

**SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION - FELONY BRANCH**

UNITED STATES OF AMERICA : Case Nos.: 2016 CF3 19909
: :
v. : Hon. Anita Josey-Herring
: :
EDGAR WELCH : Preliminary Hearing: December 8, 2016

OPPOSITION TO MOTION TO CONTINUE PRELIMINARY HEARING

The United States of America, by and through its attorney, the United States Attorney's Office for the District of Columbia, hereby opposes defendant Edgar Welch's motion to continue preliminary hearing on the basis that the defendant has not shown good cause to continue the hearing for more than five calendar days as contemplated in 23 D.C. Code § 1322(d)(1).

Mr. Welch was initially presented to a magistrate of the Superior Court for the District of Columbia on December 5, 2016 on four counts: 1) Assault with a Dangerous Weapon, in violation of 22 D.C. Code § 402; 2) Carrying a Pistol Without a License (Outside Home or Business), in violation of 22 D.C. Code § 4504(a); 3) Unlawful Discharge of Firearm, in violation of 22 D.C. Code § 4503.01; and 4) Carrying a Rifle or Shotgun (Outside Home or Place of Business), in violation of 22 D.C. Code § 4504 (a-1). At presentment, the government requested, pursuant to 23 D.C. Code §§ 1322(b)(1)(a) and (b)(1)(d), that Mr. Welch be preventatively detained pending a preliminary hearing. Defense counsel did not make any argument against probable cause for the offenses charged in the Complaint as set forth in the Gerstein affidavit submitted by the government. Magistrate Judge Joseph Beshouri granted the government's request for preventative detention pursuant to 22 D.C. Code § 1322(b)(1)(a). The defense requested that the preliminary hearing be scheduled for Friday, December 9, 2016. However, because the undersigned counsel

is unavailable on December 9, 2016, the preliminary hearing was scheduled for Thursday, December 8, 2016, within the three-day period contemplated by 23 D.C. Code § 1322(d)(1).

On Wednesday, December 7, 2016, Mr. Welch's counsel, Ieshaah Murphy, emailed the chambers of Magistrate Judge Sherry Trafford at 11:48 a.m. and requested that the preliminary hearing be continued based on a "need to conduct additional defense investigation" and because Mr. Welch has family members and friends who would be travelling from North Carolina to be present for the hearing. The Court asked whether the government conceded to the continuance and whether the defendant would be willing to toll the time for indictment and trial for the period of the continuance. The undersigned spoke with Ms. Murphy by phone, who simply asserted a need and right to conduct an investigation, but provided no additional specifics.

Shortly thereafter, the undersigned learned that Ms. Murphy and an investigator from the Public Defender Service had appeared at an event at Comet Ping Pong on Tuesday December 6, which was held to celebrate the reopening of the restaurant after Mr. Welch entered the restaurant with an AR-15 rifle on December 4, to serve a subpoena on owner James Adefantis for the production of materials for the preliminary hearing on December 8. Based on that information, and the fact that the defense did not argue against probable cause at presentment, the government replied that it opposed a request for a continuance and further asked that any such request be made on the record, rather than via email. The Court replied that it would make a determination on the record at the hearing that was already scheduled for December 8, 2016. The defendant subsequently filed a motion to continue the preliminary hearing on the record.

The government submits that the defendant has not provided good cause to continue the hearing beyond the five calendar days allowed in the statute, nor has the defendant agreed to toll the time for indictment and trial if a continuance is granted. A blanket statement that the defense

needs additional time to investigate falls far short of the standard for good cause. This is especially the case where, as here, the defense has already served at least one subpoena, and, where eyewitness information and accounts have been widely reported in the news in the days since the offense. The government notes that as prescribed by D.C. Superior Court Criminal Rule 5.1(d), “the purpose of the preliminary hearing is not for discovery.” Moreover, Superior Court Criminal Rule 16(e) specifically provides that in a case where a defendant is preventatively detained pursuant to 23 D.C. Code § 1322(b)(1)(a), a request for discovery “may be made after 30 days following the initial order of detention or at any time after the detention hearing pursuant to 23 D.C. Code § 1322(d).”

Given that a detained defendant is not entitled to discovery at this stage in the proceedings, the defense has not asserted good cause for a continuance. If the defense learns of information that would be relevant to a probable cause determination at a later date, 22 D.C. Code § 1322(d)(6) provides that the preliminary hearing can be re-opened at any time on the basis of additional evidence. The defense can also move at any time for a change in release conditions by filing a motion with the Associate Judge presiding over the matter. This right to reopen the proceeding and contest detention further undermines the defendant’s claim that he must conduct additional investigation prior to the preliminary hearing.

Finally, as Rule 5.1 makes clear, in deciding whether to grant a continuance for good cause, the Court must take into account “the public interest in the prompt disposition of criminal cases.” Here, the public has an interest in the case moving forward in a timely fashion.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion has been served via email to the attorney for the defendant, Ishaah A. Murphy, this 7th day of December, 2016.

_____/s/ Sonali D. Patel
Sonali D. Patel
Assistant United States Attorney