

I. Background

Defendant has been charged with one count each of manufacturing more than 100 marijuana plants and conspiracy to manufacture more than 100 marijuana plants. (Def.'s Appeal 1, ECF No. 42-1.) Magistrate Judge Sullivan denied bail to Defendant due to lack of sufficient ties to Rhode Island. (Id.) Defendant's Motion for Reconsideration of Bail argued that he had procured a residence and employment in Rhode Island. (Id.) The Government responded that Defendant's attorney had found the housing for him, that Defendant had never seen the residence or met his intended landlord, and that Defendant "is in no way tied or otherwise rooted to this proposed address." (Gov.'s Resp. to Mot. for Reconsideration of Bail 3, ECF No. 35-1.) Likewise, the intended employer had never met Defendant, and only gave him the job because he knew Defendant's attorney; according to the Government, "[a]gain, it was evident that the defendant was in no way invested in this job nor had any attachment or affiliation with his proposed employer sufficient to deter him from fleeing the jurisdiction." (Id. at 4.) The Government further argued that Defendant received financial support from a third party that would be motivated to finance his escape and disappearance. (Id. at 4-5.)

II. Discussion

"In reviewing the magistrate judge's detention orders, the court must undertake an independent review, giving her decision such deference as the care and consideration manifested by the magistrate judge warrant." United States v. Simone, 317 F. Supp. 2d 38, 42 (D. Mass. 2004) (citing United States v. Tortora, 922 F.2d 880, 882-83 (1st Cir. 1990); United States v. O'Brien, 895 F.2d 810, 816 (1st Cir. 1990); United States v. DiGiacomo, 746 F. Supp. 1176, 1181 (D. Mass. 1990)). Under 18 U.S.C. § 3142(e), there is

a rebuttable presumption that no conditions or combination of conditions exist that will reasonably assure a defendant's appearance where there is probable cause to believe that "the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.)."

O'Brien, 895 F.2d at 814-15 (quoting 18 U.S.C. § 3142(e)). The burden of production then shifts to the defendant to "introduce 'some evidence' to the contrary." Id. at 815 (quoting United States v. Jessup, 757 F.2d 378, 381 (1st Cir. 1985)). However, the presumption "does not cease to have effect once the defendant has come forward with some evidence. Instead, it continues to operate as one factor to be considered by the court in determining whether the defendant must be detained." Id. (citing Jessup, 757 F.2d at 383).

In this case, the Court concurs with Magistrate Judge Sullivan that although "this decision poses a difficult one in light of the Defendant's absence of a criminal record and his failure to flee as he became aware early that there was an investigation afoot," ultimately, "the balance tip[s] in favor of detention based on the nature of the charge, which creates a motivation to flee and which is serious in nature, even though the Defendant's role in the alleged conspiracy is a relatively minor one." (Hr'g Tr. 16:17-17-1, Jan. 4, 2015, ECF No. 41.) The Court also agrees with Magistrate Judge Sullivan's assessment that:

the proffered residence and employment in Rhode Island that forms the basis for the motion for reconsideration . . . simply provides a place to which the Defendant has no emotional ties, no reason to stay, and work which essentially is the same in quality; that is, this does not create the emotional motivation on the part of the Defendant to remain because of the nature of the ties that has been presented.

(Id. at 17:7-16.)

Relying on O'Brien, Defendant argues in his Appeal that he "his whereabouts would be known via electronic monitoring; which in of itself arguably rebuts the presumption of flight." (Def.'s Appeal 3, ECF No. 42-1.) Yet O'Brien held that "evidence concerning the effectiveness of the [electronic monitoring] bracelet alone only arguably rebuts the presumption of flight"; instead, the First Circuit upheld the

magistrate judge's finding of no risk of flight because she "did not rely entirely on the bracelet in finding that O'Brien had rebutted the presumption," but "also considered the availability of a surety which, by all appearances, is so vital to defendant that he sought hard and long to avoid offering it." 895 F.2d at 816 (emphasis added). Indeed, if the Court were to hold that the availability of electronic monitoring automatically negated the presumption of flight risk, the presumption would become a nullity. In this case, there is no other evidence that rebuts the presumption of flight risk aside from the residence and employment that Magistrate Judge Sullivan properly considered and rejected.

Defendant further argues that he should be granted bail because two other members of the alleged conspiracy who Defendant claims "present[] no greater risk of flight" have been released. (Def.'s Appeal 5, ECF No. 42-1.) However, as the Government pointed out during its oral argument on Defendant's Motion for Reconsideration of Bail, unlike Defendant, both of those individuals had substantial ties to the community. (Hr'g Tr. 13:17-14:7, Jan. 4, 2015, ECF No. 41.)

III. Conclusion

For the foregoing reasons, the Court hereby DENIES Defendant's Appeal of Magistrate Judge Sullivan's Denial of His Motion for Reconsideration of Bail.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "WESMITH", written in a cursive style.

William E. Smith
Chief Judge
Date: March 15, 2016