

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL
:
vs. :
:
:
PETER C. D'AMELIO : NO. 98-562-01
FRANK DeSUMMA : -02

MEMORANDUM

DUBOIS, J.

November 13, 1998

I. INTRODUCTION

On September 29, 1998, Special Agents of the Federal Bureau of Investigation ("FBI") arrested defendants Peter C. D'Amelio and Frank DeSumma, and a third defendant, George Delia, pursuant to a complaint and warrant. On October 1, 1998, United States Magistrate Judge Thomas J. Reuter held a probable cause and pretrial detention hearing and, after finding probable cause to hold the defendants for trial, he ordered that D'Amelio and DeSumma be detained pursuant to the Bail Reform Act of 1984, 18 U.S.C. sections 3141-3150.¹

On October 9, 1998, defendants D'Amelio and DeSumma filed Motions for Pre-Trial Release. On October 28, 1998, a Federal grand jury returned a nine-count Indictment against D'Amelio, DeSumma and Delia, and the case was assigned to this Court. On November 5, 1998, defendants plead not guilty to all counts of

¹ At the beginning of the hearing, Judge Reuter granted defendant Delia's request for a continuance.

the Indictment.²

On the issue of detention, Judge Reuter determined that the government had proven by clear and convincing evidence that no condition or combination of conditions would reasonably assure the safety of any other person and the community as required by 18 U.S.C. section 3142(f)(2)(B). Judge Reuter did not premise the detention orders on risk of flight, but instead based his ruling on the evidence from FBI Special Agent Jerria Williams regarding the firing of a weapon and specific death threats made by the defendants to cooperating witnesses, and the pervasive and violent threat component presented in this case.³ Currently before the Court are the two pretrial release motions.

II. FACTS

On November 6, 1998, the Court held a hearing on the motions

² D'Amelio is charged in Counts 1, 2, 5, and 6. DeSumma is charged in Counts 1-9. Delia is charged in Counts 1, 4, 5, and 9.

³ Judge Reuter summarized the reasons for his decision as follows:

I have found probable cause to believe that D'Amelio lent the money to [the victims], that he was present with DeSumma when [the latter] shot the bullet over [one victim's] head, and that he caused both DeSumma and Delia to threaten to kill the fellow. And in my view after reviewing the whole record, if it wasn't [sic] for the FBI stepping into this case that most likely would have happened.

N.T. 10/1/98 at 35-36.

of defendants D'Amelio and DeSumma for pretrial release.⁴ At this hearing, by agreement and pursuant to applicable law,⁵ the Court received in evidence the record of the October 1, 1998 hearing before Judge Reuter, including the affidavit filed by FBI Agent Williams in support of the warrant for the arrest of the defendants. In her affidavit, Special Agent Williams relates the following information:

Beginning in 1991 and continuing periodically until the time of his arrest, D'Amelio agreed to loan money to Gary and Andy Shull ("the Shulls") in their individual capacity and to their business, Valley Industrial Supplies, Inc. Repayment consisted of the Shulls writing checks on their business account to themselves, which the Shulls would then cash at D'Amelio's check cashing business, Budget Check Cashing, Inc. D'Amelio would retain all or part of the principal as payment on the loans. The rate of interest on "bounced" checks was one and one-half percent (1 ½%) per week, or 78% per year. D'Amelio employed DeSumma and Delia to collect the money owed by the Shulls. When the Shulls

⁴ D'Amelio and his counsel were present at the hearing. Counsel for DeSumma was present, but DeSumma, who became ill earlier that day, attended the hearing via video-conference equipment after stating that he felt fine and stipulating that he had no objection to such an arrangement. Counsel for Delia was present, but Delia is not being detained prior to trial and was not involved in the instant motions.

⁵ See United States v. Cole, 715 F.Supp. 677 (E.D.Pa. 1988).

fell in arrears they would be presented with promissory notes and/or judgment notes which defendants would demand that they sign. Affidavit at 3-5.

In January, 1998, D'Amelio and DeSumma came to the offices of the Shulls and angrily demanded payment. With D'Amelio present, DeSumma fired a bullet into the wall behind one of the Shulls. Affidavit at 4. On June 25, 1998, the Shulls, themselves the target of a federal investigation for telemarketing fraud, began to cooperate with the FBI in exchange for future sentencing consideration. As part of their cooperation, the Shulls agreed to wear digital recording devices disguised as pagers to record their dealings with the defendants. Affidavit at 5.

