

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 12-60298-CR-Scola

UNITED STATES OF AMERICA,

v.

RAEES ALAM QAZI,
a/k/a "Shan,"

Defendant.

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PRETRIAL DETENTION ORDER

The Court, pursuant to 18 U.S.C. § 3142, commonly known as the Bail Reform Act of 1984, hereby ORDERS the Defendant, RAEES ALAM QAZI, a/k/a "Shan," detained pursuant to the provisions of Sections (b), (e) and (f).

The Government moved for pre-trial detention of Defendant Qazi on the basis that he is a serious risk of flight or nonappearance and a danger to the community. After conducting a detention hearing in this case on December 18, 2012, the Court specifically finds that no condition or combination of conditions will reasonably assure the appearance of Defendant Qazi or the safety of the community as required. The Court makes the following findings of fact with respect to this order for detention:

I. Findings of Fact

A. Nature and Circumstances of the Offense

The Court takes judicial notice of the Indictment in this case. Defendant Qazi is charged by way of Indictment with conspiring to provide material support to terrorists, in violation of 18

U.S.C. § 2339A(a) (Count 1), and conspiring to use a weapon of mass destruction, in violation of 18 U.S.C. § 2332a(a) (Count 2). The statutory rebuttable presumption in 18 U.S.C. § 3142(e)(3)(C) does apply in this case. Defendant Qazi is facing a statutory maximum of fifteen years in prison for Count 1 and life in prison for Count 2.

B. Weight of the Evidence

The weight of the evidence against Defendant Qazi is substantial. The Government set forth the following evidence by proffer. The Government utilized confidential informants in this case and recorded numerous telephone calls and in-person conversations.¹ In August 2012, Defendant Qazi's brother, who is a co-defendant in this case, told an individual that Defendant Qazi had connections with Al Qaeda and that Defendant Qazi believed that he was being watched by law enforcement. During another recorded conversation between Defendant Qazi's brother and the brother's wife, the brother's wife made a statement to the effect that, even though Defendant Qazi is going to jihad, he needs to work for now to help with the household expenses.

On August 30, 2012, Defendant Qazi and his brother purchased a computer from a third party, and it was delivered to Defendant Qazi's brother. Defendant Qazi's brother referred to Defendant Qazi as a "lone wolf" to the third party and compared Defendant Qazi to terrorists such as Faisal Shahzad² and others. The computer bought by the brothers was actually an FBI computer, and the FBI was able to track Defendant Qazi's internet searches. Defendant researched how to make bombs, different types of ingredients used in explosive devices, bomb detonation mechanisms, the pure form of PETN³, how to identify targets, and the legality of martyrdom among other topics. He also read Al Qaeda's online magazine, entitled *Inspire*. The

¹ The Government has filed a Notice of Intent to Use Foreign Intelligence Surveillance Act Information. See DE 9.

² Faisal Shahzad is a Pakistani American who attempted a car bombing in Times Square in New York City in 2010.

³ PETN, or Pentaerythritol tetranitrate, is one of the most powerful high explosives.

computer was seized pursuant to a search warrant, and law enforcement has not finished searching the computer at this time.

In September 2012, Defendant Qazi's brother was recorded stating that Defendant Qazi should not have to work as he would not be in this world for long and was following the path of Allah. Defendant Qazi's brother said that Defendant Qazi had taken a covenant and would risk his life at his first chance. In another recording, Defendant Qazi stated that his belief was that a person should keep everything in his head to circumvent law enforcement.

On November 23, 2012, Defendant Qazi left Fort Lauderdale and was driven by an individual to New York City. While traveling, he shaved, which was an unusual act for the Defendant. Defendant Qazi arrived in New York City on November 24, 2012. A November 27, 2012, phone call between Defendant Qazi and his brother was intercepted and recorded while Defendant Qazi was in New York. Defendant Qazi indicated during that call that he was going to return to South Florida as he had not yet completed his task and had run out of money. Defendant Qazi's brother told him to return to South Florida, raise money, and then later carry out the task. The brother then wired Defendant Qazi money so that he could take a bus home to Florida. On November 29, 2012, Defendant Qazi was arrested when he got off a Greyhound bus in Fort Lauderdale.

