

knowingly distributing a mixture or substance containing a detectable amount of cocaine base (“crack”), a Schedule II narcotic drug controlled substance.

2. The evidence in this case is strong and consists of eyewitness observations of three police officers, together with other evidence.

3. The evidence shows that the defendant possessed a loaded semi-automatic pistol while on probation for a 1995 drug distribution felony. Police officers observed STROUD distributing crack cocaine, on January 12, 1999. When they told him to halt, STROUD fled into 911 Woodlawn Street and locked the door. Police found a loaded weapon in the room from which he was observed emerging at the time of his arrest. The room was identified as his room.

4. The defendant has not observed the conditions of his pretrial release in this case, specifically, that he remain at home unless specifically authorized by his Pretrial Services Officer. On June 7-8, 1999, the defendant stayed out all night with friends, although he was authorized only to go to work. Defendant has also been unable to maintain a steady residence during the term of his pretrial release.

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

B. Penalties

1. Defendant, STROUD, 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. He faces a maximum of 30 years imprisonment, a \$2,000,000 fine, from 6 years to a lifetime of supervised release and a \$100 special assessment for violation of 21 U.S.C. § 841(a).

2. Based on STROUD’s prior record and the fact that the defendant was on

probation when the offense occurred, the defendant at a minimum faces a guidelines incarceration range of 70-87 months, under U.S.S.G. § 2K2.1(a)(4)¹. 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 a prior conviction for delivery/manufacture/possession with intent to deliver crack cocaine in 1995 in the Philadelphia Court of Common Pleas, at CP #9504-0047, sentence date 10/22/97. He was on probation at the time of his arrest by Philadelphia Police, on January 12, 1999, based on a prior conviction for possession with intent to deliver cocaine. At the time of his arrest of March 29, 1999, STROUD tested positive for marijuana, in violation of the terms of his probation. There is no indication that the defendant has failed to appear as required in the Court of Common Pleas.

D. Ties To The Community

1. The defendant reports he is currently employed as a dishwasher, making \$7/hr.

While STROUD appears to have some family or social ties to the community, these ties, such as they are, 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).

¹ Because defendant used or possessed the firearm in connection with a crack distribution offense, his guideline range will be 57-71 months. USSG 2K2.1(b)(5). USSG 3C1.2 should apply to his conduct for reckless endangerment during flight to avoid arrest, increasing his guidelines range of imprisonment to 70-87 months.

2. Certainly, any ties to the community in this instance have not served to prevent the defendant from endangering the community by possessing a loaded firearm while on probation and dealing crack. Where a defendant has previously violated the terms of his probation 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 a rebuttable presumption in favor of detention in this case. 18 U.S.C. § 3142(e).

II. Conclusions of Law

There is probable cause to believe the defendant was in possession of a loaded semi-automatic pistol while on probation, having been previously convicted of at least 1 felony drug distribution charge. There is probable cause to believe that STROUD distributed crack cocaine. There is more than probable cause to believe that the defendant violated the terms of his pretrial release in this case by staying out all night on June 7-8, 1999 against the permission of his Pretrial Services Officer. The case against the defendant is strong. Whatever the defendant's ties to the community, they have not served to prevent him from breaking the law. The safety of the community is clearly jeopardized by those who deal crack cocaine and possess loaded semi-automatic weapons, not only in violation of the law but in specifically 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, and has violated the terms of his pretrial release. 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 a significant term 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, which is currently scheduled for trial on July 1, 1999.

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:

HON. EDUARDO C. ROBRENO
United States District Judge