DeSumma and Delia strip searched the Shulls on two occasions. The searches took place at the beginning of meetings between the Shulls and defendants to ensure that the Shulls were not wearing concealed recording devices or transmitters. The first such incident occurred on July 20, 1998, when the Shulls met DeSumma at "Benny the Bums" restaurant at the corner of Red Lion Road and Bustelton Avenue in Philadelphia. DeSumma took the Shulls to the men's room, where he told them to remove their clothing. After lifting their shirts and lowering their pants to prove that they were not wearing recorders or transmitting devices, the Shulls were told to speak to no one about the

financial arrangement they had with Budget Check Cashing. The second such incident occurred on September 18, 1998, when the Shulls met DeSumma and Delia at Benny the Bums. After forcing the Shulls to undergo a strip search, DeSumma demanded that they sign a promissory note, telling them, "'If you have to be killed, I'm the one who's gonna have to kill you. But I'll make it nice for you. Just one clean shot in the head.'" Affidavit at 7.

Special Agent Williams concluded the affidavit by relating information about a meeting held on September 25, 1998. On that date, the Shulls met D'Amelio, Delia, and DeSumma at Benny the Bums restaurant, where defendants told them that "the word on the street was that they were wired." Affidavit at 7. DeSumma took Gary Shull to the men's room and took what he thought was a pager from him. The pager was actually a radio transmitter given to the Shulls by the FBI. DeSumma then displayed what is believed to be a radio-frequency detector, which, according to DeSumma, "'lit up like a Christmas tree'" when passed over the transmitter. Affidavit at 8. DeSumma kept the radio transmitter, and the meeting continued.

On September 28, 1998, during a telephone conversation, Delia told Andy Shull that D'Amelio had "the pager," and that they should meet the next day (September 29, 1998). Delia did not specify the purpose of the proposed meeting. Affidavit at 8. The defendants were arrested shortly thereafter.

III. THE BAIL REFORM ACT OF 1984

The Court has jurisdiction over the motions of defendants for pretrial release under 18 U.S.C. section 3145(b). That section requires the Court to make a de novo determination of the findings of fact underlying the detention order. United States v. Delker, 757 F.2d 1390, 1394 (3d Cir. 1985). However, the Court must give Judge Reuter's findings "respectful consideration." United States v. Suppa, 799 F.2d 115, 120 (3d Cir. 1986). The transcript of the probable cause and pretrial detention hearing may also be admitted into evidence. United States v. Cole, 715 F.Supp. 677 (E.D.Pa. 1988).

The Bail Reform Act of 1984, 18 U.S.C. sections 3141-3150, sets forth four factors which the Court must consider in determining whether pretrial detention is warranted. These factors are:

- (1) the nature and seriousness of the offenses charged;
- (2) the weight of the evidence against the defendants;
- (3) the history and characteristics of the person including, inter alia, character, employment, family, and criminal history;
- (4) the nature and seriousness of the danger to any person that would be posed by the person's release.

See United States v. Traitz, 807 F.2d 322, 324 (3d Cir. 1986).
See also 18 U.S.C. § 3142(g)(1997). A detention decision must be supported by "clear and convincing evidence." 18 U.S.C. § 3142(f). As noted earlier, the detention orders at issue are not premised on the risk of flight. Thus, the focus of the Court is on the safety of any other person and the community.

A. The nature and seriousness of the offenses charged

The seriousness of the charges cannot be disputed. The Indictment charges defendants D'Amelio and DeSumma with conspiracy to collect extensions of credit through extortionate means in violation of 18 U.S.C. section 894(a)(1); collection of and attempted collection of extensions of credit through extortionate means in violation of 18 U.S.C. section 894(a)(1); use of a firearm in the commission of a crime of violence in violation of 18 U.S.C. section 924(c)(1); and felony possession of a firearm in violation of 18 U.S.C. section 922(g)(1). As Special Agent Williams' affidavit reveals, the crimes themselves involve serious extortionate practices, and violent debt collection.

B. The weight of the evidence

While the Court notes that the evidence against the defendants is not overwhelming, it is sufficient to meet the

government's burden for purposes of the instant motions. At the November 6, 1998 hearing, the government introduced into evidence the record of the October 1, 1998 hearing and the following exhibits relating to the January, 1998 shooting incident: (1) photographs of the Shulls' office depicting the bullet and bullet hole; (2) a ballistics report on the bullet, showing that it came from a .44 caliber revolver; and (3) gun registration documents establishing that the bullet was fired from a revolver registered to D'Amelio, a Bulldog Pug .44 caliber SPL 5 shot revolver, serial number 1128124. This revolver was found at Budget Check Cashing at the time of D'Amelio's arrest.⁶ Regarding the alleged conspiracy and accompanying threats, the Shulls provided statements to the government covering the conduct of the defendants referenced in the affidavit and charged in the Indictment (although the statements are not in evidence).