Defendant Qazi gave an oral post-arrest statement, which was not recorded, to law enforcement. Some questions were asked pre-*Miranda* as Defendant Qazi was considered to be an imminent threat. He also spoke to law enforcement after *Miranda* statements were given, and he signed a written waiver of his *Miranda* rights. Defendant Qazi initially denied any criminal activity, but then he confessed. He stated that he was from Pakistan and routinely travels back to that country. Defendant Qazi explained that, when he returned to the United States from

Pakistan in July 2011, he began to prepare for an attack on United States soil to avenge innocents killed in Afghanistan and by drones. Defendant Qazi stated that he wanted to execute his attack in New York City to send a message. He also intended on returning to New York after raising more money. Defendant Qazi admitted to reaching out to Al Qaeda, watching videos promoting violent jihad, and reading Al Qaeda's *Inspire* magazine.

In addition to his verbal post-arrest statement, Defendant Qazi signed a brief statement written by an agent in English. The document stated, in summary, that he went to New York to carry out an attack on an unspecified target and was unable to carry out the attack.

During a search of the apartment where Defendant Qazi, his father, his brother, and his sister-in-law resided, law enforcement found a letter that Defendant Qazi had left for his family. The letter, in Arabic, stated that Allah would pay the family back for everything they had given Defendant Qazi. The letter also said not to panic and to keep cool, especially when someone asks.

According to the Government, Defendant Qazi was going to be the actor and carry out an attack in New York through an explosive device on his person or through the remote detonation of an explosive device. Defendant's brother's role in the conspiracy was to support Defendant Qazi financially.

Defense counsel cross-examined FBI Special Agent Kristine Holden. She explained that the family apartment where Defendant Qazi resided, as well as the garage of Defendant Qazi's sister, were searched. Law enforcement recovered a part of a Christmas tree light strand, batteries taped together, high-strength peroxide, remote control car parts, wires, and voltmeters from Defendant Qazi's room. These items were of significance to law enforcement since, before leaving for New York, Defendant Qazi had viewed an *Inspire* article about making homemade

bombs utilizing Christmas tree lights and batteries. Moreover, during his post-arrest statement, Defendant Qazi stated that he tried to make an explosive device at home, but it did not work.

Agent Holden testified that, according to Defendant Qazi's post-arrest statement, he went to New York to get a job so that he could both support himself and buy explosives to build a bomb. Defendant Qazi admitted to his computer searches related to making a bomb. He also stated that he rode around on his bicycle in New York City looking for targets, but he never selected one. Defendant Qazi told law enforcement that would have completed his attack but ran out of money and equipment. He stated that he planned to practice bomb-making at home before again returning to New York. Agent Holden additionally testified that Defendant Qazi asked an individual, during a recorded conversation, how crowded certain areas in New York City were, such as Times Square, Wall Street, and the theaters.

C. Defendant's History and Characteristics

The Court takes judicial notice of the Pretrial Services Report. Defendant Qazi is twenty years old and was born in Pakistan. He entered the United States approximately ten years ago and is a naturalized United States citizen. Defendant Qazi has resided at the same address in Broward County for the last three years and attended school in South Florida. His parents and two of his siblings reside in South Florida, but one sibling resides in Pakistan. Defendant Qazi is currently self-employed, buying and selling bicycles on Craigslist. Previously, he was employed as a maintenance man at a mosque and sold merchandise at the Swap Shop. Defendant Qazi has no money or real estate. He has a valid U.S. passport, which was seized by law enforcement, and he travels between Pakistan and the United States.

D. Defendant's Criminal History

Based on the Pretrial Services Report, Defendant Qazi has no criminal history.

