

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
v.) No. 1:20-cr-10002 JDB
)
CHAD D. ISBELL,)
)
Defendant.)

ORDER

On January 30, 2020, the undersigned Magistrate Judge found that “no condition or combination of conditions of release would reasonably assure the safety of any other person and the community” from the Defendant, Chad D. Isbell, and ordered that he be detained pending trial. (Docket Entry (“D.E.”) 12.) To put it bluntly, since January 30, 2020, the world has drastically changed due to COVID-19, a coronavirus originating in Wuhan, People’s Republic of China. According to the World Health Organization, on January 30, 2020, there were 7,736 confirmed cases of COVID-19 world-wide and only 5 confirmed cases within the United States.¹ By March 19, 2020, the confirmed global case numbers rose to 209,839 with 7,087 confirmed cases in the United States.² Since January 30, 2020, the World Health Organization also began characterizing the COVID-19 outbreak as a pandemic, and on March 13, 2020, the President of the United States

¹ See World Health Org., Novel Coronavirus(2019-nCoV) Situation Report-10 (Jan. 30, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200130-sitrep-10-ncov.pdf?sfvrsn=d0b2e480_2.

² See World Health Org., Novel Coronavirus(2019-nCoV) Situation Report-59 (Mar. 19, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200319-sitrep-59-COVID-19.pdf?sfvrsn=c3dcdef9_2.

of America, Donald J. Trump, issued a Proclamation declaring a National Emergency to assist in combatting the spread of the disease.³

In light of these changes, Mr. Isbell, who suffers from various medical maladies, sought reconsideration of his order of detention. (D.E. 23.) Mr. Isbell's request was referred to the undersigned Magistrate Judge "to consider the ramifications of the current health crisis to [Mr. Isbell's] situation" and "to determine if there any conditions or combination of conditions found in 18 U.S.C. § 3142(c) which would reasonably assure the safety of any other person and the community by his release." (D.E. 25.) For the reasons set forth below, despite growing national concerns regarding the potential spread of COVID-19 within prisons, jails, and correctional facilities, Mr. Isbell's continued detention is warranted.

Procedural Background

On January 16, 2020, Mr. Isbell was charged by Criminal Complaint with Sexual Exploitation of a Minor and Possession of Child Pornography. (D.E. 3.) The Affidavit in support of the Criminal Complaint alleges that Mr. Isbell possessed child pornography and molested and drugged a seven (7) year old girl. (D.E. 3-1). After Mr. Isbell's arrest, he was ordered to be temporarily detained pending his detention hearing. (D.E. 6.)

On January 30, 2020, a detention hearing was held. At the hearing, Dennis Mitchell, a Task Force Officer, and Sandra Denning, Mr. Isbell's mother, testified. (D.E. 11.) The Pretrial Services Report indicated that Mr. Isbell is 53 years old and has several medical conditions including congestive heart failure, chronic obstructive pulmonary disease ("COPD"), a tumor on his spine, and heart blockage. (D.E. 10.)

³ Proclamation No. 9994, 85 F.R. 15337 (March 13, 2020 [published March 18, 2020]).

Additionally, the Pretrial Services Report demonstrated that Mr. Isbell has a lengthy criminal history including, but not limited to drug sales, failure to appear, possession of methamphetamine, resisting arrests, criminal trespass, and a probation violation. (*Id.*) In light of the testimony of Dennis Mitchell, Mr. Isbell's Pretrial Services Report, and the nature of the charges against Mr. Isbell in this case, I found that probable cause existed for the charges against Mr. Isbell and that no condition of release would reasonably assure the safety of any other person and the community from the Defendant. (D.E. 12.) Accordingly, Mr. Isbell was ordered detained pending trial. (*Id.*)

On February 18, 2020, Mr. Isbell was indicted for production of child pornography. (D.E. 15.) He subsequently entered a "not guilty" plea at his February 26, 2020, arraignment. (D.E. 26.) On March 17, 2020, Mr. Isbell filed a Motion for Review of Order of Detention. (D.E. 23.)

On March 20, 2020, a hearing was held on Mr. Isbell's motion. Mr. Isbell, through his counsel, consented to appearing via videoconferencing. At the hearing, counsel for Mr. Isbell reiterated the reasons raised in his motion as grounds for his relief. Specifically, Mr. Isbell contends that his medical conditions place him as "high risk" for COVID-19. (D.E. 23.) Mr. Isbell asserts that because he is detained, he cannot socially distance himself or isolate himself from others and is forced to interact with guards and hundreds of inmates on a daily basis. (*Id.*) Therefore, because he is high risk and COVID-19 is spreading, Mr. Isbell requests the Court to release him from pretrial confinement and place him on home detention at his mother's residence.

