

Facts

Based on the evidence proffered² by the parties at the hearing conducted before me on September 13, 2007, I find the pertinent facts to be as follows.

On September 5, 2007, a federal grand jury charged defendant James Garcia in a one-count Indictment. The Indictment charged possession with intent to distribute 500 grams or more of cocaine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B).

This charge stemmed from an apparent home invasion and double shooting on July 26, 2007, at defendant's residence at 1026 Wyandotte Street, Bethlehem, Pennsylvania, which is within this federal judicial district. During the incident, Daniel Rivera was shot and killed.³ Defendant sustained a gunshot wound and was taken to the hospital, where he was treated and released.

Upon search of the residence owned by defendant, Bethlehem Police Department officers and agents of the United

² The Bail Reform Act of 1984 provides that at a bail hearing, defendant "shall be afforded an opportunity to testify, to present witnesses on his own behalf, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise." 18 U.S.C. § 3142(f) (emphasis added).

The parties did not call witnesses but, by agreement, both parties presented their cases at the hearing by proffer. Specifically, the parties summarized the proposed testimony of Task Force Officer Michael Mish and referred the court to the transcript of proceedings before Magistrate Judge Rapoport on August 20, 2007.

³ The record is unclear concerning the nature of the relationship between defendant and Daniel Rivera. The government proffer did not address it. Defense counsel in his proffer described Mr. Rivera as a "friend" of defendant. In Defendant's Memorandum in Support of Motion for Pre-Trial Release, defense counsel refers to "Danny Rivera" as defendant's "long-time friend". Defendant's Memorandum, page 5.

States Drug Enforcement Administration ("DEA"), recovered a large clear plastic bag containing 722 grams of powder cocaine. The bag was located on a chair in defendant's office inside the home. This quantity of cocaine would sell for in excess of \$25,000 in retail street sales.

The Bethlehem Police and the DEA also recovered a safe in Mr. Garcia's home office. The safe contained \$140,000 in United States currency, consisting entirely of \$100.00 bills. An additional \$30,000 in \$100 bills was recovered, part of which was on a second-floor windowsill, and the remainder was on the ground outside the residence.

DEA agents also recovered two digital scales; documents bearing defendant's name, including tax records, income records and pay stubs reflecting a modest income; four boxes of .9 mm ammunition; an empty pistol holster; and a box of plastic sandwich bags, of the type used to package cocaine for distribution.

A state police records check disclosed that a Ruger .9 mm pistol is registered to defendant. The pistol was not found. Defendant was present inside his residence immediately before the home was secured and searched by the police.

On August 15, 2007, defendant was arrested on a criminal Complaint. In the 20-day period between the search and

arrest, defendant canceled plans for a trip to Las Vegas and remained in the area.

Defendant is a lifelong resident of the Bethlehem, Pennsylvania area and a graduate of Freedom High School in Bethlehem. He owns a construction business, and has no criminal record. His two children, aged 11 and 15, attend local schools. Shortly after the July 26, 2007 incident, defendant placed his Bethlehem home on the market for sale.

On August 20, 2007, a pretrial detention hearing was conducted before United States Magistrate Judge Arnold C. Rapoport. After the hearing, Magistrate Judge Rapoport issued an Order concluding that defendant failed to rebut the presumption, based on the charges in the Complaint, that he was both a danger to the community and a risk of flight. See 18 U.S.C. § 3142(e).

Furthermore, Judge Rapoport found by a preponderance of the evidence that no condition or combination of conditions would reasonably assure the appearance of defendant. In addition, Judge Rapoport found by clear and convincing evidence that no condition or combination of conditions would reasonably assure the safety of other persons and of the community. Thus, Judge Rapoport ordered that defendant be detained without bail prior to trial pursuant to 18 U.S.C. § 3142(e).

Discussion

My review of a Magistrate Judge's pretrial detention determination is de novo. United States v. Delker, 757 F.2d 1390, 1395 (3d Cir. 1985).

The issue of pretrial detention is governed by the Bail Reform Act, 18 U.S.C. § 3142. The Act provides, in part:

If, after a hearing pursuant to the provisions of subsection (f) of this section, 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).

Where there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-971), there is a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of any other person and the community. 18 U.S.C. §§ 3142(e)(1) and (f)(1)(C).

Here, there is probable cause to believe that defendant has violated provisions of the Controlled Substances Act, specifically 21 U.S.C. § 841(a)(1) and (b)(1)(B), by possessing with intent to distribute 500 grams or more of cocaine. This offense carries a maximum penalty of 40 years of imprisonment. Therefore, the rebuttable presumption arises, pursuant to

18 U.S.C. § 3142(e)(1), that no condition or combination of conditions will reasonably assure the safety of any other person and the community.

Accordingly, I must review the factors enumerated in 18 U.S.C. § 3142(g) to determine whether defendant has rebutted the presumption. These factors include:

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a Federal crime of terrorism, 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 of an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person in the community that would be posed by the person's release....

18 U.S.C. § 3142(g).

In applying the factors outlined above, as more fully discussed below, I find that the statutory factors weigh heavily in favor of detention, particularly the nature and circumstances

of the offense charged, the weight of the evidence against defendant, and the nature and seriousness of the danger to any person or the community that would be posed by defendant's release.

