

United States v. Mark Thomas Reno – 3:22-MJ-2126-JEM
Part II— Supplemental Statement of the Reasons for Detention

The Court has considered the proffers, exhibits [Exhs. 1–43], and arguments presented at the detention hearing, as well as the Amended Pretrial Services Report (“PSR”) prepared by the United States Probation Office [Exh. 44, SEALED]. The United States Probation Office recommends that Defendant be detained. In consideration of releasing Defendant pending trial, the Court has weighed the factors set forth in 18 U.S.C. § 3142(g) and finds that the proffers, evidence, and arguments presented at the detention hearing, establish by clear and convincing evidence that Defendant is a danger to the community and by a preponderance of the evidence that he is a serious flight risk, for the reasons set forth below.

As an initial matter, the Government argued that the charged offense gives rise to 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 because there is probable cause to believe that Defendant committed an offense listed in § 2332b(g)(5)(B). *See* 18 U.S.C. § 3142(e)(3)(C). Defendant asserted through counsel that the rebuttable presumption has not been established, but even it were established, Defendant rebutted it. The Court makes no determination as to whether the presumption applies in this case because, after considering the § 3142(g) factors, the Court finds that even without the presumption, the Government has carried its burden to prove by clear and convincing evidence that Defendant is a danger to the community and by a preponderance of the evidence that he is a serious risk of flight. The Court further finds that there are no conditions or a combination of conditions that will reasonably assure the appearance of Defendant as required and the safety of the community and of any other person.

Turning to the § 3142(g) factors, the Court first considers the nature and circumstances of the charged offense, including “whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device.” 18 U.S.C. § 3142(g)(1). Defendant is charged in a Criminal Complaint [Doc. 1] with Destruction of Government Property in violation of 18 U.S.C. § 1361. Title 18, United States Code, Section 2332b(g)(5), defines “Federal crime of terrorism” as an offense that “is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct” and is included in an enumerated list of statutes, which includes § 1361. *See* 18 U.S.C. §§ 2332b(g)(5)(A)–(B). Even if the charged offense does not fall within this definition, the Court finds the charged offense does involve a firearm or some other destructive device used to damage the John J. Duncan Federal Office Building (“Duncan Building”).

As for other circumstances of the charged offense, the Government summarized the Affidavit in Support of the Criminal Complaint, explaining that, on July 3, 2022, Defendant’s vehicle was observed by a license-plate reader headed toward downtown Knoxville, Tennessee. Ten minutes later, his vehicle was near the Bank of America building on West Main Street. About six minutes later, his vehicle was in the proximity of the Federal courthouse before Defendant left the area and went to a church. At around 1:43 p.m., two hours later, Defendant was back in downtown Knoxville in the vicinity of West Church and Locust Streets. Two minutes later, the vehicle was seen adjacent to the Duncan Building, and at that time, someone fired several rounds

into the building shattering three window panes, although the projectile did not break through both panes of the double-paned windows. Thereafter, Defendant's vehicle accelerated toward Cumberland Avenue, and turned left, the wrong way on a one way street, onto Cumberland Avenue. Defendant's vehicle circled the Duncan Building again and then headed back to his residence. The Duncan Building is an active building and houses the IRS, ATF, and United States Secret Service. While not greatly populated at the time, it was not vacant. A FPS Officer was present to protect the building. The resulting damage to the building exceeds \$5,000.

While defense counsel submitted that Defendant could serve only probation for the charged offense, the Government proffered that Defendant is potentially facing a lengthy term of incarceration—up to ten years' imprisonment—if convicted of this offense, and furthermore, the Government believes it is likely he will face a terrorism-related sentencing enhancement that would result in a Sentencing Guidelines range of 210 to 262 months, which is beyond the statutory maximum of ten years' imprisonment. Defendant is 63 years old, and such a lengthy sentence could result in him being incarcerated for the remainder of his life. The Court notes that Defendant is presumed innocent and acknowledges that this matter is still in its beginning stages, that the Government's estimated Guidelines range is speculative, and that the Guidelines are ultimately advisory; however, the Court finds that the nature and circumstances of the charged offense indicate Defendant poses a danger and potential flight risk. 18 U.S.C. § 3142(g)(1).

Second, the Court considers the weight of the evidence of Defendant's dangerousness. 18 U.S.C. § 3142(g)(2). In *United States v. Stone*, the Sixth Circuit clarified that the weight of the evidence against the defendant "goes to the weight of the evidence of dangerousness, not the weight of the evidence of the defendant's guilt." 608 F.3d 939, 948 (6th Cir. 2010). The Government introduced photographic evidence of items seized from Defendant's home and vehicles following a search. During that search, investigators seized materials for making improvised explosive or other destructive devices, a wide assortment of firearms and ammunition (although the Court notes the Government has not asserted that Defendant is a prohibited person), and a book and military training manuals that describe how to construct explosive or other destructive devices, which by their appearance show that they had been read and marked. The Government also stated it has discovered Defendant had used his phone to search for instructions on how to assemble explosive and other destructive devices, information on firearms and ammunition, and locations of federal buildings in this District. Further, the Government introduced an audio recording from April 26, 2022, in which Defendant made a number of statements about identifying potential targets and destroying property, including government buildings. Considering all of this, as well as Defendant's criminal history discussed below, the Court finds the weight of the evidence of Defendant's dangerousness weighs in favor of detention.

