

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA :
 :
 vs. : No.0:00CR000-0
 :
XXXXXXXXXXXXXXXXXXXXX :

MOTION TO AMEND DETENTION ORDER

COMES NOW Defendant, [REDACTED], by and through his undersigned counsel of record, and pursuant to Title 18, U.S.C. § 3145(d) and moves the Court to enter an Order revoking the Detention Order entered by the magistrate judge in this case on August 23, 2004, and in lieu thereof ordering the defendant's release into the third party custody of his wife Mrs. [REDACTED] on house arrest at his residence at [REDACTED], [REDACTED], North Carolina. The basis for this motion is that newly discovered evidence has come to the attention of defense counsel since the detention hearing in this matter before the magistrate judge, which information is pertinent and material to the question of whether conditions of release can be fashioned which will assure the safety of the community upon the defendant's release.

In further support of this motion, the movant states as follows:

1. The movant is under indictment for violations of Title 18, U.S.C. §§ 922(g)(1) and 922(a)(6), possession of a firearm

by a convicted felon and making a false statement in connection with the acquisition of a firearm, respectively.

2. On August 3, 1999, [REDACTED] was arraigned and given a detention hearing before the Honorable [REDACTED], United States Magistrate Judge. During the detention hearing the Government offered the testimony of a [REDACTED] police officer to the effect that, on an occasion prior to his arrest on the instant charge, Mr. [REDACTED] assaulted another [REDACTED] police officer after receiving a traffic citation for driving while impaired.

3. This information, along with additional information contained in the pretrial services report was relied upon by the magistrate judge in concluding that Mr. [REDACTED] pretrial release posed a danger to the community that could not be mitigated by any conditions of release which the court could fashion. [REDACTED] was thus ordered detained based on the court's conclusion that his release posed a danger to the community.

4. In the ensuing weeks counsel for the defendant has reviewed evidence contained in the U.S. Attorney's file in this case, and has conducted other independent investigation. During the course of reviewing the Government's file counsel reviewed

a copy of the [REDACTED] Police Department's incident report which described the events surrounding Mr. [REDACTED] arrest on the driving while impaired charge in which the assault on the law enforcement officer allegedly occurred. The report reflects that rather than stopping immediately in response to the arresting officer's blue light, Mr. [REDACTED] drove his vehicle an extended distance before stopping near his residence. The report however makes no reference to any violent, assaultive, or otherwise overtly hostile behavior by Mr. [REDACTED] directed at the arresting officer. It appears from the face of the report therefore that the testimony regarding the alleged assault on the officer by Mr. [REDACTED] was erroneous.

5. Other uncontradicted evidence presented at the detention hearing included the following:

A. The weapon in question is a full length [REDACTED] shotgun (the type of weapon which convicted felons in North Carolina have been allowed to lawfully possess in their homes);

B. He answered honestly and without equivocation all questions put to him by police officers regarding his possession of the weapon; including where, when and from whom he purchased the weapon;

C. At the time of his arrest Mr. [REDACTED] worked full time at [REDACTED], and was the primary source of support for his wife who is unable to work due to a disability.

6. At the detention hearing Mr. [REDACTED], through counsel, proffered to the court a release plan which entailed his release into the third party custody of his wife, Mrs. [REDACTED], with house arrest at his residence supported by electronic monitoring. Conditions proposed for the court's consideration included a requirement that Mr. [REDACTED] return to or obtain full time employment, that he report on a daily basis to pretrial services, or alternatively as often as the supervising pretrial services officer requested.

7. The factually inaccurate information regarding the alleged assault by Mr. [REDACTED] upon a [REDACTED] Police Officer undoubtedly figured prominently in the magistrate judge's evaluation of the evidence and ultimate conclusion regarding detention. The defendant maintains that an evidentiary record which includes accurate information regarding Mr. [REDACTED]'s conduct during the [REDACTED] episode and otherwise, will support the conclusion that conditions can be fashioned which would allow Mr. [REDACTED]'s release pending trial while adequately safeguarding the community.

WHEREFORE, Mr. [REDACTED] respectfully requests that the court schedule an evidentiary hearing for the purpose of receiving evidence relevant to his suitability for pretrial release, and amend the magistrate judge's detention order by granting the defendant's release pending trial upon any conditions which the court deems acceptable.

Respectfully submitted, this 27th day of August, 2004.

[REDACTED]
Assistant Federal Public Defender
North Carolina State Bar # [REDACTED]
101 S. Elm Street, Suite 210
Greensboro, NC 27401
(336) 333-5455

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing on the below-mentioned attorney by mailing a copy of the same to the following address:

Ms. [REDACTED]
Assistant United States Attorney
P. O. Box 1858
Greensboro, NC 27402

This, the 27th day of August, 2004.



Assistant Federal Public Defender