



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

MKM:DGR
F. #2017R02213

*271 Cadman Plaza East
Brooklyn, New York 11201*

June 6, 2018

By Hand and ECF

The Honorable Roanne L. Mann
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Joseph Johnson, et al.
Criminal Docket No. 18-279 (MKB)

Dear Judge Mann,

The government respectfully submits this letter in advance of the defendants' arraignment on the indictment in the above-captioned matter and to request a permanent order of detention with respect to defendant Joseph Johnson. The government seeks home confinement and a substantial bail package for defendant Brianna Glee.¹ For the reasons set forth below, including Johnson's and Stevens' roles in a years' long gun trafficking organization that used straw buyers to illegally obtain more than 40 firearms, they are both a risk of flight and a danger to the community. Because no combination of conditions are sufficient to mitigate those risks, the Court should detain Johnson and Stevens pending trial.

¹ Defendant Tyshon Stevens has been in Virginia state custody since May 22, 2018, following his arrest by Virginia State authorities for transporting firearms with co-conspirator Brianna Glee. A Virginia state court judge has denied him bail and he remains in custody pending his return to this District on a writ ad prosequendum. At the time of his arraignment in this District, the government will seek a permanent order of detention as to Stevens.

I. Background²

Since at least April 2017, Joseph Johnson has been trafficking firearms obtained through multiple straw purchasers and then marketing and selling his firearms to multiple individuals in Brooklyn, New York. For example in June 2017, Johnson contacted an individual (“Individual-1”) over Facebook, sending Individual-1 images of an array of firearms, which included Glock manufactured pistols.³ Johnson contacted Individual-1 again on June 7, 2017 and emphasized the purported benefits of the Glock manufactured firearms Johnson was selling, telling Individual-1, “Glocks are for serious accurate no fingerprint love . . . [p]lastic frame means no prints.” Individual-1 responded plainly: “That’s for hits.”

Johnson marketed firearms ranging from small, concealed carry-sized pistols, to larger handguns with extended ammunition “clips.” Among the potential purchasers Johnson contacted about these firearms were convicted felons and gang members. For example, on April 2017, an individual affiliated with the 5-9 Brim set of the Bloods street gang (“Individual-2”) communicated with Johnson about a firearm, telling Johnson he urgently needed a “roaster.” In response, Johnson quoted prices to Individual-2 that varied depending on the firearm’s quality, stating “brand new grips” were \$700 and \$800 while “old boy” was only \$400. Similarly, Johnson contacted another individual affiliated with the 5-9 Brims (“Individual-3”) about firearms, and sent him multiple images of a Ruger pistol purchased by one of Johnson’s co-conspirators (“CC-1”). Johnson asked Individual-3 to find a purchaser for \$700, and Individual-3 confirmed, stating, “I’m on it.”

In June 2017, Johnson sent images and pricing information for two Ruger firearms to more than five individuals using Facebook, including his co-defendant Tyshon Stevens. Stevens in turn used Facebook to contact others about purchasing the firearms and reported back to Johnson about potential purchasers. Because Johnson was a convicted felon, he could not legally purchase or possess any of these firearms, so he relied on straw buyers to purchase them on his behalf. Records maintained by the Bureau of Alcohol, Tobacco, Firearms and Explosives reveal that the two Ruger firearms Johnson marketed using Facebook had been purchased by CC-1 from a federally licensed firearms dealer (a

² Under the Bail Reform Act, when detention is at issue, the defendant may proceed by proffer, United States v. Martir, 782 F.2d 1141, 1145 (2d Cir. 1986), and so may the government, United States v. Ferranti, 66 F.3d 540, 541 (2d Cir. 1995); see also United States v. LaFontaine, 210 F.3d 125, 130-31 (2d Cir. 2000) (explaining that the government is entitled to proceed by proffer in a detention hearing); Martir, 782 F.2d at 1145 (same).

³ Copies of these images are attached hereto as Exhibits A and B.

“FFL”) in Virginia.⁴ Overall, between April 2017 and March 2018, CC-1 purchased approximately twelve firearms from FFLs in Virginia.⁵

Reflective of Johnson’s leadership role in the firearms trafficking operation, he accompanied CC-1 to FFLs on multiple occasions, notwithstanding the risks presented by his prior felony conviction. In particular, on December 9, 2017 and December 10, 2017, surveillance footage from two FFLs in Hampton and Virginia Beach, Virginia showed Johnson and CC-1 together. Within hours of CC-1 purchasing firearms from these FFLs, Johnson sent images of them to his customers.