Third, the Court must consider a host of factors relating to Defendant's history and characteristics. 18 U.S.C. § 3142(g)(3)(A). Defendant is a 63-year-old man who has resided in Tennessee since moving to this District approximately two years ago. Defendant and his wife have been married for roughly 34 years, and the two have a home in Jefferson City that is mortgaged in both of their names. Defendant's daughter and son-in-law, some of his grandchildren, and one of his siblings also reside in this District. Defendant has considerable family and community support, as his wife, daughter, two of his three grandchildren, a cousin, and his son-in-law all appeared at the detention hearing to support him.

Defendant had a strong work history prior to retiring in 2017 and becoming disabled in 2018, and he currently receives disability income. Defendant denies any history of mental health issues or emotional problems, but he does suffer from various physical health issues for which he takes medication. He is also a user of marijuana, as he uses the substance to help manage his pain. He denies any other substance abuse history, although he heavily drank alcohol in the past, and he has never participated in substance abuse treatment.

Defendant's criminal history is not particularly lengthy and is somewhat dated, but it does demonstrate a propensity towards domestic violence. Defendant has a prior charge for domestic violence and three charges of battery against a member of his household, including at least one involving his wife. Although the Court affords these lesser weight than convictions, it finds they illustrate Defendant's dangerousness to others, particularly family members, and notes that, even though the charges were dismissed, Defendant admitted to engaging in violent conduct. *See United States v. Tolbert*, Nos. 3:09-CR-56-TAV-HBG & 3:10-CR-30-TAV-HBG, 2017 WL 6003075, at *4 (E.D. Tenn. Dec. 4, 2017) (holding that "the court may consider both actual convictions and mere arrests or indictments to assess the defendant's dangerousness, though the latter will typically weigh less heavily in favor of detention"); *see also United States v. Acevedo-Ramos*, 755 F.2d 203, 209 (1st Cir. 1985) (finding that the authors of the Bail Reform Act of 1984 intended for judges to "rely on a defendant's past bad conduct that had led to indictment but not conviction" under some circumstances). In addition to the above charges, Defendant pled guilty to a charge of battery against a household member in 2005.

While some of Defendant's history and characteristics favor release, Defendant's criminal history, use of marijuana, and past history relating to alcohol abuse, as well as access to financial resources, which is discussed below, show that this third factor ultimately weighs in favor of detention. 18 U.S.C. § 3142(g)(3).

Finally, the Court must consider "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. § 3142(g)(4). The considerations discussed above inform the Court's analysis of this factor. Defendant's history of domestic violence, the items uncovered during the search of Defendant's home, vehicles, and phone, and the circumstances surrounding the charges he faces in this matter demonstrate that Defendant poses a danger to the community if released. Indeed, based upon the information before the Court, it is reasonable to infer that Defendant sought out and has specialized knowledge to engage in criminal conduct that could cause property damage or injury to human life.

As to risk of flight, specifically, the Court notes that Defendant has demonstrated some skill and knowledge on how to conceal his activities from the authorities, as recorded statements indicate he believes someone wanting to engage in illegal activities should not carry a cell phone because he or she could be tracked by law enforcement. Other evidence also indicates Defendant has, in the past, gone to some lengths to disguise his appearance through use of a fake cane and glasses and a change of gait. He also purportedly removed a decal sticker from the back of the vehicle he allegedly used in relation to the charged offense to further conceal his involvement. Moreover, the Government identified that Defendant has access to a large sum of cash in his residence that he could use to flee. Notably, the withdrawal slips associated with the cash found

in his home were from a bank account not known to the Government. The Court finds that all of this, along with the potential for a lengthy sentence, indicates Defendant poses a serious risk of nonappearance.

Considering all of the § 3142(g) factors, the Court finds that the information provided in the PSR and at the hearing established by clear and convincing evidence that the Defendant poses a danger to the community or another person. The Court also finds by a preponderance of the evidence that Defendant poses a serious risk of nonappearance.

The Court has considered whether there are any conditions or combination of conditions available that would reasonably assure the safety of the community and Defendant's appearance as required, including those offered by Defendant: GPS monitoring, use of two third-party custodians, home detention, the equity in Defendant's home as collateral, and restrictions on his associations with others. None of these conditions or others, nor a combination of these or other conditions, will reasonably assure the safety of any other person and the community or the appearance of Defendant as required. Defendant offered his wife and daughter to serve as third-party custodians. The Court, however, questions whether Mrs. Reno can be an effective third-party custodian given representations made to the Court that she was seemingly unaware of the numerous firearms and ammunition her husband owned and the fact that he was present at the January 6 riots in Washington D.C.; that Mrs. Reno may have an alcohol abuse problem, as indicated by Defendant; that nearly half a pound of marijuana was found at Defendant's residence during execution of a search warrant; that Defendant had been living with Mrs. Reno prior to and at the time of the alleged offense; and that Defendant's criminal history suggests a propensity for domestic violence against his wife. As for Defendant's daughter, the Court acknowledges Defendant's argument that adult children may be strong third-party custodian candidates, but the Court is concerned with the fact that this adult child does not live with Defendant, or even in the same city as him, which may limit her ability to effectively serve as a third-party custodian. The Court is further concerned that, even if Defendant lived with his daughter upon release, Defendant's prior criminal history shows propensity towards domestic violence toward family members.

For all these reasons, upon consideration of the proffers, exhibits, the PSR, and arguments presented at the detention hearing, as well as the § 3142(g) factors, the Court finds that each factor weighs in favor of pretrial detention. Even without consideration of the asserted presumption, the Government has met its burden to establish by clear and convincing evidence that Defendant is a danger to the community and by a preponderance of the evidence that he is a serious flight risk if he were to be released pending further proceedings. Defendant shall therefore be detained. 18 U.S.C. § 3142(e)(1).