The United States opposes Mr. Isbell's release. The United States contends that there have been no confirmed COVID-19 cases in the West Tennessee Detention Facility ("WTDF"), the facility in which Mr. Isbell is currently being housed. Additionally, as set forth in the United States' response in opposition to Mr. Isbell's motion, WTDF is taking affirmative steps to prevent

or mitigate the risk that COVID-19 poses to the facility and its detainee population. (D.E. 27.) Finally, the United States argues that the COVID-19 pandemic does not in of itself demonstrate a change in circumstances or otherwise impact the undersigned's prior finding that no condition of combination of conditions would reasonably assure the safety of others and/or the community from the Defendant. (*Id.*)

COVID-19 & Confinement

COVID-19 is a serious disease, particularly for high risk individuals. The Center for Disease Control ("CDC") has identified "older adults"⁴ and persons with underlying medical conditions such as heart disease, diabetes, and lung disease as being at higher risk of getting very sick from COVID-19.⁵ Additionally, millions of United States citizens are currently under "shelter in place" orders.⁶ Moreover, President Trump has issued guidelines that people should avoid gatherings of over ten (10) people.⁷ As noted by the United States District Court for the District of Nevada, the COVID-19 pandemic could become especially problematic due to the close quarters, flow of people, and general population in our nation's prisons, jails, and correctional facilities. *United States v. Barkman*, No. 3:19-cr-0052-RCJ-WGC, 2020 U.S. Dist. LEXIS 45628, *1-4 (D.

⁴ Persons over the age of 65.

⁵ See Center for Disease Control and Prevention, Are You at Higher Risk for Severe Illness?, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> (last visited Mar. 30, 2020, 11:23 a.m.).

⁶ See, e.g., Governor's Exec. Order No. N-33-20, available at <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf> (last visited Mar. 20, 2020, 2:12 p.m.).

⁷ See White House, Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing (Mar. 17, 2020), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-4/> (last visited Mar. 20, 2020, 2:26 p.m.).

Nev. Mar. 17, 2020) (suspending intermittent confinement as a condition of probation for 30 days in light of the potential spread of COVID-19 in jails and prison in general, the specific precautionary measures of the facility at issue in its case, and the absence of an objection from the government).

While the impact of COVID-19 on all Americans is rapidly growing and changing on a daily basis, since President Trump's March 13, 2020, declaration of a national emergency, two federal courts have reviewed orders of detention in light of the COVID-19 pandemic. Both courts have reached opposite outcomes. The United States District Court for the Southern District of New York ordered the release of a previously detained defendant, in part, due to the COVID-19 outbreak. *United States v. Stephens*, No. 15-cr-95 (AJN), 2020 U.S. Dist. LEXIS 47846, *1-11 (S.D.N.Y. Mar. 18, 2020). On the other hand, the United States District Court for the District of Maryland recently denied an appeal of a detention order based, in part, on the COVID-19 pandemic. *See United States v. Martin*, No. PWG-19-140-13, 2020 U.S. Dist. LEXIS 46046, at *3-14 (D. Md. Mar. 17, 2020).

In *Stephens*, the presiding district judge noted that the decision to initially hold the defendant was a "close one" due to his prior criminal conduct. *Id.* at *5-6. Therefore, the court found that in light of new information concerning the strength (or, rather, weakness) of the Government's case and the unprecedented circumstances surrounding the COVID-19 pandemic, the defendant had established by clear and convincing evidence that he did not pose a danger to the community. *Id.* at *6. The court also held that pursuant to 18 U.S.C. § 3142(i), compelling reasons justified the defendant's release due to his inability to effectively prepare his defense, because of difficulties the defendant's counsel encountered in communicating with the defendant in preparation for a March 25, 2020, hearing. *Id.* at *8-11.

