

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

UNITED STATES OF AMERICA

v.

WILLIAM LIMPER

**CRIMINAL ACTION
NO. 19-303-1**

MEMORANDUM OPINION

Defendant William Limper asks the Court to review a magistrate judge's denial of his request for pretrial release, pursuant to the Bail Reform Act of 1984, 18 U.S.C. § 3145. For the reasons that follow, Limper's motion will be denied, and the Magistrate Judge's findings of fact and conclusions of law will be affirmed.

I. BACKGROUND

In April 2019, Limper was charged by complaint with one count of possession with intent to distribute a controlled substance (specifically, prescription drugs), in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), and one count of possessing a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1). To substantiate those charges, the government included an affidavit by FBI Special Agent Scott Friedenreich, who had participated in investigating Limper. Following these charges, the government moved to detain Limper pre-trial, and a combined probable cause and pretrial detention hearing was held before a magistrate judge.

During the probable cause portion of the hearing, the government called Friedenreich. He testified (through incorporation of his affidavit) that when officers executed a warrant at Limper's home in April 2019 they found controlled substances in the master bedroom, including Suboxone and Fentanyl as well as "thousands of pills," including Clonazepam, Methylphenidate,

and Methadone; and that officers recovered from the same bedroom a loaded Glock 26 9mm semiautomatic pistol and two magazines inside an unlocked safe the door of which was ajar, as well as “several bundles of United States Currency that included multiples \$100 bills.” Both Limper and his girlfriend were present during the search, and Limper’s girlfriend claimed the gun belonged to her. On cross-examination, the defense elicited testimony that the bedroom where the drugs and the gun were found was shared by Limper and his girlfriend and that the gun in the safe was registered in Limper’s girlfriend’s name. In closing, the defense argued that the gun had no connection to Limper, but the magistrate judge rejected this argument on the basis that it was stored in an unlocked safe in Limper’s bedroom ultimately finding that there was probable cause for the charges against Limper.

During the detention portion of the hearing, the government proceeded by proffer and summarized the facts outlined in its pre-hearing filings which incorporated the testimony detailed in Friedenreich’s affidavit. The government also referenced Limper’s two prior convictions: one state conviction for possessing controlled substances, for which he was serving probation when officers executed the April warrant, and one federal conviction for conspiracy to operate and conduct operations in a chop shop, in violation of 18 U.S.C. § 371, and operation of a chop shop, in violation of 18 U.S.C. § 2322(a)(1). The defense did not object to this presentation; it did, however, highlight that Limper was a substance abuser who needed drug treatment and that he had family members willing to support and supervise him if he were released. Following the parties’ argument, the magistrate judge ordered Limper detained pending trial finding that “[t]he case is appropriate for detention under 18 U.S.C. § 3142(e) because the defendant presents a high risk of flight given the length of imprisonment he faces if convicted, and because the defendant’s charged offense conduct demonstrates that he is a danger to the community,” and “[b]ecause no

condition or combination of conditions will reasonably assure the defendant's appearance as required and/or the safety of the community.”

In April 2019, while still detained pending trial, Limper was indicted by a grand jury on the same charges contained in the complaint. A superseding indictment returned in August added charges of conspiracy to commit pharmacy burglary, in violation of 18 U.S.C. § 2118(d), conspiracy to possess with intent to distribute controlled substances, in violation of 18 U.S.C. § 846, pharmacy burglary, in violation of 18 U.S.C. § 2118(b), attempted pharmacy burglary, in violation of 18 U.S.C. § 2118(b), being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1), and aiding and abetting pharmacy burglary, in violation of 18 U.S.C. § 2, against Limper, and also included charges against two coconspirators. A second superseding indictment returned in November included charges against an additional coconspirator.

Limper now moves for review of the magistrate judge's order and requests release pending trial.

II. DISCUSSION

A defendant who has been detained by a magistrate judge under 18 U.S.C. § 3142 may file “a motion for revocation or amendment of the order” before a district judge in the court “having original jurisdiction over the offense.” 18 U.S.C. § 3145. Review of a magistrate judge's detention order by a district judge is *de novo*. *United States v. Delker*, 757 F.2d 1390, 1394 (3d Cir. 1985). However, if a hearing has been held before the magistrate judge, the district court “need not hear live testimony” to perform its review, *see United States v. Lemos*, 876 F. Supp. 58, 62 (D.N.J. 1995), and the Third Circuit has advised reviewing district courts to consider “a transcript of the hearing before the magistrate . . . in order that the court may, in an

informed exercise of discretion, determine whether additional evidence is desirable,” *Delker*, 757 F.2d at 1395, n.3.

The Bail Reform Act governs “whether and under what circumstances a district court may release a defendant pending trial.” *United States v. Soriano Nunez*, 928 F.3d 240, 244 (3d Cir. 2019). Specifically, it provides that “[i]f, after a hearing . . . the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.” 18 U.S.C. § 3142(e).

Though the government bears the burden of persuasion, *see United States v. Suppa*, 799 F.2d 115, 119 (3d Cir. 1986), where there is probable cause to believe that the defendant committed “an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act,” the Bail Reform Act establishes a presumption “that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community,” 18 U.S.C. § 3142(e)(3)(A).

