)
)
)

Case No. 09-00296-03-CR-W-FJG

**MOTION OF DEFENDANT ROBERT E. STEWART
FOR RECONSIDERATION OF DETENTION ORDER,
WITH SUGGESTIONS IN SUPPORT**

COMES NOW Defendant Robert E. Stewart, by and through his undersigned attorney, and moves this Court to reconsider its Order for Detention entered on October 2, 2009 (Doc. No. 41), and in support thereof, states:

1. On September 30, 2009, the Court held a hearing on the government's Motion to Detain defendant Stewart. At that time, defendant was represented by appointed counsel who he just met at the commencement of that hearing. Counsel was unfamiliar with defendant and his circumstances, including defendant's criminal history, when defendant moved to the Kansas City area, defendant's prior contact with Steven Cook, an Independence detective and the case agent, and the alleged time frame of the Indictment.

2. On October 2, 2009, the Court issued its Order denying pretrial release. Among the reasons listed in the Order were that defendant has a lengthy criminal history, which included failures to appear, has a record of using other names, and has a history of substance abuse. Additionally, the Court noted defendant faces significant penalties if convicted of the instant

charge.

3. On or about October 3, 2009, defendant's family retained undersigned counsel. An investigation has been conducted regarding defendant's suitability as a candidate for pretrial release, and as a result, counsel believes that there is now available to defendant and his attorney information relevant to whether a "condition or combination of conditions will reasonably assure the appearance of the defendant as requested" and "will reasonably assure the safety of any other person and the community".

4. Included in the information that defendant seeks to place before the Court is the following:

a. Defendant's criminal history as set forth in the Detention Order, paragraph 7, is full of inaccuracies and overstates defendant's conduct within the last twenty years. The following dates which list a disposition as "Unknown" or "No disposition listed" were not matters on which any case was ever filed against this defendant: 10/07/84; 01/07/87; 09/01/89; 10/03/89; 11/09/07. Of significance is the last date, which shows a charge of "Manufacture Controlled Substance" in November, 2007. Defendant was never charged with such an offense. Further, the only alleged active warrant is one issued on April 4, 2007. That information is incorrect. Defendant was charged with no driver's license in Kansas City, Missouri Municipal Court in August, 2006, as shown, but that case was disposed of by a plea agreement and defendant received a suspended imposition of sentence. There is no warrant outstanding on that case or any other case against defendant. Defendant's criminal history for the past twenty years has been one of driving violations, unlicensed dog, and a county planning code violation.

b. The last felony conviction for defendant was over twenty years ago, in April, 1989, for criminal impersonation. Defendant had a driver's license in the name of Robert Gene Snyder, he entered a guilty plea, and served his sentence. He has never used any other alias, not Robert Gene Summers nor John Paul Summers. He has never used the name Robert Gene Snyder since 1989.

c. The Indictment period in this case is between on or about January 1, 2002, to and including July 31, 2007. Defendant moved from Minneapolis to Kansas City in September, 2006. He received his patch in the Minneapolis chapter of El Forastero in May, 2003. Neither defendant nor any of his fellow members of the Minneapolis chapter were charged, let alone convicted, with any drug offenses while defendant lived in Minneapolis.

d. Defendant has been stopped at the direction of Det. Steve Cook, the case agent, at least twice since he moved to Kansas City. The most recent incident was in the fall of 2007. Defendant was taken in for a 24 hour investigative hold, and was informed by Det. Cook that he should go back to Minneapolis, that he should not be here to replace other El Forastero members who had been indicted. No charges were filed against defendant over the phantom traffic violations. Thus, had defendant wanted to flee after receiving a warning, he has had over two years to do so, but has not. He has remained in Kansas City while the government has returned two other major indictments against El Forastero and Galloping Goose members the past three years.

e. In late 2005, defendant was diagnosed with Hodgkin's Lymphoma. He underwent chemotherapy treatments at the Hennepin County Medical Center Cancer Unit in Minneapolis for approximately nine months. One of the drugs administered caused lesions on his

lungs, and he has had difficulty breathing and is in constant pain since that date. Defendant requires regular administration of albuteral by nebulizer to clear his lungs, and heavy doses daily of ibuprofen for pain in his joints and bones. Defendant readily admits he regularly uses marijuana to self-medicate the pain. He does not use any other illegal substance. Defendant is now due for his regular blood work, MRI, and EKG to monitor the status of the Lymphoma.

5. Defendant does have significant ties to the community including ownership of a home, where he lives with his wife, and full time employment. While facing a significant sentence *if convicted*, defendant could have long ago fled the jurisdiction of this court had he wanted. His significant health issues weigh heavily in favor of release pending trial so he can properly monitor and treat his condition. Any number of conditions of release can be imposed to assure defendant abides all laws and appears as required.

WHEREFORE, Defendant prays that this Court reconsider its Detention Order of October 2, 2009, and grant defendant a bond with such conditions of release as this Court deems appropriate.

/s/Ronald E. Partee
Ronald E. Partee, MoBar #23898
606 West 39th Street
Kansas City, MO 64111
TEL: (816) 531-3500
FAX: (816) 753-3234
EMAIL: rpartee@pn-law.com
Attorney for Defendant Stewart

CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2009, I electronically filed the foregoing with the clerk of the Court using the CM/ECF system, which will send notification to the following: Jeffrey E. Valenti and Daniel Morton Nelson, Assistant United States Attorneys, and all counsel of record.

/s/Ronald E. Partee
Ronald E. Partee