

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal Docket No.
	:	3:03 CR 188 (CFD)
MICHAEL G. SPERO	:	

RULING ON MOTION FOR REVOCATION OF ORDER OF DETENTION

Pursuant to 18 U.S.C. § 3145(b), the Court, following a *de novo* review of U.S. Magistrate Judge Thomas P. Smith's amended detention order of July 2, 2003, orders the defendant detained for the following reasons:

1. On June 25, 2003, the defendant was arrested pursuant to a criminal complaint for violating Title 18, United States Code, Section 2423(b) (interstate travel to engage in illicit sexual conduct).
2. Following a detention hearing on June 30, 2003, U.S. Magistrate Judge Smith issued an order of detention on July 1, 2003 and an amended order of detention on July 2, 2003, on grounds of both dangerousness and risk of flight.
3. On July 2, 2003, a grand jury returned a one-count indictment charging the defendant with a violation of Title 18, United States Code, Section 2423(b).
4. On August 6, 2003, a grand jury returned a two-count superseding indictment charging the defendant with violations of Title 18, United States Code, Section 2423(b) (interstate travel to engage in illicit sexual conduct) and Title 18, United States Code, Section 2423(e) (attempt to engage in illicit sexual conduct).
5. This Court held a hearing on the defendant's "Motion for Revocation of Order of Detention" on August 25, 2003.

6. The defendant engaged in a sexually suggestive internet discussion with a 15 year old male, hereinafter referred to as "John Doe," in May 2003.

7. The defendant asserted in the discussion that he was a 23 year old medical student, but is a 41 year old anaesthesiologist who resides in New Jersey; he was also aware of the age of John Doe.

8. Following the internet communication, on June 10, 2003, the defendant met with the 15 year old boy at the Grantmoor Motor Lodge in Newington, Connecticut, and obtained a motel room there.

9. In that room, the defendant attempted to anally penetrate John Doe on several occasions and eventually did so. The next day, the defendant performed oral sex on the victim.

10. Thereafter, John Doe reported the events to law enforcement authorities who identified the defendant through various record checks, including the defendant's cellular telephone records and registration records from the Grantmoor Motor Lodge.

11. The defendant had previously been arrested by New Jersey State Police on February 3, 2003, on state charges of sexual assault and endangering the welfare of a child. At the time the defendant sexually assaulted John Doe in Connecticut, on June 10, 2003, he was on pretrial release, having posted a cash bond in New Jersey.

12. Following the assault on June 10, 2003 and John Doe's report of it to law enforcement, on several occasions from June 17, 2003, through June 25, 2003, an undercover FBI agent was in communication with the defendant, through the internet. The FBI agent posed as John Doe in those communications. In those communications, the defendant sought an additional opportunity to meet with "John Doe." In the course of those discussions, the defendant also expressed his interest in having additional sexual relations with the 15 year old victim. In addition, the defendant indicated that he had

met another boy who was "like 14 or 15, from Bristol"

13. The defendant scheduled a meeting with John Doe to take place on June 25, 2003. When he traveled to Connecticut for that meeting, he was arrested by Special Agents of the Federal Bureau of Investigation.

14. The Magistrate Judge's amended detention order of July 2, 2003 was supported by specific findings, including: Finding No. 6: "The Court finds that this alleged offense occurred while Spero was free on bond in a New Jersey state court case against him for similar predatory sexual behavior with a minor." Finding No. 7: "The e-mail conversation between Spero and the FBI agent, which conversation is reflected in the affidavit in support of the arrest warrant, indicates that Spero has engaged in a pattern of predatory sexual behavior involving victims under 16 years of age." Finding No. 9: "Spero appears to be single and unemployed. The conduct which has occurred in this case, and Spero's post-arrest behavior, suggest that he is of questionable stability. Conviction appears likely in this case. The Government appears to have a strong case."

15. The Government's proffered evidence includes not only the testimony of the victim in this case, but corroborating evidence from the Grantmoor Motor Lodge, internet chat transcripts, and the results of a court-ordered search of the defendant's vehicle.

16. The court-ordered search of the defendant's vehicle was completed on July 30, 2003. It followed the defendant's arrest of June 25, 2003 when the defendant expected to meet with John Doe. Among other items located in that search, agents discovered a backpack that contained condoms, lubricants, massage oil, and a Polaroid camera and film. The Government alleges, and the defendant does not disagree, that a virtually identical list of items had been found by New Jersey State Police

when the defendant's same vehicle was searched in February 2003, following his arrest on sexual assault charges in that state.

17. The defendant has no ties to the District of Connecticut. He owns no property in Connecticut, nor does he have family located in Connecticut.