Following CC-1’s arrest on an unrelated matter, Johnson ensured that his gun trafficking business would continue by enlisting another straw buyer, defendant Brianna Glee. Rather than slow down the operation after CC-1’s arrest, records of Brianna Glee’s firearms purchases suggest that Johnson’s organization increased its supply. Within days of CC-1’s arrest, Glee began a firearms purchasing spree that continued through April 25, 2018. By that point, Glee had purchased 27 firearms from FFLs throughout Virginia. For many of these purchases, Johnson had visited or contacted the FFL prior to Glee’s purchase.

On May 21, 2018, ATF received an alert that Brianna Glee was attempting to purchase firearms from an FFL in Virginia Beach, Virginia. ATF agents also learned that another individual (“Individual-4”) was scheduled to pick up firearms at the same time. ATF agents surveilled the FFL the day of the sale, and stopped a black Mercedes with license plates that matched the plates previously found on Johnson’s Mercedes in New York. The agents discovered defendant Tyshon Stevens driving the Mercedes along with Individual-4. Following a consensual search of the vehicle, agents recovered three firearms from the trunk. Stevens was arrested by Virginia State Police at that time.

Consistent with Johnson’s leadership role in the organization, Tyshon Stevens reported back to Johnson after his arrest. During a recorded call from a Virginia jail, Stevens warned Johnson to be careful of Glee, whom Stevens apparently suspected of cooperating with law enforcement. As phone records for Johnson’s cellular telephone reveal, however, after this call, Johnson called another FFL in Virginia.

II. Discussion

The Court should order Johnson and Stevens detained pending trial because they pose both a danger to the community and a risk of flight. As discussed below, the large-

⁴ After Johnson’s messages concerning the Ruger firearms, on October 10, 2017, the NYPD arrested a convicted felon for possessing a Ruger firearm. A review of the serial number for that Ruger firearm revealed that it was one of the two Ruger firearms purchased by CC-1 and marketed by Johnson.

⁵ In addition to the Ruger firearm, at least one additional firearm was seized by the NYPD after it was found in the possession of a convicted felon.

scale gun trafficking operation underlying the indictment, and Johnson's prior firearm conviction demonstrate his danger to the community if released. Likewise, Stevens central role in the scheme and his prior conviction for possessing firearms demonstrate his substantial risk of danger. Additionally, Johnson's prior history of failing to appear at criminal proceedings and being returned on bench warrants and his strong ties outside the Eastern District of New York shows that he is a risk of flight and is likely to flee prosecution. Accordingly, for the reasons set forth below, the Court should enter a permanent order of detention for both Johnson and Stevens in this case.

A. Applicable Law

The Bail Reform Act of 1984, codified at 18 U.S.C. §§ 3141–3156, governs determinations of pre-trial release. The Act provides that, in general, a court “shall order” a defendant's pretrial release unless the court determines that the defendant presents an unreasonable risk of flight or “will endanger the safety of any other person or the community.” 18 U.S.C. § 3142(b). If the court finds by a preponderance of the evidence that the defendant presents a flight risk and that no conditions will reasonably assure the defendant's continued presence, the court should order detention. United States v. Chimurenga, 760 F.2d 400, 405 (2d Cir. 1985). Similarly, a defendant should be detained if the court finds that release on bail would pose a danger, 18 U.S.C. § 3142(e), though detention based on dangerousness must “be supported by clear and convincing evidence,” 18 U.S.C. § 3142(f).

Whether detention is sought on the basis of flight or dangerousness, the Bail Reform Act lists four factors to be considered in the detention analysis:

- (1) “the nature and circumstances of the offense charged, including whether the offense is a crime of violence . . . or involves a . . . firearm . . .”;
- (2) “the weight of the evidence against the person”;
- (3) “the history and characteristics of the person, including . . . the person's character, . . . past conduct, . . . [and] criminal history, and record concerning appearance at court proceedings”; and
- (4) “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).

The Second Circuit has repeatedly stated that even elaborate conditions of home detention cannot substitute for incarceration where the defendant cannot be trusted to comply with the conditions of release. See United States v. Millan, 4 F.3d 1038, 1048-49 (2d Cir. 1993) (home detention and electronic surveillance can be circumvented); United

States v. Orena, 986 F.2d 628, 632 (2d Cir. 1993) (“home detention and electronic monitoring at best ‘elaborately replicate a detention facility without the confidence of security such a facility instills’”) (quoting United States v. Gotti, 776 F. Supp. 666, 672 (E.D.N.Y. 1991)). In United States v. Salerno, 631 F. Supp. 1375 (S.D.N.Y. 1986), the court approvingly quoted the Second Circuit’s decision in United States v. Colombo, 777 F.2d 96 (2d Cir. 1985), which held:

In light of Congress’ direction that “[w]here there is a strong probability that a person will commit additional crimes if released, the need to protect the community becomes sufficiently compelling that detention is, on balance, appropriate,” . . . we hold that the decision to release Colombo based upon conditions which we consider to be wholly inadequate was clearly erroneous.

