

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 19-CR-151

CEDRIC COHEN

Defendant.

**DEFENDANT’S MOTION TO REVIEW
DETENTION ORDER**

Defendant, Cedric Cohen (“Cohen”), by his attorney Craig S. Powell of HART POWELL, SC, hereby respectfully moves the Court pursuant to Title 18 U.S.C. § 3145(b) to review the order of detention entered on November 16, 2019, to allow for Cohen’s release upon conditions.

AS GROUNDS, the defendant asserts conditions of release exist which will reasonably assure the safety of the community and the appearance of the defendant in court under 18 U.S.C. § 3142(c) and also asserts as follows:

I. Procedural Background

1. On September 9, 2019, Cohen was named as one of 11 defendants in an 11-count indictment returned by the grand jury. Cohen was charged in three counts: (1) a conspiracy spanning from May 2017 to August 2, 2019 to possess with intent to distribute and to distribute various controlled substances violation of Title 21, U.S.C., §§ 846, 841(a)(1), 841(b)(1)(A); (2)

a substantive count of possession of cocaine with intent to distribute in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(c); and (3) possessing a firearm in furtherance of “the drug-trafficking crimes charged in Count One and Nine” in violation of 18 U.S.C. § 924(c).

2. Cohen made his initial appearance with a representative of the Federal Defender’s office and was arraigned on September 19, 2019. A federal detainer was ordered because, at that time, Cohen was in state custody related to Brown County case 19CF970. This state case was based on the execution of a search warrant underpinning this federal prosecution. (Dkt. #50). The Brown County case was dismissed after Cohen was arraigned in this Court.

3. Undersigned counsel was then appointed to represent Cohen in this matter and a detention hearing was held on October 11, 2019. At the hearing, Magistrate Judge Sickel ordered that Cohen be detained pending trial (Dkt. #82), and a written Order of Detention Pending Trial was filed on November 16, 2019. (Dkt. #83). The detention order cited the rebuttable presumption of detention pursuant to 18 U.S.C. § 3142(e) based on the controlled substance charge and found that Cohen had not introduced sufficient evidence to rebut the presumption. (Id.). Cohen continues to be detained at the Brown County Jail.

4. The case has been designated complex on the Government’s motion (Dkt. #59). The original trial date was scheduled for June 15, 2020. (Dkt. #106). On May 19, 2020, the Government moved to adjourn the jury trial in this matter due to the impact of the emergency orders necessitated by the COVID-19 pandemic. (Dkt. #135). The Court granted the Government’s motion and rescheduled the trial to, as of now, October 19, 2020.

II. Applicable Law

5. Pursuant to 18 U.S.C. § 3145(b), Cohen respectfully requests the Court amend the detention order to allow Cohen to be released pending trial under conditions as determined by the Court.

6. A defendant may only be detained if there is no set of release conditions under 18 U.S.C. § 3142(b) that will reasonably secure the safety of the community or that will reasonably assure the defendant's appearance at trial. *See* 18 U.S.C. § 3142(e)(1). Although § 3142(e)(2) delineates several offenses for which a presumption of detention arises, the presumption may be rebutted by "[a]ny evidence favorable to a defendant" that bears on any one of the factors in § 3142(g): (1) the nature and circumstances of the offense charged, (2) the weight of the evidence against the defendant, (3) the history and characteristics of the person, or (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986). Indeed, the burden of production for rebutting the presumption "is not a heavy one to meet." *Id.*

III. Information and Conditions

7. Cohen asserts that, although his charges trigger the presumption of detention under § 3142(e)(3), there exists favorable evidence that rebuts the presumption that no set of conditions of release will reasonably secure the safety of the community or assure the defendant's appearance at trial.

8. Cohen's history does not indicate that his release would pose a risk to the safety of the community. Cohen's criminal history is dated. His most recent conviction was over a decade

ago for misdemeanor possession of a controlled substance (Outagamie Co. Case 09CM484; Dkt. #46). Prior to that, he had misdemeanor convictions for damage to property and battery in 2004, failure to pay child support in 2000 and 2001, and misdemeanor battery in 1998. (Dkt. #46). The batteries, which superficially could be claimed to indicate dangerousness, occurred within the context of an intimate relationship 16 and 22 years ago. None of these convictions demonstrate any level of danger to the community at large, or a danger to anyone at all currently.

