

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

UNITED STATES OF AMERICA :
v. : CRIMINAL NO. 99-181
DAVID GREEN :

PRETRIAL DETENTION ORDER

AND Now, this day of , 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) 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).

The Court makes the following findings of fact:

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

1. There is probable cause to believe that the defendant has violated 18 U.S.C. § 922(g), as charged by Indictment on April 6, 1999.

2. The evidence in this case is strong and consists of eyewitness testimony by law enforcement officers. This evidence shows that on January 21, 1999, at 12:55 a.m., the police stopped an automobile being driven by the defendant at 1900 W. Page

Street because its tag had been reported stolen. The defendant, the sole occupant of the vehicle, ignored repeated instructions to put his hands on the steering wheel. The defendant then pulled a fully loaded Charter Arms 38 Special from the area of his waistband and discarded it on the floor of the car. Police officers recovered the pistol and arrested the defendant.

3. The strength and the nature of the case against the defendant and the corresponding probability that upon conviction the defendant will be incarcerated for a significant period of time, increases the high risk that the defendant will not appear as required by the Court.

Maximum Penalties

The defendant is charged with possession of a firearm by a convicted felon. The maximum penalty for this violation is 10 years imprisonment, three years of supervised release, and a \$250,000 fine.

Under the sentencing guidelines, the Base Offense Level for his offense should be **24**, and the defendant's Criminal History Category should be **IV**. See §§ 2K2.1, 4A1.1. The defendant's sentencing guideline range, therefore, should be **77-96** months incarceration.

Accordingly, there is a serious risk that the defendant will flee.

Prior Criminal Record

David Green is 29 years old. As a juvenile, the defendant was arrested twice and adjudicated delinquent both times. On March 20, 1985, he was arrested and charged with burglary and related offenses. He was adjudicated delinquent of unspecified charges and was placed on probation on May 8 1985. On January 5, 1987, he was arrested and charged with cruelty to animals and conspiracy. He was adjudicated delinquent on both charges, and on August 7, 1987 he was again placed on probation.

As an adult, the defendant has been arrested 9 times and

been convicted 4 times.

The defendant has the following criminal convictions:

1. August 6, 1991 - The defendant was arrested and charged with aggravated assault and related offenses. The defendant entered a negotiated guilty plea to aggravated and simple assault and conspiracy, and was sentenced to 6 to 23 months incarceration on May 19, 1992 (CP 91-09-0525 1/1).

2. September 19, 1991 - Six weeks after this arrest, and while awaiting trial, the defendant was arrested and charged with possession of a controlled substance (33 vials of crack cocaine) and possession with the intent to deliver. The defendant entered a guilty plea to both charges, and on May 19, 1992 was sentenced to 6 to 23 months incarceration on this case as well (CP 91-10-0147 1/1).

3. September 24, 1994 - Shortly after completing his parole, the defendant was arrested and again charged with possession of a controlled substance (4 packets of PCP) and possession with the intent to deliver. Following a non-jury trial, the defendant was convicted of these charges. On November 30, 1994, he was sentenced to 12 months probation (MC 94-09-2360 1/1).

4. November 26, 1994 - While awaiting trial in his drug case, the defendant was arrested and charged with two violations of the Uniform Firearms Act. Following a non-jury trial, the defendant was convicted of both charges. On May 22, 1995, he was sentenced to two years probation (MC 94-11-2306 1/1).

A Pretrial Services Investigation Report prepared on January 22, 1999 in connection with the defendant's state arrest in this case - his second charging firearms violations - lists **2** occasions on which the defendant failed to appear for court when required to do so, November 15, 1991 and March 7, 1995.

Ties to the Community

While the defendant arguably has some ties to the community,

he has provided inconsistent information to authorities concerning them. When arrested by state authorities on January 22, 1999, the defendant told Pre-trial Services Investigators that he worked part-time for four months doing odd jobs and maintenance work, earning \$80 per day. Two and one-half months later, however, on April 8, 1999, the defendant told federal Pre-Trial Services Investigators that he had worked for six months at Unlimited Hair Salon, 2253 North Broad Street, earning \$30 per night.

Moreover, 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).

The defendant's track record, coupled with the nature of the present charges, indicates that conditions of release short of detention cannot reasonably assure the safety of the community or the defendant's appearance as required by the Court.

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;

(2) the defendant be afforded reasonable opportunity for private consultation with counsel; and

(3) 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:

Honorable Carol S. Wells
United States Magistrate Judge

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Ties to the Community

While the defendant arguably has some ties to the community, he has provided inconsistent information to authorities concerning them. When arrested by state authorities on January 22, 1999, the defendant told Pre-trial Services Investigators that he worked part-time for four months doing odd jobs and maintenance work, earning \$80 per day. Two and one-half months later, however, on April 8, 1999, the defendant told federal Pre-Trial Services Investigators that he had worked for six months at Unlimited Hair Salon, 2253 North Broad Street, earning \$30 per night.

Moreover, 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).

The defendant's track record, coupled with the nature of the present charges, indicates that conditions of release short of

detention cannot reasonably assure the safety of the community or the defendant's appearance as required by the Court.

Conclusion

The defendant's track record, coupled with the nature of the

present charges, indicates that conditions of release short of 24-hour custody and supervision cannot reasonably assure the safety of the community or the defendant's appearance as required by the Court.

The conditions of release enumerated in the detention statute at Section 3142(C) would serve only to inform the Court, after the fact, that the defendant has fled or resumed his criminal career. The United States therefore respectfully requests that its motion for pretrial detention be granted.

Respectfully submitted,

MICHAEL R. STILES
UNITED STATES ATTORNEY

J. HUNTLEY PALMER, Jr.
Chief, Arson and Firearms
Assistant United States
Attorney

Carol Meehan Sweeney
Special Assistant United
States Attorney

Date: April 9, 1999