



findings of fact:

A. Probable Cause And The Evidence In This Case

1. There is probable cause to believe that the defendant has violated 18 U.S.C. § 922(g) and 924(e) as charged by indictment on March 23, 1999. The evidence in this case is strong and consists of eye witness testimony of Philadelphia police officers who will testify that on December 12, 1998 they responded to a radio call of “Man with a gun at the bar at 8th and Bristol.” Upon arrival, these police officers received a description of the man who possessed the gun in the bar from an anonymous civilian who was outside of the bar. Police proceeded into the bar where they observed the defendant, who was the only individual who fit the description, seated at the bar. Pursuant to a frisk, the defendant was found to possess a loaded Ruger 9 millimeter semiautomatic pistol with an obliterated serial number, and eleven rounds of ammunition.

2. The strength and nature of the case against the defendant and the corresponding probability that the defendant will be incarcerated for a significant period of time, establishes his danger to the community and increases the high risk that the defendant will not appear as required by the Court.

B. Maximum Penalties

1. The defendant is charged with one count of possession of a firearm by a convicted felon which exposes the defendant to a total maximum penalty of life imprisonment as an Armed Career Criminal and a \$250,000 fine.

2. The defendant faces a mandatory minimum period of 15 years in prison due to

his status as an Armed Career Criminal.

3. The government estimates conservatively that under the Sentencing Guidelines that the defendant faces a prison term of 210-262 months without parole.

4. Accordingly, the defendant has a substantial incentive to flee.

#### C. Prior Criminal Record.

Barry Sheldon Faulks is 36 years of age and has twenty-one prior arrests with six prior convictions; two are misdemeanors and four are felony convictions. He is known to have used at least four other names during his previous police contacts.

1. The defendant has a 1989 conviction for a Violations of the Uniform Firearms Act (“VUFA”) graded as an M1 for which he initially received a sentence of one year probation. His probation was revoked on 10/30/91 and he received a county sentence of less than six months to one year. This sentence counts as two points under the Sentencing Guidelines.

2. The defendant has a 1989 Theft conviction graded as an F3 for which he received a county sentence of less than one year nor more than two years (this conviction served as the basis for the violation for the 1989 VUFA conviction described in paragraph 1). This sentence counts as two points under the Sentencing Guidelines..

3. The defendant has a 1989 ungraded misdemeanor drug conviction for which he originally received a probation without verdict disposition on 9/12/89 called Section 17. However, he violated his probation, was subsequently convicted of this charge, and was sentenced on 12/23/91 to not less than six months nor more than one year in a county facility. This conviction counts as two points under the Sentencing Guidelines.

4. The defendant has a 1991 felony drug conviction stemming from a 2/10/90 arrest for which he received a county sentence of less than one year nor more than two years incarceration. This sentence counts as two points under the Sentencing Guidelines and is the defendant's first qualifying conviction towards characterizing the defendant as an Armed Career Criminal.

5. The defendant has a 1995 felony drug conviction dating from a 4/28/95 arrest. He received a state sentence of less than two years nor more than three years incarceration. This sentence counts as three points under the Sentencing Guidelines and is the defendant's second qualifying conviction towards characterizing the defendant as an Armed Career Criminal.

6. The defendant has a 1995 felony drug conviction dating from a 6/22/95 arrest. He received a state sentence of less than two years nor more than three years incarceration. This sentence counts as one point under the Sentencing Guidelines because it was part of a guilty plea with the conviction described in paragraph 5 and is the defendant's third qualifying conviction towards characterizing the defendant as an Armed Career Criminal.

D. Ties To The Community

1. While the defendant arguably has some ties to the community, 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).

E. History and Character of the Defendant

At the time of the defendant's arrest on the underlying state case he indicated that he was an unemployed laborer. On April 7, 1999 he indicated that he worked at the bar in which he was arrested for the last two years earning approximately \$800 a month. Clearly, on either December 12, 1998 or on April 7, 1999 he misrepresented his employment situation.

The defendant indicates that he does not have a substance abuse problem. The reasonable inference from this assertion is that the defendant has been engaged in the sale of drugs solely as a means of earning a livelihood and not to support a drug habit.

In addition, during the course of his twenty-one arrests, the defendant has failed to appear in court on at least twenty-one (21) occasions. By such conduct, the defendant has demonstrated his complete contempt for the judicial process and his intent not to appear in court pursuant to a subpoena. Clearly, when the consequences were far less severe than those he faces in this matter, the defendant chose to violate his condition of release from custody. Now, he is a far greater risk of flight given the severity of the penalty he faces if he is convicted of these charges.

F. Rebuttable Presumption.

Based on his 6/22/95 arrest and subsequent conviction, there is a rebuttable presumption of detention under 18 U.S.C. §3142(e)(1),(2) and (3).

III. CONCLUSION

Nothing short of 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 at Section 3142(f) would serve only to inform the Court, after the fact, that the defendant has

fled or resumed his criminal career

For all of the reasons stated above, the United States respectfully requests that its motion for pretrial detention be granted.

Respectfully submitted,

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CHIEF, FIREARMS

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Special Assistant United States Attorney

Date: \_\_\_\_\_, 1999

CERTIFICATE OF SERVICE

I certify that on this day I caused a copy of the government's detention motion to be served by hand addressed to:

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LOUISA ASHMEAD ROBINSON  
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Date: \_\_\_\_\_