

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

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	NO. 04-680
	:	
TYRONE SMITH	:	

MEMORANDUM

DUBOIS, J.

OCTOBER 29, 2004

I. BACKGROUND

Presently before the Court is Defendant's Motion to Review Previously Entered Detention Order. The detention was ordered by United States Magistrate Judge Diane M. Welsh on September 27, 2004.

On October 29, 2004, this Court conducted a hearing on defendant's Motion. At the hearing, the transcript of the September 27, 2004 hearing before Magistrate Judge Diane M. Welsh was admitted to evidence and additional evidence was received.

II. STANDARD OF REVIEW / GOVERNMENT'S BURDEN

This Court has jurisdiction to review the Magistrate Judge's decision under 18 U.S.C. § 3145(b). That section requires this Court to make a de novo determination of the Findings of Fact underlying the detention order. United States v. Delker, 757 F.2d 1390, 1394 (3d Cir. 1985). However, the reasons articulated by the Magistrate Judge must be given "respectful consideration". United States v. Suppa, 799 F.2d 115, 120 (3d Cir. 1986). The transcript of the hearing before the Magistrate Judge may also be admitted into evidence in the hearing before the District Court. See United States v. Allen, 605 F.Supp. 864 (W.D. Pa. 1985).

At the hearing in this Court on October 29, 2004, the transcript of the September 27, 2004

hearing before Magistrate Judge Diane M. Welsh was admitted to evidence and additional evidence was received.

The Government's burden in demonstrating risk of flight justifying pretrial detention is the preponderance of the evidence standard. United States v. Himler, 797 F.2d. 156, 161 (3d Cir. 1986). The Government's burden in demonstrating danger to the community justifying pretrial detention is the clear and convincing standard. Id. at 160. Because there is probable cause to believe that defendant committed an offense for which a maximum term of imprisonment of more than ten (10) years is proscribed by the Controlled Substances Act, 21 U.S.C. § 801 et seq., and an offense under 18 U.S.C. § 924(c), there is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of defendant as required and the safety of the community. 18 U.S.C. § 3142(e).

III. FINDINGS OF FACT

This Court makes the following Findings of Fact with respect to pretrial detention. Some of the Findings of Fact were made by Magistrate Judge Diane M. Welsh and are adopted by this Court¹.

1. On October 20, 2004 a Grand Jury in this District returned an Indictment charging defendant, Tyrone Smith, with the following crimes: Count One - possession of approximately 1,547 grams of cocaine on or about September 9, 2004 in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B); Count Two - possession of approximately 1,547 grams of cocaine on or about September 9, 2004 within 1,000 feet of a school, the Mary Bethune School located at 3301 Old York Road, Philadelphia, Pennsylvania, in violation of 21 U.S.C. §§ 841(a)(1) and 860(a); Count

¹This Court adopts all of the Findings of Fact made by Magistrate Judge Diane M. Welsh on September 27, 2004, to the extent that they are not inconsistent with this Memorandum.

Three - possession with intent to distribute approximately 582 grams of cocaine base (“crack”) on or about September 9, 2004 in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A); Count Four - possession with intent to distribute approximately 582 grams of cocaine on or about September 9, 2004 within 1,000 feet of a school, the Mary Bethune School located at 3301 Old York Road, Philadelphia, Pennsylvania, in violation of 21 U.S.C. §§ 841(a)(1) and 860(a); Count Five - possession of a loaded Star 9mm semiautomatic pistol in furtherance of a drug trafficking crime on or about September 9, 2004 in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 924(c)(1). The Indictment also included Notice of Additional Factors. There is probable cause to believe that defendant committed the crimes charged in the Indictment.

2. If convicted on all offenses in the Indictment, defendant faces a maximum penalty of life imprisonment with a mandatory minimum sentence of ten years imprisonment on the drug charges and a mandatory consecutive five year sentence on the firearms charge. The Government has estimated the guideline sentencing range at 235-293 months imprisonment on the drug charges with a consecutive 60-month sentence on the firearms charge, for a total sentencing range of 295-353 months.