In *Martin*, the magistrate judge previously found that there was a presumption that the defendant should be detained pursuant to 18 U.S.C. § 3142(e)(3)(A), and that the defendant failed to overcome that presumption in light of the nature of his charges, the weight of the evidence against him, and his criminal history. 2020 U.S. Dist. LEXIS 46046 at *3. In his appeal to the presiding district judge, the defendant argued that the Federal and State declarations of emergency concerning COVID-19 coupled with his diabetes, high blood pressure, asthma, and pain placed him at higher risk for COVID-19. *Id.* at *4-5.

The court considered the defendant's argument and noted that the unprecedented magnitude of COVID-19 could "indeed constitute new information having a material bearing on whether there are conditions of release that will reasonably assure the appearance of detained defendants and secure the safety of the community." *Id.* at *8. However, the court also recognized that, "resolving an appeal of an order of detention must in the first instance be an individualized assessment of the factors identified by the Bail Reform Act, 18 U.S.C. § 3142(g)." *Id.* at *9-10. Therefore, despite the unprecedented nature of the COVID-19 pandemic and the defendant's medical conditions, the court found that the defendant failed to rebut the presumption of the detention. *Id.* at *11-4. The court made this finding based upon the nature of the charges against the defendant, the government's evidence, the defendant's criminal history, and the precautionary measures being taken against COVID-19 by the detention facility. *Id.* at *13-4.

Ruling

Mr. Isbell's personal health concerns due to his underlying medical conditions are understandable and reasonable. The seriousness of the ongoing COVID-19 pandemic and its potential impact on inmates and detainees throughout the United States, and in particular within the Western District of Tennessee, is recognized by this Court. However, in this case unlike in

Stephens, the Government has opposed the defendant's request to be release and the Government's case remains strong. Furthermore, like in *Martin*, Mr. Isbell is facing a presumption of detention. Finally, while Congress has passed legislation in response to the COVID-19 pandemic, Congress has not, as of yet, specifically authorized the judiciary to release "high risk" detainees or otherwise confront this potential issue. Therefore, I am constrained by the Bail Reform Act, 18 U.S.C. § 3141, *et seq.*, and my analysis starts and ends with the statute.

Here, Mr. Isbell is facing no less than 15 years imprisonment. (D.E. 15-1). Additionally, Mr. Isbell has been indicted for committing an offense involving a minor in violation of 18 U.S.C. § 2251(a) and (e). Accordingly, there is a rebuttable presumption that there is no condition or combination of conditions that will reasonably assure his appearance and the safety of the community. *See* 18 U.S.C. § 3142(e)(3). Mr. Isbell's criminal history, the strength of the government's evidence, including testimony at the initial detention hearing that Mr. Isbell confessed to the criminal conduct, and the nature of the charges against him all weigh in favor of his continued detention.

Despite the ongoing COVID-19 pandemic, Mr. Isbell has failed to rebut the presumption of detention. The Government has described the various precautions WTDF has taken to prevent the spread of COVID-19 in the facility.⁸ Additionally, there has been no proof that COVID-19 has been confirmed in the facility.

Furthermore, while Mr. Isbell's underlying medical conditions might reduce the likelihood that he would leave his mother's home if released, they do not substantially reduce the likelihood

⁸ These precautions include, but are not limited to: cancelling social and volunteer visits at the facility; requesting attorneys to use non-contact visitation rooms; unless needed for security reasons, halting detainee transfers within the facility; checking detainee temperatures for incoming and out-going transfers; disinfecting hard surfaces every two hours; wiping down restraints before and after use; and signage to encourage proper hygiene. (D.E. 27.)

that he could continue to engage in actions involving child pornography. Nor do they alleviate my concerns regarding his criminal history or the nature of the charges in this case. Accordingly, none of conditions or combinations of the conditions set forth in 18 U.S.C. § 3142(c)(1)(B) will reasonably assure the safety of any other person and the community from Mr. Isbell. Therefore, Defendant's Motion for Review of Order of Detention is hereby DENIED, and he will continue to be detained pending trial.

So ordered this the 20th day of March, 2020.

s/Jon A. York _____
United States Magistrate Judge

IF DESIRED, AN APPEAL OF THIS ORDER TO THE PRESIDING DISTRICT COURT JUDGE MUST BE FILED WITHIN FOURTEEN (14) DAYS OF THE SERVICE OF A COPY OF THIS ORDER. SEE LOCAL RULE 72(g). FAILURE TO APPEAL WITHIN FOURTEEN (14) DAYS MAY CONSTITUTE A WAIVER OF OBJECTIONS, EXCEPTIONS, AND ANY FURTHER APPEAL.