II. Reasons for Detention

The policy underlying the Bail Reform Act “is to permit release under the least restrictive condition compatible with assuring the future appearance of the defendant.” *United States v. Price*, 773 F.2d 1526, 1527 (11th Cir. 1985) (per curiam). When the United States seeks to detain a criminal defendant pending trial based on his status as a flight risk, it must prove by a preponderance of the evidence that no condition or set of conditions will reasonably assure his presence at trial. *United States v. Medina*, 775 F.2d 1398, 1402 (11th Cir. 1985). By contrast, where the Government seeks to detain a defendant based on a contention that he is a danger to the community, it must show by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of the community. *Id.* However, where, like here, a defendant is charged with an offense for which a maximum term of imprisonment of ten years or more is prescribed in 18 U.S.C. 2332b(g)(5)(B), a rebuttable presumption arises that the person is both a flight risk and a danger to the community. “Once the statutory presumptions are raised, the defendant carries the burden of production to come forward with evidence to rebut the presumptions.” *United States v. Quartermaine*, 913 F.2d 910, 916 (11th Cir. 1990). But this “obligation to come forward with evidence does not shift to the defendant the government’s burden of persuasion.” *Id.* (citing *United States v. King*, 849 F.2d 485, 488 (11th Cir. 1988)). Accordingly, in a presumption case, the defendant bears the burden of producing evidence to suggest that he is not dangerous and/or that he is not likely to flee if released. *Quartermaine*, 913 F.2d at 916 (quoting *United States v. Hurtado*, 779 F.2d 1467, 1479 (11th Cir. 1985)). In presumption cases, “the presumption becomes evidence to be considered along with other evidence listed in the [Bail Reform] Act as indicative of risk of flight or danger to the community.” *Quartermaine*, 913 F.2d at 916. Finally, the presumption of detention does not

alter the defendant's underlying presumption of innocence. *See* 18 U.S.C. § 3142(j).

A. Likelihood of Defendant's Reappearance if Released

The Court, after carefully listening to the testimony, the government's proffer, the defense proffer, and carefully reviewing the Indictment, pre-trial services report and docket in this case, finds that there is no condition or combination of conditions of release which will reasonably assure Defendant Qazi's presence if he is released. The Court finds that there is a serious risk that Defendant Qazi will flee if released. Defendant Qazi has ties to Pakistan and has traveled there recently, and it would be difficult, if not impossible, to extradite him from Pakistan if he were to flee there. Defendant Qazi is also facing a very serious prison sentence if convicted and has no substantial assets in the United States. In light of the statutory rebuttable presumption, the substantial weight of the evidence against him, including a post-arrest oral statement and a signed written statement, his ties to Pakistan, his asserted goal of engaging in a terrorist attack, and the substantial prison term Defendant Qazi faces if convicted, the Court finds that the Government has shown by a preponderance of the evidence that Defendant Qazi is a flight risk. Defendant Qazi failed to rebut the statutory presumption as to his risk of flight.

B. Nature and Seriousness of the Danger to Any Person or the Community that would be posed by the Defendant's Release

This Court, after carefully listening to the testimony, the government's proffer, the defense proffer, and carefully reviewing the Indictment, pre-trial services report and docket in this case, finds that there is no condition or combination of conditions of release which will reasonably assure the safety of the community if Defendant Qazi is released. In light of the Government's substantial evidence against Defendant Qazi, including his inculpatory post-arrest statement in which he admitted most of what the Government is alleging, and the seriousness of the charges against Defendant Qazi, the Court finds that the Government has shown by clear and

convincing evidence that Defendant Qazi is a danger to the community. The option of house arrest with electronic monitoring, as suggested by the defense, is not a suitable alternative in this case where the Defendant stands accused of attempting to make explosive devices in his home, engaging in conspiratorial conversations in his home, and engaging in computer searches for creation of explosive devices in his home. Defendant Qazi has failed to rebut the statutory presumption as to his danger to the community. The Court finds that he would pose a danger to the community if released.

III. Directions Regarding Detention

Accordingly, it is hereby ORDERED that Defendant Qazi be committed to the custody of the Attorney General 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 Court directs that Defendant Qazi be afforded reasonable opportunity for private consultation with counsel; and the Court directs that, on order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility in which Defendant Qazi is confined deliver Defendant Qazi to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

DONE and ORDERED in Chambers at Fort Lauderdale in the Southern District of Florida, this 19th day of December, 2012.


WILLIAM MATTHEWMAN
UNITED STATES MAGISTRATE JUDGE