3. The evidence against defendant is strong and includes defendant’s confession to the crimes charged in the Indictment.

4. The Government’s evidence is as follows: on September 10, 2004, at approximately 6:00 a.m., a Pennsylvania search warrant was executed by the Pennsylvania State Police, assisted by agents of the Drug Enforcement Agency, at a house located at 3335 Goodman Street, Philadelphia, Pennsylvania. Among the items seized from the house during the search were: approximately 2.2 kilograms of cocaine; approximately thirty used kilogram wrappers containing

suspected cocaine residue; one Star 9mm semiautomatic handgun, serial number 2147819, with two magazines and six rounds of 9mm ammunition; two automated currency counters; photographs of defendant; two digital scales; three bottles and one plastic bag of inositol - a cutting agent - and approximately \$212,168 in United States currency. Between August 16 and September 9, 2004 defendant had been observed by law enforcement officers entering and exiting 3335 Goodman Street on several occasions.

5. Defendant attempted to avoid apprehension when Pennsylvania State Troopers and DEA Agents attempted to arrest him on September 9, 2004 in University City. When police vehicles attempted to stop defendant as he drove a Nissan Quest, defendant drove on to a city sidewalk and down the sidewalk as he fled the police. He was chased to Southwest Philadelphia where he abandoned the Quest and was driven away by an associate. Defendant then fled to his mother's house in Sharon Hill, Pennsylvania. When agents attempted to arrest him there, he ran from the house, through another house, and into to a third house, where he was eventually found hiding. Along the way, he discarded a bag containing approximately twenty pounds of marijuana.

6. The Nissan Quest driven by defendant was searched by law enforcement agents. Inside a motorized hidden compartment in the Quest the agents found approximately \$24,000 in cash.

7. On September 5, 2004 the investigating agents watched defendant load a suitcase and a smaller bag into a BMW that was later driven by defendant on to a car transport. The BMW was later searched by law enforcement agents. Inside the suitcase agents found approximately \$995,000 in cash. Inside the smaller bag agents found approximately \$200,000 in cash.

8. The total amount of money confiscated from the Goodman Street house, the BMW and the Quest, cash known to be under defendant's control in the five days from September 5 to September 10, 2004, was over \$1.4 million.

9. Defendant has ties to California (the BMW was being shipped to California at the time it was seized) and to Mexican citizens.

IV. STATEMENT OF REASONS FOR DETENTION

Defendant demonstrated a propensity to flee from the authorities on two occasions. He has incentive to flee in view of the substantial penalties that he faces if convicted. Defendant also has the financial ability to flee as demonstrated by the amount of money found in his possession - in excess of \$1.4 million. Under these circumstances, the Court concludes that the Government has met its burden of proving by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the presence of the defendant as required.

The Government has also presented evidence of defendant's involvement in large scale drug trafficking and defendant's possession of a weapon in connection with that drug trafficking. Based on that evidence the Court concludes that the Government has met its burden of proving by clear and convincing evidence that no condition or combination of conditions will reasonably insure the safety of the community.

In reaching these conclusions the Court notes that because there is probable cause to believe defendant committed an offense for which a maximum term of imprisonment of more than ten years is prescribed in the Controlled Substances Act, 21 U.S.C. § 801 et seq., and an offense under 18 U.S.C. § 924(c), there is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of defendant as required and the safety of the community. 18 U.S.C. § 3142(e). Defendant's evidence - his strong family ties to

the Philadelphia, Pennsylvania area and the fact that members of his family and/or friends are willing to post property as security for his bail - is insufficient to overcome this presumption.

An appropriate order follows:

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PRETRIAL DETENTION ORDER

AND NOW, this 29th day of October, 2004, upon consideration of Defendant's Motion to Review Previously Entered Detention Order (Document No. 10, filed October 6, 2004), and the related submissions of the parties, following an evidentiary hearing on October 29, 2004, for the reasons set forth in the attached Memorandum, and good cause appearing, **IT IS ORDERED** that Defendant's Motion to Review Previously Entered Detention Order is **DENIED** on the ground that, pursuant to 18 U.S.C. § 3142 (e) and (f), (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; and, (b) 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.

IT IS FURTHER ORDERED that defendant, Tyrone Smith, 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.

BY THE COURT:

JAN E. DUBOIS, J.