

3/22/05

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	Criminal No. 05-66
	:	
v.	:	
	:	
WALTER ANDERSON,	:	
	:	
aka Mark Roth,	:	
	:	
Defendant.	:	

GOVERNMENT’S OPPOSITION TO DEFENDANT’S MOTION FOR RECONSIDERATION OF DEFENDANT’S MOTION FOR CONDITIONS OF RELEASE

The United States, through its attorney, the United States Attorney for the District of Columbia, respectfully opposes the defendant's motion to reconsider pre-trial detention. The Government asserts the following in support of this opposition:

1. On February 28, 2005, the government requested that defendant be detained pending trial, pursuant to 18 U.S.C. Section 3142. In support of its request, the government submitted 84 exhibits into evidence. On March 2, 2005, defendant filed a motion in opposition, which included 15 exhibits and several letters relating to defendant’s “good” character. On March 3, 2005, the government proffered additional exhibits in support of its motion. After hearing from defendant’s counsel and defendant, Magistrate Judge Alan Kay agreed that the government had proved by a preponderance of the evidence that defendant has “the means and interest in avoiding trial in this case.” Several days later, Magistrate Judge Kay issued written findings in accordance with the provisions of the Bail Reform Act.

2. On March 10, 2005, defendant, represented by new counsel, filed a motion seeking

that this Court impose conditions of release. In support of this motion, defendant submitted five exhibits, four of which were documents already in the Court's file. Exhibit 4 was the only evidentiary exhibit, which is a compilation of release decisions by various courts for defendants who were similarly charged with white collar offenses. The following day, a hearing was held before this Court at which time defendant's counsel was given ample opportunity to present evidence and argue for defendant's release. No additional evidentiary exhibits were offered by defendant. The government proffered additional exhibits in support of its request.

3. On March 11, 2005, defendant submitted a proposed order of release, listing numerous conditions that the Court could impose to assure his presence at trial.

4. On March 16, 2005, this Court issued an Order, finding "by a preponderance of the evidence that there is no condition or combination of conditions that will reasonably assure the appearance of the defendant as required by this Court." In its Order, the Judge specifically addressed those conditions suggested by defendant as being inadequate to assure defendant's appearance at trial. During a hearing later that day, defendant's counsel advised the Court that it intended to seek reconsideration.

5. On March 21, 2005, the government received defendant's motion for reconsideration. Defendant has offered no new evidence regarding the Court's earlier ruling. See 18 U.S.C. Section 3142(f) (2) ("The hearing may be reopened . . . if the judicial officer finds that information exists that was not known to the movant at the time of the hearing"). Defendant has merely proposed home detention as an additional condition of release. The facts justifying detention have not changed since the defendant's arrest. The defense request for release gains no greater force of persuasion merely from repetition. On two previous occasions, the record

demonstrates that there have been judicial determinations supporting pretrial detention on the ground that defendant poses a significant risk of flight. Defendant has raised no new facts warranting a reconsideration of the Court's order detaining him without bail prior to his trial. Simply put, defendant remains an extreme flight risk.

6. Locking defendant in his home with armed guards, even if ordered in conjunction with defendant's use of a monitoring device, does not prevent flight. The Court has no control over the proposed security firm. Moreover, even if the monitoring device proposed by defendant serves as a tracking device, it can be disarmed. Given defendant's technological knowledge, if he wanted to flee, he would find a way. Continued detention provides the Government its best assurance that defendant will appear at trial.¹

7. Defendant claims again that his right to effective assistance of counsel is being denied by his continued detention. This is not one of the enumerated factors to be considered in the Court's detention determination. See United States v. Tortora, 922 F.2d 880 (1st Cir. 1990) (court refused to entertain claim that continued detention would hamper defense); United States v. Quatermaine, 913 F.2d 910 (11th Cir. 1990) (length of pretrial delay is not appropriate factor to release defendant, "for whom pretrial detention is otherwise appropriate"); United States v. Parker, 848 F.2d 61 (5th Cir. 1988) (detained defendant not denied effective assistance of counsel even where access to attorney is limited). If defendant and his counsel are having difficulty

¹ Defendant has not provided this Court with any assurances that the system can be erected and maintained throughout the pretrial period. No plans or estimated costs were included in his motion. Defendant asserted without proof that his friends and family members intended to cover the costs. If the Court is inclined to entertain his motion, defendant should be required to provide more detail and the government should be given an opportunity to examine his evidence.

preparing for trial, defendant's release is not the solution. Defendant can request the Court to fashion an order regarding access to counsel and materials necessary for trial preparation trial.²

WHEREFORE, the Government requests this Court to deny the motion to reconsider pretrial detention.

Respectfully submitted,

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² Defendant has stated in his Motion that the government has informed him that the 95 boxes of search records "can neither be imaged nor copied." This is not true. The government has informed defense counsel that the government does not have the resources to image or copy these records. The government has assured defense counsel that he will have the opportunity to make copies if he chooses. Furthermore, defendant has had the opportunity since these records were seized to review and make copies of these records. Upon request, the government has even made copies for him.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this pleading to Abbe David Lowell, Esquire by facsimile (202) 974-5602 and mail to Chadbourne & Park LLP, 1200 New Hampshire Avenue, N.W., Washington, D.C. 20036, this 22nd day of March, 2005.

SUSAN B. MENZER
ASSISTANT UNITED STATES ATTORNEY