9. In addition, Cohen's current charges are non-violent in nature. Cohen is alleged to have been involved in a controlled-substance conspiracy; the activities he is alleged to have been involved in do not include any allegations of violence. The firearm charge is based upon the discovery of a handgun in a dresser drawer during the execution of a search warrant at Cohen's home. There are no allegations, and there is no evidence contained in the mountain of discovery provided, that Cohen ever traveled with the gun, used the gun, brandished the gun, or possessed it during any transactions related to the conspiracy.

10. In addition to the lack of evidence of dangerousness, nothing in Cohen's history suggests he presents a risk of non-appearance. The bond study cited as factors posing this risk: (1) the offense charged; (2) lack of verifiable, legitimate employment; and (3) lack of stable residence. (Dkt. #46). As for employment, the bond study notes that Cohen described earning a living over the last 3 years by reselling high-end sneakers. The bond study confirmed this business through an interview with his close friend, Ms. Vandavelde. (Id.). Nevertheless, the bond study appears to describe it as non-verifiable. The bond study also categorizes this mode of income as not "legitimate" without further explanation. The fact is that the sneaker re-sale

market is massive. See, *How a Single Pair of Sneakers Explains the Booming Billion-Dollar Sneaker Resale Industry – Inside the wild, shockingly lucrative world of sneaker reselling.*, Cam Wolf, www.gq.com/story/stadium-goods-tracking-a-sneaker (last accessed June 17, 2020). Additionally, throughout the discovery provided in the case, Cohen references his shoe re-selling enterprise.

11. The bond study also notes a lack of a stable residence as presenting a risk of non-appearance. At the time of his arrest, Cohen was splitting his time between Green Bay and Florida. Since his arrest, Cohen no longer has a residence in Florida, and his only ties are to Green Bay. Further, Cohen offered to the bond study author that he could live with Ms. Vandavelde, which she rejected. Cohen has been offered residence with his brother Sandy and his sister-in-law, Kristy Wood, here in Green Bay. Both work full-time and are willing to support him during any period of pre-trial release.

12. As for the nature of the charged offense, the only relevance to the risk of non-appearance is the potential penalty Cohen faces if convicted as charged. But this risk can easily be addressed and alleviated through a condition of electronic/location monitoring.

13. Based on discovery made available to date, the case against Cohen, as charged, is not particularly strong. In particular, although Cohen made admissions about his involvement with some drugs, the scope of the conspiracy charged is far beyond the evidence the Government has against Cohen. Additionally, the firearm count is on shaky ground, as the Government's ability to connect its possession to the furtherance of a drug trafficking crime is tenuous at best. (See ¶ 9, *supra*).

14. In sum, while a presumption of detention applies based on the charges filed, nothing about the actual facts of the case or Cohen's personal history portends danger to the community or flight from the jurisdiction if he is released on the conditions offered below.

15. Further, the Court should take into account the fact that Cohen has been in pre-trial confinement for approaching 1 year, and delays in the progress of the case are not attributable to any conduct of his own. None of us know how the COVID-19 pandemic will continue to impact litigants' abilities to appear in court or defendants' abilities to meet with their counsel to meaningfully prepare for trial. The latter is manifestly easier and less-risky for all involved when the defendant is not incarcerated.

16. To reasonably assure the safety of the community and his appearance in Court, it is respectfully recommended that Cohen be released on a personal recognizance bond and with the following conditions:

- a. Cohen's travel shall be restricted to the Eastern District of Wisconsin;
- b. Cohen shall reside with his brother and sister-in-law in Green Bay [specific address to be provided in Court];
- c. Cohen shall not possess any firearms or other dangerous weapons;
- d. Cohen shall have no contact with witnesses in this matter;
- e. Cohen shall be monitored in the community in the form of location monitoring and shall abide by all technology requirements. Voice recognition is considered a form of electronic monitoring and would be included in this condition;
- f. Cohen shall refrain from use or unlawful possession of a narcotic drug or other controlled substances as defined in 21 U.S.C. §802, unless prescribed by a licensed medical practitioner; and
- g. Cohen shall report to Pretrial Services as directed.

17. In addition to the above conditions, Cohen will abide by any conditions the Court deems appropriate.

WHEREFORE, Cohen respectfully requests that the Court hold a detention hearing as soon as practicable to consider evidence supporting this motion and to amend the detention order entered in this matter to allow for Cohen's release upon conditions set by the Court.

Dated at Milwaukee, Wisconsin, this 17th day of June, 2020

Respectfully,

/s/ Craig S. Powell

Craig S. Powell
Attorney for Cedric Cohen
Wisconsin Bar #1046248
cspowell@hartpowell.com