Defendant's ties to the community appear to be strong, and defendant apparently does not have a criminal record. Those factors weigh in favor of pre-trial release. However, I conclude that those factors are insufficient to outweigh the other factors.

First, with regard to the nature and circumstances of the arrest charged, the fact that the offense involves a controlled substance weighs heavily in favor of detention. The government has charged defendant with the serious crime of possession with intent to distribute 500 grams or more of cocaine.

The large quantity of cocaine found in defendant's home, combined with the two digital scales, plastic sandwich bags, and large quantity of cash - \$170,000 in \$100 denominations - is indicative of intent to distribute the cocaine by sale. Moreover, the amount of cocaine seized would garner over \$25,000 if sold in street quantities.

The seriousness of this offense is further reflected in its maximum penalty of 40 years imprisonment and a \$2 million fine. The severity of the potential punishment presents defendant

with an incentive to flee. In addition, it is apparent that defendant has access to large quantities of cash.⁴ Accordingly, I find that the nature and seriousness of the offense weigh in favor of detention.

Similarly, the weight of the evidence against defendant strongly favors detention. Defendant was at his residence immediately prior to the police search. The seizure of a large quantity of cocaine, combined with the scales, sandwich bags, and cash, establishes probable cause for the charge filed.

Moreover, police found a pistol holder and four boxes of .9 mm pistol ammunition consistent with the Ruger .9 mm pistol registered to defendant, which was not found in the house. Given that large-scale drug traffickers commonly possess and maintain firearms to defend their product and cash, the presence of ammunition and a missing firearm registered to defendant, all provide strong evidence against defendant, thereby weighing in favor of pre-trial detention.

That defendant has no criminal history, has strong ties to the community, and did not flee prior to his arrest are facts which weigh in his favor. He is a lifelong resident of Bethlehem and a graduate of Freedom High School, and his children attend

⁴ The fact that defendant remained in the area during the time between the July 26, 2007 incident and his arrest on August 15, 2007, despite his plans to go to Las Vegas, weighs in defendant's favor. Nevertheless, I conclude that this factor is outweighed by the seriousness of the offense, the potential punishment which defendant is facing, and the other factors weighing in favor of pre-trial detention.

local schools. He owns a construction business and the financial records found in his home reflect a modest income.

Although he owns his home at 1026 Wyandotte Street in Bethlehem, defendant placed that house up for sale shortly after the incident. While defendant proffered evidence that 200 members of his community had signed a petition in support of his release pending trial, suggesting that his ties to the community are strong, this does not outweigh the other factors in favor of pre-trial detention.

The United States Court of Appeals for the Third Circuit has found community ties to be "of limited weight" in the context of a case where other factors weigh heavily in favor of pretrial detention. Delker, 757 F.2d at 1396. Thus, although it appears that defendant has ties to the community, this factor does not outweigh the other factors in favor of pre-trial detention.

Finally, the strongest factor weighing in favor of pre-trial detention is the danger to both defendant and the community if the defendant were to be released pending trial. A situation involving a large quantity of drugs is inherently dangerous, as evidenced by the apparent home invasion and double shooting which led to the search of defendant's home and his eventual arrest.

Defendant is charged with possession with the intent to distribute a large quantity of cocaine, which is an inherently

dangerous activity. He has already been the victim of a violent home invasion resulting in the shooting death of one person and injury to defendant. Defendant's children, age 11 and 15, were home at the time of the shooting. The shooters have not been apprehended, giving rise to the risk that such an invasion could occur again, endangering both defendant and his family.

Moreover, there is a risk that defendant may himself seek retribution against the perpetrators. The fact that he owns a firearm⁵ heightens the risk of a violent encounter.

Thus, given the inherent danger involved in drug distribution, the fact that defendant has already been the victim of a shooting in his home, and the fact that he may have access to a pistol registered to him, I find these factors to strongly weigh in favor of pre-trial detention.

Conclusion

For all the forgoing reasons, I find that defendant's proffered evidence does not rebut the presumption against his release. Specifically, I conclude that defendant's community ties and lack of a criminal record do not outweigh the seriousness of the offense charged, the weight of the evidence against defendant, and the serious risk of danger to defendant, his family, and the community if he were to be released pending

⁵ While the pistol itself may no longer be in defendant's home, it is not unlikely that it would be within his command and control should he be released, particularly in the absence of any evidence that he no longer owns the weapon.

trial. Accordingly, I deny defendant's motion for revocation or amendment of the Magistrate Judge's Pretrial Detention Order.

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

UNITED STATES OF AMERICA,)	
)	Criminal Action
)	No. 07-CR-00529
vs.)	
)	
JAMES GARCIA,)	
)	
Defendant)	

O R D E R

NOW, this 20th day of September, 2007, upon consideration of Defendant's Motion for Review of Pretrial Detention Order, which motion was filed August 30, 2007, together with Defendant's Memorandum in Support of Motion for Pre-Trial Release; upon consideration of the Government's Response to Motion for Review of Pretrial Detention Order, which response was filed September 6, 2007; after hearing held September 13, 2007; and for the reasons articulated in the accompanying Memorandum,

IT IS ORDERED that defendant's motion is denied.

BY THE COURT:

James Knoll Gardner
United States District Judge