Here, Limper does not challenge the magistrate judge’s probable cause determination,¹ and he concedes that the presumption that “no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community” applies, as he has been charged with an offense under the Controlled Substances Act (“CSA”) which carries a maximum term of imprisonment of ten years or more.² In determining whether

¹ Additionally, because Limper was charged with these crimes by a grand jury, sufficient evidence exists to establish probable cause that Limper committed an offense under the Controlled Substance Act. *See Suppa*, 799 F.2d 115 (“[A]n indictment is a sufficient substitute for a preliminary hearing to establish probable cause.”). Though the grand jury returned its indictment after the Magistrate Judge ordered Limper’s detention, a district court reviewing a magistrate judge’s probable cause determination may consider a subsequent indictment in making that determination. *See United States v. Covington*, 2014 WL 504880, at *6 n.3 (S.D.W. Va. Feb. 7, 2014).

² Among other charges, Limper has been charged with possession with intent to distribute a controlled substance in violation of 21 U.S.C. § 841(a)(1), (b)(1)(C), which carries a term of imprisonment of “not more than 20 years.”

Limper has rebutted that presumption, the Bail Reform Act directs courts to consider:

- (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, . . . or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;
- (2) the weight of the evidence against the person;
- (3) the history and characteristics of the person, including—
 - (A) the person’s character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
 - (B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and
- (4) the nature and seriousness of the danger to any person or the community that would be posed by the person’s release.

18 U.S.C.A. § 3142(g). In analyzing the Section 3142(g) factors, a court may consider information contained in an indictment, *see United States v. Foy*, 2020 WL 1436969, at *4 (W.D. Pa. Mar. 24, 2020), or affidavit, *see Delker*, 757 F.2d at 1400; the manner and substance of live testimony, *see United States v. Coit*, 2019 WL 7049020, at *2 (E.D. Pa. Dec. 23, 2019); or evidence proffered by either party, *see United States v. Kabbaj*, 2016 WL 11660082, at *10 (E.D. Pa. Sept. 12, 2016).

At the time of his detention hearing, Limper was accused of possession with intent to distribute a controlled substance and of possessing a gun in furtherance of a drug trafficking crime. Limper concedes that he is charged with a crime of violence. Limper argues, however, that this factor should not weigh against him as “there are no allegations that any of the offenses [he] committed . . . involved acts of violence, threats of violence, or that a firearm was used or carried during the commission of any offense.” However, an FBI officer testified that law

enforcement recovered a handgun from an open safe in Limper's bedroom, which was also the room in which quantities of drugs were found, and "possession of a firearm while committing a drug trafficking offense presents a serious potential risk of physical injury to another." *United States v. Wright*, 2014 WL 3440448, at *1 (E.D. Pa. July 15, 2014) (quoting *United States v. Watson*, 650 F.3d 1084, 1093 (8th Cir.2011)). Furthermore, "crimes involv[ing] the possession or use of a destructive device"—regardless of their connection to drugs—create a "strong" against presumption pretrial release. See *United States v. Strong*, 775 F.2d 504, 507 (3d Cir. 1985). This factor therefore weighs in favor of detention.

Here Limper was arrested at the home he shared with his fiancé and nine-year-old daughter; officers recovered "thousands" of pills of prescription drugs from his bedroom; and bundles of cash, as well as a loaded gun, were found in that same bedroom. These facts weigh in favor of a conclusion that Limper possessed controlled substances with intent to distribute them and possessed a firearm in furtherance of a drug trafficking crime. Accordingly, this factor also weighs in favor of detention. See *United States v. Grimes*, 2016 WL 1594838, at *3 (E.D. Pa. Apr. 21, 2016) (finding weight of the evidence for possession with intent to distribute a controlled substance and possession of a firearm in furtherance of a drug trafficking crime where the government seized "substances and a firearm . . . at Defendant's property while he was present").

Finally, Limper's history and characteristics and the nature and seriousness of the danger he would pose to the community if released also weigh in favor of detention. Limper has prior federal and state convictions and was on probation for the state charge when officers searched his home and found the drugs and gun in his bedroom. 18 U.S.C.A. § 3142(g)(B) (directing courts to consider criminal history). Limper also admits to a history of drug abuse. *Id.* at §

3142(g)(A) (directing courts to consider history of drug abuse). While Limper claims that he has been legally employed in the past, there is no indication he was so employed when arrested. *Id.* (directing courts to consider employment). And, while Limper does have a home and support from his family—particularly his fiancé—drugs were recovered from the couple’s shared home. *Id.* (directing courts to consider family ties). As for the danger posed by Limper’s potential release, “[s]everal district courts have found that the combination of guns and drugs constitutes a danger to the community,” and the evidence against Limper suggests that he is comfortable exposing both his community and his own family to this dangerous combination. *United States v. Mosqueda*, 2017 WL 5157847, at *4 (W.D. Pa. Nov. 7, 2017) (collecting cases); *see also Strong*, 775 F.2d at 507 (3d Cir. 1985) (explaining that “[t]he legislative history [of Section 3142] fully supports the conclusion that Congress intended to equate drug trafficking with danger to the community”). These factors therefore weigh in favor of continued detention as well.

Accordingly, Limper has not overcome the presumption for pretrial detention and his request that this Court overrule the Magistrate Judge’s denial of pretrial release will be denied.

An appropriate order follows.

April 10, 2020

BY THE COURT:

/s/ Wendy Beetlestone

WENDY BEETLESTONE, J.

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ORDER

AND NOW, this 10th day of April, 2020, upon consideration of Defendant's Motion for Pretrial Detention Review (ECF 51) and the Government's Response thereto (ECF 54), **IT IS ORDERED** that Defendant's Motion is **DENIED**.

BY THE COURT:

/s/ Wendy Beetlestone

WENDY BEETLESTONE, J.