

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR. 08-50079-02
)	
Plaintiff,)	
)	DETENTION ORDER
vs.)	
)	
VINE RICHARD MARSHALL, aka)	
RICHARD VINE MARSHALL, aka)	
DICK MARSHALL,)	
)	
Defendant.)	

This matter came before the court on a motion to reconsider bond by the defendant, Vine Richard Marshall. A hearing was held on the motion on Monday, April 13, 2009. The defendant, Mr. Marshall, appeared in person and by his counsel, Dana Hanna. The United States appeared by Assistant United States Attorney Robert Mandel and United States Attorney Marty Jackley.

The government moved for detention pursuant to the Bail Reform Act, 18 U.S.C. § 3142. No presumption of detention applies in this case. See 18 U.S.C. § 3142(e). In order to sustain a motion for detention, the government must establish that there is no condition or combination of conditions which could be imposed in connection with pretrial release that would (a) reasonably insure the defendant's presence for court proceedings; or (b) reasonably insure the safety of any other person or the community. See 18 U.S.C. § 3142(f). Risk of flight must be established by a preponderance of the evidence; danger to the

community or to any other person must be established by clear and convincing evidence. Id.

The Bail Reform Act requires the court to consider the following factors in determining whether there are conditions of release that will reasonably assure the appearance of the defendant and the safety of any other person and the community:

1. the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;
2. the weight of the evidence against the person;
3. the history and characteristics of the person, including--
 - a. the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
 - b. whether at the time of the current offense or arrest, the person was on probation, parole, or other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State or local law; and
4. the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

See 18 U.S.C. § 3142(g). In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. The court concludes that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- (1) There is a serious risk that the defendant will not appear.
- (2) There is a serious risk that the defendant will endanger the safety of another person or the community.

Part II - Written Statement of Reasons for Detention

The court finds that the credible testimony and information submitted at the hearing establishes that the defendant is charged in the superseding indictment with the first degree murder of Anna Mae Aquash, and aiding and abetting that first degree murder, in violation of 18 U.S.C. §§ 1111, 1152, 1153, and 2. The defendant is presumed innocent. However, probable cause exists to believe the defendant committed the offense with which he is charged because a grand jury has issued the superseding indictment. This alleged crime is a crime of violence. In addition, the alleged crime involved the use of a firearm. The mandatory penalty for this offense in the event of conviction is life imprisonment.

Mr. Marshall was previously convicted of a state offense of murder in 1976 arising out of the death of Martin Montileaux in March, 1975.

Mr. Marshall states in his brief that this offense involved the use of alcohol.

Mr. Marshall was sentenced by the state court to a term of life imprisonment for this offense. Later, the governor of the state of South Dakota commuted Mr. Marshall's sentence to a term of imprisonment for 99 years, allowing Mr. Marshall to be paroled. He violated parole twice and was twice sent back to serve additional terms of imprisonment. Both parole violations were related to the use of alcohol.

At the time the murder of Ms. Aquash was alleged to have been committed by Mr. Marshall in December, 1975, Mr. Marshall was out on pretrial release in the Montileaux case. At the time of Mr. Marshall's arrest for the murder of Ms. Aquash, he was still on parole in the Montileaux matter.

As demonstrated by recitation of the facts relating to the Montileaux matter, Mr. Marshall has an apparent history of substance abuse.

Mr. Marshall has received treatment for substance abuse twice, once upon his initial incarceration following the Montilleaux conviction, and a second time in 1989 following one of his parole violations. Mr. Marshall also indicates that he attended 12-step meetings while on parole, though the dates of attendance were not specified. Mr. Marshall has not presented a current substance abuse

evaluation to the court to indicate whether Mr. Marshall has a current substance abuse problem or whether treatment is now indicated.

Prior to his arrest in this case in August, 2008, Mr. Marshall had no steady job. He does have ties to the Pine Ridge Indian Reservation where he has lived for extended periods of time. He has also lived for unspecified periods of time in North Dakota, Minnesota, Wyoming, Montana, New Mexico, and Colorado. Furthermore, Mr. Marshall represents that he has an offer of employment with a local construction company if he is released.

The penalty in this case, if Mr. Marshall is convicted, is mandatory life imprisonment with no possibility of parole. Although the Bail Reform Act does not provide that this potential penalty gives rise to any legal presumption, the court finds that it provides substantial incentive to flee, especially for a person in Mr. Marshall's circumstance who has prior experience with lengthy incarceration.

Finally, both sides argue strenuously that the weight of the evidence favors them. The entrenchment of the parties in their own particular view of the evidence is understandable, given the fact that the jury trial in this case looms less than one month away. The court is very familiar with both parties' views of the evidence, having read the parties' briefs on their motions to sever,

the pending motions to dismiss, motions to compel discovery, and the motions *in limine*. In addition, the court is familiar with the entirety of the trial transcript in United States v. Looking Cloud, CR. 03-50020. The court finds that the factor of the weight of the evidence favors neither party. The evidence is capable of argument either way and that is why a jury will ultimately decide the weight of the evidence in this case. There are sufficient other factors, and those factors are sufficiently weighty, to convince the court that the Mr. Marshall should be detained in custody under the Bail Reform Act.

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of any attorney for the government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

NOTICE OF RIGHT TO APPEAL

Mr. Marshall has the right to appeal the court's detention order to the district court having original jurisdiction over the offense, which appeal shall be determined promptly. See 18 U.S.C. § 3145(b).

Dated April 13, 2009.

BY THE COURT:

/s/ Veronica L. Duffy

VERONICA L. DUFFY
UNITED STATES MAGISTRATE JUDGE