

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

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

This matter came before the court for an initial appearance and arraignment on an Indictment in the above matter on Tuesday, August 26, 2008. The defendant, Vine Marshall, appeared in person and by his counsel. The United States appeared by Assistant United States Attorney Robert Mandel.

The government moved for detention pursuant to the Bail Reform Act, 18 U.S.C. § 3142. At Mr. Marshall's request, the detention hearing in this case was continued to August 29, 2008. A hearing was held on that date in accordance with §3142(f) of the Bail Reform Act.

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). 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 proffer submitted by the government at the hearing establishes that the defendant is charged in the Indictment with First Degree Murder, in violation of 18 U.S.C. §§ 1111, 1153, and 2. Probable cause exists to believe the defendant committed the offense with which he is charged because a grand jury has issued the indictment. This alleged crime is a crime of violence. In addition, the alleged crime involved the use of a firearm. The maximum penalty for this offense in the event of conviction is life imprisonment. Other than the fact of the indictment and the bare allegations contained in that indictment as stated above, no other information is known concerning the weight of the evidence against Mr. Marshall in this case.

Mr. Marshall declined to be interviewed by pretrial services prior to the hearing, as is his right. However, because no interview was conducted, no

information was submitted to the court regarding Mr. Marshall's financial circumstances, his history of drug or alcohol abuse, family ties, or physical or mental condition.

Mr. Marshall has one prior criminal conviction from 1976 in the state of South Dakota for murder, for which he received a sentence of life imprisonment, which was later commuted to a term of 99 years by then-Governor William Janklow. He was paroled on this charge in 1984, violated parole, and was reincarcerated in 1989. He was paroled again in 1993, again violated the conditions of his parole, and again was reincarcerated in the same year. He was paroled a third time in 2000 and is currently on parole on this charge, despite a subsequent tribal arrest for driving while intoxicated and the issuance of a 30-day protection order against defendant and in favor of defendant's girlfriend.

Mr. Marshall is not employed on a regular basis. He does have ties to the western South Dakota community dating back at least to the mid-1970s.

Based on the above findings, I find by clear and convincing evidence that there is no condition or combination of conditions of release that will assure the presence of the defendant at further proceedings in this matter or ensure the safety of any person or the community.

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 August 29, 2008.

BY THE COURT:

/s/ Veronica L. Duffy

VERONICA L. DUFFY
UNITED STATES MAGISTRATE JUDGE