

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

UNITED STATES OF AMERICA

**CRIMINAL ACTION
NO. 19-303-4**

v.

ROBERT HOPKINS

MEMORANDUM OPINION

Defendant Robert Hopkins asks the Court to release him from federal custody pending trial pursuant to the Bail Reform Act, 18 U.S.C. § 3142(c)(B)(1). For the reasons that follow, Hopkins' motion will be denied.

I. BACKGROUND

In April 2019, Hopkins was arrested and charged by local authorities for attempted pharmacy burglary. In October 2019, federal authorities also charged Hopkins in connection with the April burglary. During his initial appearance in federal court, Hopkins stipulated before a magistrate judge that there was probable cause for the charged offense. He also stipulated to pretrial detention, and the Magistrate Judge issued a detention order. Then, in November, Hopkins was indicted by a grand jury with conspiracy to commit pharmacy burglary, in violation of 18 U.S.C. § 2118(d), conspiracy to possess with intent to distribute controlled substances, 21 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), and attempted possession with intent to distribute controlled substances, in violation of 21 U.S.C. § 841(a)(1). At the arraignment following the addition of these charges, Hopkins again stipulated to pretrial detention.

Hopkins is currently incarcerated in the Federal Detention Center ("FDC") in Philadelphia, but is seeking release pending trial in consideration of the COVID-19 pandemic.

Specifically, Hopkins asks to be allowed to reside with his mother in the Kensington section of Philadelphia.

II. DISCUSSION

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 if “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.A. § 3142.

A defendant who has been detained by a magistrate judge under 18 U.S.C.A. § 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.A. § 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). When a defendant stipulates to pretrial detention but subsequently motions for pretrial release, such motion is construed as a request for review of the magistrate judge’s detention order. *See, e.g., United States v. Calderon*, 2010 WL 4237967, at *2 (E.D. Pa. Oct. 26, 2010). Here, because Hopkins stipulated to pretrial detention before the magistrate judge, his motion is so construed. *See id.*

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,” (“CSA”), 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.A. § 3142(e)(3)(A). Here, among other charges,

Hopkins has been charged with possession with intent to distribute a controlled substance in violation of 21 U.S.C. § 841(a)(1), which carries a term of imprisonment of “not more than 20 years.” Hopkins does not contest that there is probable cause to support this charge, or the other charges in the indictment. The existence of probable cause is further supported by the indictment itself. *See United States v. Suppa*, 799 F.2d 115, 115 (3rd Cir. 1986), (“[A]n indictment is a sufficient substitute for a preliminary hearing to establish probable cause.”). Because sufficient evidence exists to establish probable cause that Hopkins committed an offense under the CSA, the presumption in favor of detention applies. *See United States v. Grimes*, 2016 WL 1594838, at *2 (E.D. Pa. Apr. 21, 2016).

In determining whether Hopkins has rebutted the presumption favoring detention, the Court considers

- (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).

Rather than addressing the above-applied factors outlined in Section 3142(g) to rebut the presumption in favor of detention, however, Hopkins argues that release is justified by the possibility of COVID-19 spreading in the FDC. Hopkins characterizes the current situation as “exigent” and argues that “it is more than possible that the pandemic could rapidly spiral out of control in a correctional atmosphere, producing far greater numbers of the ill and the dying than prison administration and medical personnel can handle.” Hopkins does not, however, identify any portion of the Bail Reform Act, any interpretive commentary, or any cases which direct a court to consider “exigent circumstances” as a factor favoring pretrial release under that statute. While COVID-19 presents “risks” to inmates—as it currently does to everyone in the world, as that is the nature of a pandemic—“the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify” release independent from statutory considerations, “especially considering the [Bureau of Prison’s (“BOP”)] statutory role, and its extensive and professional efforts to curtail the virus’s spread.” *United States v. Raia*, 2020 WL 1647922, at *2 (3d Cir. Apr. 2, 2020); *see also United States v. Roeder*, 2020 WL 1545872, at *3 (3d Cir. Apr. 1, 2020) (“[T]he existence of some health risk to every federal prisoner as the result of this global pandemic does not, without more, provide the sole basis for granting release to each and every prisoner within our Circuit.”). Furthermore, as of the filing of Hopkins’s motion, there have been no reported cases of COVID-19 in the FDC, and the BOP has instituted strict containment measures at the FDC, such as mandatory quarantine, regular health

checks, limits on inmate movement, and limitations on entry by outside individuals. *See* https://www.bop.gov/resources/news/20200313_covid-19.jsp. By contrast, the city of Philadelphia to which Hopkins seeks to be released has over 9,553 confirmed cases of COVID-19 and 370 deaths of COVID patients and rising as of the writing of this opinion.¹ *See* www.phila.gov/programs/coronavirus-disease-2019-covid-19/.

Turning now to the Section 3142(g) factors which a reviewing district court must consider, Hopkins is indicted for numerous serious crimes, including two controlled substance offenses—conspiracy to possess with intent to distribute controlled substances, and attempted possession with intent to distribute controlled substances. This factor therefore weighs in favor of detention. *See* 18 U.S.C.A. § 3142(g)(1) (directing courts to consider whether charged conduct a “involve[d] a . . . controlled substance”); *see also United States v. Garcia*, 2007 WL 2825724, at *3 (E.D. Pa. Sept. 20, 2007) (finding that “the fact that the offense involves a controlled substance weighs heavily in favor of detention”).

As for the weight of the evidence against Hopkins, he conceded probable cause for the attempted pharmacy burglary charges. The affidavit testimony of FBI Special Agent Scott Friedenreich further provides evidence for that charge and the other charges contained in the indictment. Friedenreich testified that, in April 2019, officers observed Hopkins and another man outside a Delaware County pharmacy they believed was being targeted for a burglary. He further testified that when the officers approached the men, they ran, and, that following a chase, officers apprehended Hopkins two blocks from the pharmacy with a pair of gloves, a ski mask and a flashlight.

Finally, Hopkins’s history and characteristics and the nature and seriousness of the

¹ “[A] court may, in certain circumstances, . . . take judicial notice of information ‘in the public realm,’ such as news reports, relating to a particular issue in a case.” *Mollett v. Leith*, 2011 WL 5407359, at *3 (W.D. Pa. Nov. 8, 2011), *aff’d sub nom. Mollett v. Leith*, 511 F. App’x 172 (3d Cir. 2013).

danger he would pose to the community if released also weigh in favor of detention. Hopkins has a prior felony for receiving stolen property, and was in fact serving a sentence of probation when he was arrested in connection with the April burglary. As for the danger posed by Hopkins's potential release, several district courts have found that drug trafficking crimes present a danger to the community sufficient to justify pretrial detention. *See United States v. Akins*, 2016 WL 1322323, at *4 n.2 (W.D. Pa. Apr. 5, 2016) (collecting cases). These factors therefore weigh in favor of continued detention as well.

Because Hopkins has not presented evidence to overcome the presumption in favor of pretrial detention, Hopkins motion for pretrial release must be denied and the Magistrate Judge's order remains in place.

An appropriate order follows.

April 21, 2020

BY THE COURT:

/s/ Wendy Beetlestone

WENDY BEETLESTONE, J.

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ORDER

AND NOW, this 21st day of April, 2020, upon consideration of Defendant's First Motion for Release from Custody Based on Exigent Circumstances (ECF 52), the Government's Response thereto (ECF 55), and Defendant's Reply and Further Reply (ECF 56 and 59), **IT IS ORDERED** that Defendant's motion is **DENIED**.

BY THE COURT:

/s/ Wendy Beetlestone

WENDY BEETLESTONE, J.