631 F. Supp. at 1371 (quoting Colombo, 777 F.2d at 99 (quoting Senate Report at 3189) (citation omitted)).

B. Argument

1. Johnson and Stevens Are a Danger to the Community

Both Johnson and Stevens pose a serious danger to the community. In light of the instant criminal conduct and their criminal history, all four factors set forth in Section 3142(g) compel this conclusion. First, “the nature and circumstances of the offense[s] charged” are extremely serious. As set forth above, for more than a year, Johnson has led an interstate gun trafficking conspiracy that obtained, marketed and sold firearms to convicted felons and others like Individual-2 and Individual-3 who were affiliated with a street gang. Notably, in light of his felony conviction, Johnson conducted parts of his business by proxy, enlisting co-conspirators as straw buyers and middle-men to further the operation. One such proxy was Stevens, who was also a convicted felon, but nevertheless helped locate purchasers for Johnson’s firearms and, as demonstrated by his arrest in Virginia following Individual-3’s purchase of firearms, he helped procure them as well.

Second, “the weight of the evidence” is strong. As discussed above, much of the evidence against Johnson are his own words and images sent over Facebook. The same is true as to Stevens, with whom Johnson communicated regularly. In addition, the evidence of Johnson and Stevens’ possession of firearms is clear. Johnson sent multiple images of himself holding firearms CC-1 purchased earlier in the day. Stevens was stopped in Virginia with three firearms in the trunk. This evidence is further strengthened by evidence showing Johnson accompanying CC-1 at FFLs in Virginia and together with defendant Glee in Brooklyn, New York following Glee’s numerous firearms purchases in Virginia. For the same reasons, Stevens arrest in Virginia with Individual-3 immediately after additional purchases of firearms is strong evidence of his involvement in the organization. Accordingly, the evidence of the defendants’ guilt on each count is strong, and supports detention.

Third, Johnson’s and Steven’s “history and characteristics,” including their “character, . . . past conduct, . . . [and] criminal history,” support a finding of dangerousness. Both Johnson and Stevens have previously been convicted of firearms offenses. Specifically Johnson pleaded guilty in New York County Supreme Court to possession of an assault weapon. Likewise Stevens was convicted of possession of a firearm in Kings County Supreme Court. These defendant’s decision to engage in the illegal trafficking of firearms notwithstanding their prior convictions demonstrate their disregard for the law and that they are undeterred by the prospect of punishment. As such, this factor supports detention.

Fourth and finally, “the nature and seriousness of the danger to any person or the community that would be posed by the person’s release” strongly supports a finding of dangerousness. Johnson accumulated an arsenal of weapons during the course of this conspiracy and he then sought to sell those firearms to convicted felons and gang members. This conduct created serious risk to the communities through which these firearms were trafficked. This risk is not abstract. Indeed, at least three firearms obtained by Johnson’s gun trafficking operation were seized in New York City, including two from convicted felons. Johnson was able to engage in this conduct while being a prohibited person by relying on others to further aspects of the gun trafficking operation. One such person was Stevens, who was central to furthering Johnson’s business. There are no conditions or combination of conditions that would effectively prevent them from continuing to engage in this conduct if they were released. See Millan, 4 F.3d at 1048–49. Accordingly, this factor weighs strongly in favor of detention.

Based on these four statutory factors, as applied to the facts of the case, a finding of dangerousness is warranted.

2. Johnson and Stevens Are Flight Risks

Neither Johnson nor Stevens can overcome the presumption that he is a risk of flight. For the same reasons discussed above, all four factors set forth in Section 3142(g) compel this conclusion. In particular, Johnson has significant ties to Virginia, where his son resides. While Stevens previously lived in New York, at the time of his arrest, he told agents that he was attempting to re-locate to Virginia. Additionally, the third factor—“the history and characteristics of the [defendants]”—again demonstrates the need to detain both Johnson and Stevens pending trial. Specifically, Johnson’s criminal history reflects that on two occasions he had to be returned to court on a bench warrant after failing to appear at criminal proceedings. When considered in light of his strong ties outside of the Eastern District of New York, the strength of the evidence, and the possible punishment of up to twenty years’ imprisonment, Johnson’s demonstrated willingness to avoid prosecution supports a finding that he is a risk of flight and requires his detention pending trial. The same is true as to Stevens, who, given the strength of the evidence and the prospect of a significant sentence of imprisonment, has a strong incentive to flee prosecution. See United States v. Dodge, 846 F. Supp. 181, 184-85 (D. Conn. 1994) (possibility of a “severe sentence” heightens the risk of flight).

III. Conclusion

For the reasons set forth above, the government respectfully requests that the Court order Johnson and Stevens detained pending trial on the charges in the Indictment.

Respectfully submitted,

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cc: The Honorable Margo K. Brodie (by ECF)
Clerk of the Court (by ECF)
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