At the November 6, 1998 hearing, the Court received defense testimony from Daniel Maneely, the manager of Budget Check Cashing. Mr. Maneely testified that he was unfamiliar with the extortionate practices detailed in Special Agent Williams' affidavit, and that the Shulls visited Budget Check Cashing many times after the January, 1998 shooting incident. On cross examination, Maneely stated that debt collection at Budget Check

⁶ Another firearm and a knife were also found on D'Amelio.

Cashing was primarily his responsibility; if anyone other than himself were to collect debts on bad checks, it would be a deviation from the normal operating procedures. On redirect, Maneely stated that when the Shulls came to Budget Check Cashing after January, 1998, they were always friendly.

C. The history and characteristics of defendants D'Amelio and DeSumma

At the November 6, 1998 hearing, defendants presented a number of character witnesses,⁷ all of whom testified to the peaceful nature of the defendants. On cross-examination, some of these character witnesses stated that they were unaware of the January, 1998 shooting incident, and others stated that they were unaware of defendant DeSumma's criminal history.

The evidence presented discloses that defendant D'Amelio has no prior criminal history and has strong family ties to the Philadelphia area. Defendant DeSumma also has strong family ties to the Philadelphia area, but he has a prior felony conviction in the Court of Common Pleas of Philadelphia County - a conviction for conspiracy and aggravated assault, crimes of violence, in 1989. Both D'Amelio and DeSumma are taking prescription

⁷ Testifying for defendant D'Amelio were Daniel Maneely; and the defendant's wife, Marlene D'Amelio. Testifying for defendant DeSumma were Mark Ingelido, a neighbor; Marci Ann Doyle, a friend; Ronald Greenley, a friend; Stacy Artz, DeSumma's niece; Maryanne DeSumma, DeSumma's wife; and Denise Soreth, DeSumma's sister-in-law. There was a proffer made with respect to the testimony of Steve Levy, the owner of Benny the Bums.

medication while in custody. DeSumma stated that he is in considerable pain from injuries suffered during the Vietnam War (he has been found 100% disabled for the purposes of social security disability benefits), for which he takes a pain-reliever, Percocet, and that he "could not survive physically nor emotionally if he attempted to flee the jurisdiction."

Memorandum in Support of Defendant DeSumma's Motion for Pre-Trial Release at 3. Defendants agreed to post their respective homes, and, with respect to D'Amelio, other assets, as bail.

D. The danger to any person that would be posed by the release of defendants D'Amelio and DeSumma

The Court has already summarized the evidence of the defendants' threats against the Shulls, especially the use of a firearm against Andy Shull in January, 1998, and the death threat made on September 18, 1998. At the September 25, 1998, meeting between the Shulls and the defendants, it became apparent that defendants had discovered the Shulls were cooperating with the government. From the January, 1998, shooting incident up to the proposed September 29, 1998, meeting, the violence and seriousness of the threats against the Shulls continued to escalate. It is reasonable to assume that the sole purpose of this proposed meeting was to confront the Shulls about their cooperation with the government. All such evidence gives the Court serious concern for the Shulls' safety. The evidence

adduced on this last factor is strong, and the Court concludes that no condition or combination of conditions would reasonably assure the safety of the Shulls and the community if defendants were released prior to trial.

IV. CONCLUSION

The record is clear that probable cause exists to believe that defendant D'Amelio engaged in the collection of credit through extortionate means and used a firearm and threats of bodily harm in the commission of this crime of violence. Additionally, it is clear that D'Amelio conspired with and used convicted felons - DeSumma and Delia - to effectuate his criminal ends.

The government has established by clear and convincing evidence that defendants D'Amelio and DeSumma are a danger to the other persons, the Shulls, and to the community, and that no condition or combination of conditions will reasonably assure the safety of such other persons or the community. 18 U.S.C. § 3142(e). Accordingly, the Motions for Pretrial Release will be denied.

An appropriate order follows.

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O R D E R

AND NOW, to wit, this 13th day of November, 1998, upon consideration of the Motion for Pre-Trial Release of Defendant Peter C. D'Amelio (Document No. 26), and the Motion for Pre-Trial Release of Frank DeSumma (Document No. 28), and the Response of the Government to both motions, following a hearing in open Court on November 6, 1998, for the reasons stated on the record at the hearing and in the attached Memorandum, **IT IS ORDERED** that the Motion for Pre-Trial Release of Defendant Peter C. D'Amelio, and the Motion of for Pre-Trial Release of Defendant Frank DeSumma are **DENIED**.

BY THE COURT:

JAN E. DUBOIS, J.