

local 2/18

9/30

10/21 8th
multis
76 (2/21/92)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

CRIMINAL NO.92-10276-Z

THOMAS A. SHAY.

MEMORANDUM AND
ORDER PURSUANT TO 18 U.S.C. § 3142(e)
AFTER HEARING HELD PURSUANT TO 18 U.S.C. § 3142(f)

COLLINGS, U.S.M.J.

Thomas Shay ("hereinafter "Shay") was arrested on September 18, 1992 on a Complaint charging him, through the use of the telephone, willfully making a threat and maliciously conveying false information knowing the same to be false, concerning an attempt to intimidate an individual by means of explosives, in violation of 18 U.S.C. § 844(e). At his initial appearance on July 17, the Government moved for a detention hearing pursuant to 18 U.S.C. § 3142(f)(2)(A) and (2)(A). The motion was allowed. The Government requested a continuance; that motion was allowed. The detention hearing was scheduled for, and in fact held, on September 22, 1992. The defendant was present represented by retained counsel. A Grand Jury returned an Indictment containing the same charge as is contained in the Complaint on September 24, 1992.

The purpose of a detention hearing is as stated in the statute - i.e. "...to determine whether any condition or combination of

conditions...(of release) will reasonably assure the appearance of the person as required and the safety of any other person and the community...".

After hearing, I find that there are no conditions or combination of conditions which will reasonably assure the defendant's appearance. Accordingly, he shall be detained.

The salient facts are that Shay was arrested on a similar charge last fall and was released by the state court on bail on January 3, 1992. He defaulted on January 17, 1992; a warrant was issued on February 7, 1992. Law enforcement authorities began a search for him. His mother said he had fled to avoid prosecution and because he did not want to go back to jail. An unlawful flight to avoid prosecution complaint was filed in this Court against Shay on the basis of his failure to appear in state court; on March 20, 1992, Judge Alexander issued an unlawful flight warrant on the basis of the Complaint.

Shay was arrested on March 24, 1992 in San Francisco. He told arresting officers they were lucky because he was just getting ready to go to Reno. at the time of his arrest, Shay was using the name James Keough, the name of his sister's boyfriend's, and was carrying James Keough's military identification. Shay had been carrying on a business under the name of "James Keough Massage Services" in San Francisco. He claimed to investigators that the gay community could hide him for extended periods of time.

These set of facts convince me that no condition or combination of conditions will reasonably assure Shay's appearance. The other factors which must be considered as per 18 U.S.C. § 3142(g) do not

weigh in Shay's favor, or do not do so to an extent which would outweigh his conduct after release on bail on January 3. The charge is serious, the Government's evidence is at least sufficient to establish probable cause, the defendant is unemployed. Although he lives with his mother, that fact did not deter flight in January; I see no basis on which to find that it would not deter flight now.

In all the circumstances, there are no conditions or combination of conditions which will reasonably assure the defendant's appearance at future court proceedings. Accordingly, pursuant to 18 U.S.C. § 3142(e), it is ORDERED that the defendant be, and he hereby is, DETAINED pending trial of the charge contained in the above-styled Indictment. Pursuant to 18 U.S.C. § 3142(e), the written findings of fact and a written statement of reasons for the detention are contained supra. Further pursuant to 18 U.S.C. § 3142(i), it is ORDERED that:

(1) The defendant be, and he hereby is, 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;

(2) The defendant be afforded reasonable opportunity for private consultation with his counsel; and

(3) 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 the defendant is confined deliver the defendant to an authorized Deputy U. S. Marshal for the purpose of any appearance in connection with a court proceeding.

Review of the within Detention Order may be had by the defendant filing a motion for revocation or amendment of the within Order pursuant to 18 U.S.C. Sec. 3145(b).



ROBERT B. COLLINGS
United States Magistrate Judge

September 24, 1992.