

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

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

PRETRIAL DETENTION ORDER

AND NOW, this day of April, 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) that 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).

I. Findings of Fact

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 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 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 no rebuttable presumption in favor of detention in this case.

II. Conclusions of Law

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.

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:

UNITED STATES MAGISTRATE JUDGE