

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

UNITED STATES OF AMERICA : NO. 99-253-M
 :
 v. :
 :
 ANTHONY JOHNSON CLARKE :

GOVERNMENT'S MOTION AND MEMORANDUM FOR
HEARING AND DEFENDANT'S PRETRIAL DETENTION

The United States of America, by Michael R. Stiles, United States Attorney for the Eastern District of Pennsylvania, and Richard A. Lloret, Assistant United States Attorney, moves for a detention hearing¹ and pretrial detention of the defendant, ANTHONY JOHNSON CLARKE, pursuant to 18 U.S.C. §3142(e). The government seeks this Order because no condition or combination of conditions will reasonably assure the defendant's appearance as required or the safety of the community.²

¹ Under 18 U.S.C. §3142(f)(1)(D), a judicial officer shall hold a detention hearing upon motion of the government in a case, as here, which involves any felony, if the defendant has previously been convicted of (1) a crime of violence or (2) a drug crime that if charged federally would have carried a maximum of 10 years or more imprisonment. CLARKE has been convicted of robbery, a crime of violence, and possession with intent to distribute controlled substances.

² The government must prove by a preponderance of the evidence that no conditions of release reasonably will assure the defendant's appearance or prove by clear and convincing evidence that no conditions of release will assure the safety of the community. United States v. Himmler, 797 F.2d 156, 161 (3d Cir. 1986).

I. STATEMENT OF FACTS

A. Probable Cause And The Evidence In This Case

In support of this motion, the government makes the following representations and proposed findings of fact:

1. There is probable cause to believe that ANTHONY JOHNSON CLARKE committed the following offenses:

a. That on or about August 28, 1996, in the City of Philadelphia, and elsewhere within the Eastern District of Pennsylvania, HUGH THOMAS NEAL and ANTHONY JOHNSON CLARKE conspired to violate 18 U.S.C. § 924(a)(1)(A) by making false statements with respect to information required to be kept in the records of a licensed federal firearms dealer, namely, two certifications by NEAL in ATF forms 4473 that "I also certify that I am the actual buyer" of the following handguns:

- i. One Ruger, Model P-89, 9 millimeter semi-automatic pistol, serial number 310-68369;
- ii. One Ruger, Model P-89, 9 millimeter semi-automatic pistol, serial number 310-68736;
- iii. One European American Armory Corporation, Model Witness, 9 millimeter semi-automatic pistol, serial number AE61044;
- iv. One European American Armory Corporation, Model Witness, 9 millimeter semi-automatic pistol, serial number AE61048;
- v. One European American Armory Corporation, Model Witness, 9 millimeter semi-automatic pistol, serial number AE61043.

In violation of Title 18, United States Code, Section 371.

b. That on or about August 28, 1996, in the City of Philadelphia, and elsewhere within the Eastern District of Pennsylvania, defendant ANTHONY JOHNSON CLARKE, having been previously convicted of an offense punishable by imprisonment for a term exceeding one year, as an aider, abettor and principal knowingly possessed in and affecting interstate commerce the firearms described above, in violation of Title 18, United States Code, Sections 922(g)(1), and Title 18, United States Code, Section 2.

2. The evidence in this case is strong and consists of eyewitness testimony of federal agents and police officers, as well as documentary evidence of gun purchases.

3. The evidence shows that the defendant possessed firearms while on probation for a state conviction for possessing with intent to distribute marijuana, and after having been convicted of robbery.

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, CLARKE, is charged with a conspiracy to violate 18 U.S.C. § 924(a)(1)(A), in violation of 18 U.S.C. § 371, and possession of the firearms listed above. He faces a maximum penalty of 15 years of imprisonment, a \$500,000 fine, 3

years of supervised release and a \$200 special assessment.

2. Based on the number of weapons involved in the offense, CLARKE's prior record, and the fact that the defendant was on probation for a prior drug trafficking offense when the offenses in this case occurred, the government estimates that the defendant faces a likely guidelines incarceration range of 78-97 months. Accordingly, there is a significant incentive for the defendant to flee to avoid prosecution and incarceration.

C. Prior Criminal Record/Attendance At Court Proceedings

The defendant has at least two prior felony convictions, once in North Charleston, South Carolina of possession with intent to distribute 5.9 pounds of marijuana at an Amtrak station in 1994, and once in Dade County, Florida in 1991 for kidnaping, burglary of a structure, robbery and unlawful possession of a firearm while engaged in a criminal offense in connection with a Burger King robbery. He received a sentence of 5 years incarceration (sentence suspended) and 2 years of probation in South Carolina and a sentence of 4 ½ years, with a 3 year minimum mandatory, for the Florida offense.

D. Ties To The Community

1. CLARKE's employment status is unknown to the government. CLARKE appears never to have acquired American citizenship, and has significant ties to Jamaica in the form of mother and siblings residing there. CLARKE also has significant ties to other jurisdictions, based upon his history of convictions in South Carolina and Florida. Based on CLARKE's

lack of strong ties to the community, his lack of a stable address, his unclear citizenship and connection with Jamaica, such ties as there may be would appear to exert no compelling influence on him. 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 possessing numerous firearms, and conspiring to violate record keeping requirements in order to obtain firearms, while on probation for a prior drug conviction and after having been convicted of robbery. Where a defendant has violated the terms of his probation in so obvious and dangerous a fashion, the Court should be 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. ARGUMENT

There is probable cause to believe the defendant conspired to violate firearms record keeping requirements, and possessed numerous firearms, while on probation for a previous drug distribution conviction and after having been convicted of robbery. The case against the defendant is strong. Defendant's ties to the community are not strong. The safety of the community is clearly jeopardized by those who possess firearms and conspire to circumvent the law in order to possess them, not only in violation of the law but in violation of the terms of their probation. The facts of this case strongly demonstrate that the defendant was willing to conduct himself in obvious violation of a specific court order, i.e., the terms of his probation in the state system. There is a high risk that he will continue to conduct himself in this fashion despite the existence of a court order commanding him to do otherwise. The defendant faces 15 years of incarceration in a federal penitentiary, with a correspondingly high incentive to flee, if placed on bond or home detention with electronic monitoring. His uncertain citizenship increases the risk of flight.

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.

II. CONCLUSION

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

Respectfully submitted,

MICHAEL R. STILES
United States Attorney

J. HUNTLEY PALMER
Assistant United States Attorney
Chief, Guns & Arson

RICHARD A. LLORET
Assistant United States Attorney

Date: April 21, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing to be served by fax (transmission receipt received) upon the following, with a hand delivered copy to be served immediately prior to the hearing of this matter:

William DeStefano, Esq.
Saul, Ewing, Remick & Saul, LLP
Center Square West
1500 Market Street
38th Floor
Philadelphia, PA 19102
(215)972-7725

Richard A. Lloret
Assistant United States Attorney

Dated: August 11, 2003