

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :  
v. : CRIMINAL NO. 99-97  
LAMONT RHYM :

PRETRIAL DETENTION ORDER

AND NOW, this            day of March, 1999 after an evidentiary hearing and argument of counsel for the government and the defendant, the Court FINDS that:

(a) the government has proven by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the defendant as required; and

(b) that the government has proven by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of other persons and the community, as required by Title 18, United States Code, Section 3142(e).

I. Findings of Fact

The Court makes the following findings of fact:

This case is appropriate for detention under Title 18, United States Code, Section 3142(e) because:

A. Probable Cause And The Evidence In This Case

1. There is probable cause to believe that on November 24, 1998, LAMONT RHYM committed the offense of knowingly possessing a firearm in or affecting interstate commerce after having been convicted of a crime punishable by more than one year's

imprisonment.

2. The evidence in this case is strong and consists of eyewitness testimony of two police officers.

3. The evidence shows that the defendant possessed a loaded semi-automatic pistol with an obliterated serial number while on bail for a pending state charge, after having been convicted on at least 4 prior occasions, two of which were for drug distribution felonies.

4. The nature and strength of the evidence against the defendant demonstrates both that the defendant is a high risk not to appear and that he poses a danger to the community.

#### B. Penalties

1. Defendant, RHYM, is charged with a violation of 18 U.S.C. § 922(g)(1). He faces a statutory maximum of 10 years imprisonment, a \$250,000 fine, 3 years of supervised release and a \$100 special assessment.

2. Based on RHYM's prior record, the fact that the weapon had an obliterated serial number and the fact that the defendant was on bail when the offense occurred, the defendant faces a likely guidelines incarceration range of at least 78-97 months, under U.S.S.G. § 2K2.1<sup>1</sup>. Accordingly, there is a significant incentive for the defendant to flee to avoid prosecution and incarceration.

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<sup>1</sup> If U.S.S.G. § 2K2.1(b)(5) is applied, because defendant's offense involving a gun constituted a separate offense under state law, the defendant's guidelines incarceration range could be as high as 121-151 months, which would exceed the statutory maximum of 10 years (120 months).

C. Prior Criminal Record/Attendance At Court Proceedings

The defendant has a significant history of criminal convictions:

<u>Court No.</u>	<u>Charge</u>	<u>Sentence</u>	<u>Sentence</u>
CP8812-2916	Manuf., del., poss. intent to deliver controlled substance	Max. 3 years	10/15/91
CP9004-009	Rec. stolen property	2 yrs. prob.	10/15/91
CP9004-2163	Manuf., del., poss. intent to deliver controlled substance	Max. 3 years	10/15/91
MC9309-0317	Unauth. use auto	Less than 1 year prob.	10/15/93

In addition, at the time of his arrest for possession of a firearm on November 24, 1998 the defendant was on pretrial release from state charges that were ultimately dismissed.

D. Ties To The Community

1. The defendant reports he is currently unemployed. The defendant has reported at least 8 addresses since 1986 (all in Philadelphia unless otherwise noted): 100 Kenmark Road, Newark, DE (reported on his arrest on November 24, 1998), 5440 Baltimore Avenue (arrested there), 5426 Baltimore Avenue (Driver's license), 1312 North 51st Street (wife's address reported on protection from abuse order), 1810 S. 55th Street (arrested there) 2716 Eyre Street, 2715 West Erie Street, and the current address where he was required to stay by state pretrial services, 664 North 34th Street. He reported that his fiancé, Crystal Scott, lives at 136 North 62nd Street. The legislative history

of the Comprehensive Crime Control Act of 1983 indicates that Congress found that community or family ties do not and should not weigh heavily in the risk of flight analysis. See Sen. Comm. on Judiciary, Comprehensive Crime Control Act of 1983, S. Rep. No. 98-225, 98th Cong., 1st Sess. 24, 25 (1983).

2. Certainly, any ties to the community in this instance have not served to prevent the defendant from endangering the community by carrying a loaded firearm while on bond and facing trial for residential robbery and aggravated assault charges<sup>2</sup>. Where a defendant has previously violated the terms of his pretrial release in so obvious and dangerous a fashion, the Court is very reluctant to let the defendant loose on the community again. The risk to the community is apparent, and defendant's ties to the community are irrelevant to this prong of the analysis under 18 U.S.C. §3142.

E. Rebuttable Presumption

There is no rebuttable presumption in favor of detention in this case.

II. Conclusions of Law

There is probable cause to believe the defendant was carrying a loaded semi-automatic pistol while on pretrial release, having been previously convicted of at least 2 felony drug distribution charges. The case against the defendant is strong. Defendant's ties to the community are feeble. The

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<sup>2</sup>These charges were ultimately dismissed when the Commonwealth's witnesses failed to appear.

safety of the community is clearly jeopardized by those who go about armed, not only in violation of the law but in violation of the terms of a pretrial release order. The facts of this case strongly demonstrate that the defendant was willing to conduct himself in obvious violation of his pretrial release order in the state system. There is a high risk that he will continue to conduct himself in this fashion despite the existence of any order of this court commanding him to do otherwise. The defendant faces years of incarceration in a federal penitentiary, with a correspondingly high incentive to flee, if placed on bond or home detention with electronic monitoring.

Only 24 hour custody and supervision can ensure the appearance of this defendant and the safety of the community. The conditions of release enumerated in the detention statute, 18 U.S.C. §3142(c), are unlikely to ensure that the defendant will not flee or resume his criminal activity. The defendant should be detained without bond through the course of this case.

Therefore, it is ORDERED that:

1. the defendant be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;
  - a. the defendant be afforded reasonable opportunity for private consultation with counsel; and
  - b. on order of a Court of the United States, or on

request of an attorney for the government, the person in charge of the corrections facility in which the defendant is confined deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

BY THE COURT:

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UNITED STATES MAGISTRATE JUDGE