

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
 :
 -vs- : Crim. No. 3:03cr224 (PCD)
 :
 CARLOS DELGADO :
 a/k/a "Carlos Diaz" :

RULING ON DEFENDANT’S MOTION FOR RELEASE PENDING SENTENCING

Defendant moves for release pending sentencing. The Government objects on the basis that Defendant fails to demonstrate by clear and convincing evidence that he is unlikely to flee or pose a danger to the safety of any other person or to the community.

I. Background

On December 2, 2003, Defendant was convicted by a jury of trafficking in unauthorized access devices under 18 U.S.C. § 1029(a)(2). His sentencing is scheduled for February 20, 2004. Pursuant to an Order of Detention entered on July 14, 2003 by Magistrate Judge Martinez, he had been detained pending trial. Prior to July 14, 2003, he had been released on a \$50,000 non-surety bond, including conditions requiring him not to commit any federal or state offense and not to use or possess any non-prescribed narcotic drugs.

In April, May, and June 2003 he violated these conditions, leading to his detention. On April 8, 2003, he tested positive for cocaine. On May 6, 2003, he admitted that he had lied to Probation about his drug use and he admitted to having used cocaine. On June 26, 2003, the Coventry Police Department arrested Defendant on various charges, including Illegal Distribution of Marijuana and Tampering with Physical Evidence. After Defendant’s vehicle was pulled over and as the officer was approaching his car, Defendant fled in his vehicle and led police on a four mile police chase involving excessive speed, during which the officer observed

packages being tossed from Defendant's car. After Defendant was apprehended, the packages were recovered and were found to contain distribution quantities of compressed marijuana. Defendant did not report his arrest to U.S. Probation, as required.

The Government notes that Magistrate Martinez ordered Defendant detained pending trial of his case, due to his admitted narcotics use, his possession of distribution quantities of marijuana, his failure to report his arrest to probation, and his extensive criminal history, which at the time included twenty-four convictions (including eleven felonies) spanning three jurisdictions. Gv't Opp. at 2.

II. Discussion

Pursuant to the Bail Reform Act of 1984, a defendant who has been found guilty of an offense and is awaiting sentencing must be detained. 18 U.S.C. § 3143(a)(1) (2003). A defendant is not required to be detained where "the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released under" certain conditions. *Id.*

Defendant contends that "it has already been established by clear and convincing evidence" that he is not likely to flee or pose a danger to the safety to any person or to the community if released. Def. Mem. at 2-3. He argues that he has lived for twenty five years in Connecticut, that his immediate family lives in Connecticut, and that "there is no history to believe" that he poses a danger to anyone if released.

The Government argues that Defendant is a flight risk, evinced by his conviction of Escape I in 1997 and of failure to appear in 1993. The Government notes that the June, 2003, car chase at excessive speeds initiated by Defendant while attempting to evade the police and while

tampering with evidence, evinces that he poses a danger to the community. Gv't Opp. at 3.
Moreover, Defendant failed to report his arrest to U.S. Probation as required.

Defendant fails to show by clear and convincing evidence that he is not likely to flee or pose a danger to the safety of any other person or the community if released, and his motion for release pending sentencing is denied.

III. Conclusion

Defendant's motion for release pending sentencing [Doc. No. 64] **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, January ____, 2004.

Peter C. Dorsey
United States District Judge