18. The defendant is single, unemployed, and has been unemployed since October 2002.

19. The weight of the evidence here is strongly in favor of the government.

CONCLUSIONS OF LAW

1. The Bail Reform Act of 1984 ("the Act"), 18 U.S.C. § 3141, et seq., empowers the court to order a defendant's detention pending trial upon a determination that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community[.]" 18 U.S.C. § 3142(e).

2. In deciding the question of detention, the court's first responsibility is to preserve its jurisdiction in criminal cases by ensuring that a defendant will appear as required in order to face pending charges. United States v. Berrios-Berrios, 791 F.2d 246, 250 (2d Cir.), cert. dismissed, 479 U.S. 978 (1986).

3. Second, the court must consider the legitimate societal interests implicated by the release of defendants charged with serious crimes. United States v. Dillard, 214 F.3d 88, 95-96 (2d Cir. 2000), cert. denied, 532 U.S. 907 (2001).

4. Detention may be ordered only following a hearing. 18 U.S.C. § 3142(e), (f).

5. A detention hearing may be held when, inter alia, the case involves a crime of violence and the case involves a serious risk of flight. Id.

6. Defendant Spero has been charged with offenses that fall within the statutory definition of a "crime of violence." 18 U.S.C. § 3156(a)(4)(C) (any felony under Chapter 109A, 110, or 117).

Chapter 117 includes the statutes enumerated at 18 U.S.C. § 2421 et seq.

7. When detention is based wholly or in part on a determination of dangerousness, that finding must be supported by clear and convincing evidence. United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995).

8. The factors to be considered in making the determination whether to detain or release a defendant are set forth in 18 U.S.C. § 3142(g) and include, inter alia, the nature and circumstances of the crime charged, the question of whether the offense is a crime of violence, the weight of the evidence, the defendant's personal circumstances, including family and community ties, his criminal history, and whether at the time of the commission of the offense or arrest the defendant was on probation, parole, or conditional release.

DANGEROUSNESS

9. When defendants are charged with violations of 18 U.S.C. § 2423, for conduct occurring after April 30, 2003, the Bail Reform Act gives rise to a rebuttable presumption in favor of detention. 117 Stat. 650, at Section 203. (This statute is entitled, "Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003" and is known as the "Protect Act.") Section 203 of the Protect Act amends 18 U.S.C. § 3142(e)(2) with regard to the application of the rebuttable presumption in cases such as this one.

10. Thus, the question of whether this defendant should be released on bond begins with a rebuttable statutory presumption in favor of detention.

11. The invocation of the statutory presumption imposes a burden of production on the defendant; however, the burden of persuasion always remains with the Government, which must establish dangerousness by clear and convincing evidence. United States v. Mercedes, 254 F.3d 433, 435-36 (2d Cir. 2001). Once rebuttal evidence is adduced, however, the presumption nonetheless continues as one of the factors to be weighed in making the detention analysis. Id.

12. The defendant not only traveled to Connecticut to engage in illicit sexual conduct with a fifteen year old boy, the defendant did so on more than one occasion.

13. The defendant engaged in predatory behavior of this type with another similarly-aged child, having been charged with this same conduct by law enforcement authorities in the state of New Jersey in February 2003.

14. The defendant has indicated in the course of his internet discussions that he has been in contact with other children, including a "14 or 15" year old boy in Bristol, Connecticut.

15. The Government has established, by clear and convincing evidence, that the defendant is a danger to other persons and the community, and that there are no conditions of release that will reasonably assure the safety of other persons and the community. United States v. Coffey, 2001 WL 1249684 (N.D.N.Y. July 24, 2001) (defendant charged with receipt, possession and transportation of child pornography detained on the grounds of dangerousness); United States v. Vasquez, 241 F. Supp. 2d 34 (D. Maine 2003) (defendant charged with enticing a minor to engage in sexual acts and traveling in interstate commerce for that purpose detained as a danger to the community).

RISK OF FLIGHT

16. If convicted on the pending charges, the defendant faces penalties of up to thirty years imprisonment, on each count, and a term of supervised release of up to life. 18 U.S.C. §§ 2423(b), (e), 3583(k).

17. The severity of the punishment is a relevant factor which bears upon the risk of flight. United States v. Davidson, 1992 WL 144641, at *6 (N.D.N.Y. June 18, 1992).

18. There is clear and convincing evidence that no combination of conditions can ensure that the defendant would be present for further proceedings. See United States v. Reinhart, 975 F. Supp. 834 (W.D. La. 1997) (defendant charged with producing and distributing child pornography detained as a risk of flight).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Court finds that the Government has established by clear and convincing evidence that the defendant is a danger to the community and, further, the Government has established by clear and convincing evidence that there are no conditions of release that will reasonably assure the appearance of the defendant as required. For the foregoing reasons, the defendant's Motion for Revocation of Order of Detention is DENIED.

SO ORDERED this _____ day of September 2003, at Harford, Connecticut.

Christopher F. Droney
United States District Judge