

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,

PLAINTIFF

VS.

10-20037-01-JWL

DONALD M. STEELE,

DEFENDANT

MOTION TO REVIEW DETENTION

Defendant in the above matter, through counsel, respectfully requests a hearing to review his detention pursuant to 18 U.S.C. §3145(b). He asks the Court to release him on bond following the hearing.

FACTS

On 2/23/10, after hearing evidence and arguments at a formal detention hearing, Judge Waxse overruled a release recommendation in Defendant's pre-trial services report. Defendant anticipates that the Court already is familiar with the transcript of that hearing, and so will highlight only particularly relevant points.

At the hearing, Shawnee County Sheriff's Deputy Brian Clemmons and Lawrence Police Officer Micky Rantz testified regarding the investigation that led to this case. The officers corroborated the criminal complaint that began the case, and provided additional details.

Deputy Clemmons testified that he had infiltrated a group that included Defendant and his codefendants. Through a series of surreptitiously recorded meetings, the alleged conspirators discussed the possibility of manufacturing methamphetamine and counterfeiting money at a rental home that Defendant owned.

Deputy Clemmons witnessed Defendant sell drugs on several occasions. He said that Defendant played a role in supplying two guns and assorted false identification documents in furtherance of the conspiracy.

Deputy Clemmons said that Defendant made a number of incriminating statements. The statements included Defendant saying that he could distribute a pound of methamphetamine within a week or two, Defendant bragging about evading capture through the use of an alias in an earlier criminal case, and Defendant admitting marijuana use.

Officer Rantz testified about Defendant's criminal record. He stated that Defendant apparently had left Kansas in the late 1980s after being charged in a felony drug case in Sedgwick County. Authorities later arrested Defendant in Texas under an alias, but did not realize he was a fugitive from Kansas.

Officer Rantz added that Defendant later returned to Kansas as evidenced by another arrest under a second alias. Finally, in 1995, the KBI found Defendant living in Douglas County, and brought him to justice for the Sedgwick County case.

Officer Rantz stated that, as police attempted to arrest Defendant in the present case, Defendant drove about one mile until he came upon stop sticks blocking an intersection. Defendant was talking on a cellular phone, and did not exit his car until police approached him.

Officer Rantz acknowledged that Defendant was cooperative with police once he was out of his car. Also, Officer Rantz learned that Defendant's felony drug conviction from Sedgwick County has been expunged.

In its memorandum regarding Codefendant Dyke's bond (doc. #35), the government alleged that, following the detention hearing, Defendant told Codefendant Sims that he was their only chance to "kill all the witnesses." Deputy Marshal William Lynn apparently overheard this alleged comment.

However, in the same memorandum, the government acknowledged that this comment could have been a joke. The memorandum adds that, while a potential witness has been threatened, there is no evidence linking Defendant to the threats.

At the hearing on this motion, Defendant will establish that he is a family man with four children, an eagle scout whose two sons are eagle scouts, a man of faith, and a Lawrence businessman. Defendant is known in the community as a generous soul willing to help anyone.

ARGUMENT

Defendant recognizes that, due to the grand jury's probable cause determination, he must overcome a presumption against release. 18 U.S.C. §3142(e). However, Defendant submits that, once the Court understands his character and family ties, it will find him an appropriate candidate for bond.

18 U.S.C. §3142(g)(1) and (2)

Of the §3142(g) factors the Court must consider, Defendant stipulates that two, the nature and circumstances of his offense, and the weight of evidence, are unfavorable. He does point out, however, that the police apparently controlled the direction of the alleged conspiracy.

18 U.S.C. §3142(g)(3)

Defendant's history and characteristics argue for release. Defendant bases this assertion on five main points: the age of his criminal history, his work history, his community involvement, his family ties, and the Court's ability to monitor drug use. He will address each point in turn.

1) Criminal History: Defendant acknowledges that the pre-trial services report contains a lengthy list of criminal troubles. However, of 14 separately-dated entries in the report, apparently only 2 resulted in convictions. The two convictions are a drug charge from Sedgwick County from 1989, and a misdemeanor battery from 2003.

Officer Rantz and the Kansas.gov website both indicate that the Sedgwick County District Court expunged the drug conviction. This suggests that, at least at the time of the expungement, Defendant's circumstances and behavior warranted expungement, and that expungement was consistent with the public welfare. *See* K.S.A. §21-4619(e) (2008).

Defendant's departure from Kansas in the 1980s, and his use of aliases likely trouble the Court. By way of explanation, and not excuse, Defendant states that he left the jurisdiction to escape not the law, but rather a bad element that jeopardized his family's safety. Moreover, that departure occurred over 20 years ago, before Defendant's family and place in the community were fully established.

Finally, Defendant acknowledges a string of failure to appear entries in the pre-trial services report. Noteworthy is that apparently none resulted in criminal charges, much less a conviction. All appear related to traffic and park offenses.

2) Work history: For many years, Defendant has owned and operated All Seasons Tree Service. His service frequently provides *pro-bono* trimming to the poor, and employment to workers that no other employer would hire.

Throughout Defendant's ownership, the company consistently has prioritized community service over profit. Often Defendant's pay has taken the form of simple gifts or heartfelt thanks in lieu of money. Habitat for Humanity has recognized Defendant's *pro-bono* work.

Defendant's incarceration already has cost him his home. He is frustrated that he cannot house and support his wife. Upon release, Defendant eagerly would resume work to stabilize his finances, and help his family prepare financially for whatever may come.

3) Community Involvement: At various times over the years, Defendant has been active in scouting and church. His reputation is one of willingness to volunteer for just about any worthy community program or project.

4) Family Ties: Defendant is the father of four children ranging in age from 1 to 22 years old. His family is the center of his life. Absconding from bond would be tantamount to abandoning the persons he loves the most. Defendant's family stands ready to support him as he addresses his legal problems.

5) Drug History: Deputy Clemmons' testimony about Defendant's marijuana use is troubling. However, drug abstinence is an expected bond condition that is simple to monitor. Defendant will submit to whatever drug screening or counseling the Court orders to enforce this condition.

18 U.S.C. §3142(g)(4)

The Court may be concerned whether release would pose a danger to any person or the community. Defendant denies threatening or urging violence against any witnesses.

He seeks nothing more than a reasonable opportunity to be free to participate in his defense, and support his family pending resolution of his case. Defendant has no interest or intention in harming anyone. Aside from the 2004 battery conviction, Defendant's criminal record describes a peaceful man.

CONCLUSION

As the Court hopefully has seen, Defendant's suitability for release is more appropriate than perhaps is facially apparent. Defendant requests release on bond so that he can meaningfully participate in his defense, and stabilize his finances.

RESPECTFULLY SUBMITTED,

s/Thomas R. Telthorst
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CERTIFICATE OF SERVICE

I certify that on 3/14/10, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the counsel of record in this case.

s/Thomas R. Telthorst
THOMAS R. TELTHORST
Attorney for Defendant