

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

UNITED STATES OF AMERICA :
 :
 v. : No. 1:
 :
 :

MOTION FOR DISTRICT COURT REVIEW OF MAGISTRATE
JUDGE'S PRETRIAL DETENTION ORDER

Introduction

The Defendant, NAME, by and through undersigned counsel, hereby moves, pursuant to 18 U.S.C. § 3145(b), for district court review of the detention order entered February 14, 2001, by United States Magistrate Judge Russell A. Eliason.

Background

The Defendant was indicted on date, on one count of fraud involving unauthorized access devices, in violation of 18 U.S.C. §§ 1029(a)(2), (c)(1) and 2. On date, the Defendant turned herself in to federal authorities, and was taken into custody. On date, she was arraigned before United States Magistrate Judge Russell A. Eliason, and entered a plea of not guilty. On that same date, Magistrate Judge Eliason conducted a hearing on the Government's motion for detention, and after hearing evidence and argument, entered an order that the Defendant be detained.

On date, the Defendant moved to compel discovery, and to dismiss the charge against her due to failure to comply with the

certification requirements of the Federal Juvenile Delinquency Act, 18 U.S.C. § 5031 et seq. It appears that the Government has complied with all of its discovery obligations, and that the issue raised in the motion to dismiss will be resolved by a plea of guilty to a superseding information.

Law and Argument

"In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." United States v. Salerno, 481 U.S. 739, 755 (1987)(reviewing The Bail Reform Act of 1984, 18 U.S.C. § 3141 et seq.). The Bail Reform Act "carefully limits the circumstances under which detention may be sought to the most serious crimes." Id. at 747, citing 18 U.S.C. § 3142(f). It requires the release of a person facing trial under the least restrictive condition or combination of conditions that will reasonably assure the appearance of the defendant and the safety of the community. United States v. Byrd, 969 F.2d 106, 109 (5th Cir. 1992)("There can be no doubt that this Act clearly favors nondetention."); United States v. Gebro, 948 F.2d 1118, 1121 (9th Cir. 1991) ("Only in rare circumstances should release be denied, and doubts regarding the propriety of release should be resolved in the defendant's favor."). The factors that should be considered in determining whether there are conditions of release that will

reasonably assure the appearance of the defendant and the safety of the community are set out in § 3142(g).¹ When called upon to conduct a review under 18 U.S.C. § 3145(b), a district court should reach a de novo conclusion regarding pretrial detention, and not simply defer to the Magistrate Judge's decision. United States v. Fortna, 769 F.2d 243, 249 (5th Cir. 1985); United States v. Leon, 766 F.2d 77, 80 (2d Cir. 1985).

In the instant case, the Magistrate Judge concluded that there are no conditions which would adequately assure the Defendant's presence.² That conclusion is arguably supported, to some degree, by the Defendant's prior criminal record and its juxtaposition with the offense charged. However, since the Act clearly favors release, the Defendant's past criminal history alone should not be sufficient to warrant the conclusion that the Defendant is a risk of non-appearance before the court and, accordingly, to justify the Defendant's detention. Moreover, several factors tilt the balance in favor of the Defendant's

¹ The factors are, generally, (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the defendant; (3) the defendant's history and personal characteristics; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.

² The Magistrate Judge did not even mention the other statutory justification for detention, that is, insuring the safety of any other person and the community. Given the nature of the offense charged, this justification is not implicated in this case.

release in the instant case. First, it is worth noting that the Defendant turned herself in to federal authorities, thereby demonstrating both the capacity and the willingness to appear as required, and face the potential consequences inherent in the charge against her. Second, the Defendant has strong family ties to Greensboro, North Carolina, where she and her two young children³ reside with the Defendant's mother. Third, given the nature of the charge against her, the Defendant likely faces a relatively low sentencing guideline range, perhaps even one that will allow for a split sentence. Thus, there is less incentive for the Defendant to flee. Taken together, these factors are sufficient to "reasonably assure the appearance of the [Defendant] as required." 18 U.S.C. § 3142(c).

WHEREFORE, the Defendant respectfully requests that this Court revoke the detention order entered date, and set conditions for her release.

³ The Defendant's son, name, is five years old. Her daughter, name, is only three months old.

Respectfully submitted, this the ____ day of February, 2001.

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CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing upon Mr. Arnold L. Husser, Assistant United States Attorney, 101 South Edgeworth Street, Suite 400, Greensboro, North Carolina, 27401, by hand-delivering a copy of the same.

This the ____ day of February, 2004.

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Assistant Federal Public Defender