

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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| UNITED STATES OF AMERICA | * | CRIMINAL DOCKET |
| VERSUS | * | NUMBER: 10-014 |
| ASHTON R. O'DWYER, JR. | * | SECTION: "MAG" |

**MOTION AND INCORPORATED MEMORANDUM
TO APPEAL ORDER OF DETENTION**

NOW COMES the defendant, Ashton R. O'Dwyer, Jr., who by and through undersigned standby counsel, respectfully moves this Honorable Court for the entry of an order, granting his motion for reconsideration of his detention. The reasons for this motion are set forth below:

1. On February 1, 2010, the Honorable Louis Moore, Jr., United States Magistrate Judge, ordered the defendant, Ashton R. O'Dwyer, remanded after a detention hearing. The defendant submits that he would like the opportunity to present new evidence that may cause the Court to grant a bond in this case.

2. Title 18, United States Code, Section 3142(b) provides for pretrial release on personal recognizance or on an unsecured bond. It states that:

The judicial officer shall order the pre-trial release of the person on his personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that a person not commit a federal, or local crime during the period of his release, unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

3. In determining whether the defendant should be detained, the following should be taken into consideration by the Court:

- (A) The nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;
- (B) The weight of the evidence against defendant;
- (C) Defendant's physical and mental condition;
- (D) Whether defendant is employed or actively seeking employment;
- (E) The length of defendant's residency in the community;
- (F) The strength of defendant's family and community ties;
- (G) Defendant's financial resources;
- (H) Defendant's criminal history;
- (I) Defendant's history relating to drug or alcohol abuse;
- (J) Defendant's record concerning appearance at court proceedings;
- (K) Whether defendant, at the time of the current offense or arrest was on probation or parole;
- (L) Whether defendant will restrict certain specified personal associations, places of abode, and travel;
- (M) Whether defendant will avoid all contact with an alleged victim of crime;
- (N) Whether defendant will avoid all contact with potential witness who may testify concerning the offense;
- (O) Whether defendant will report on a regular basis to a designated law enforcement agency;
- (P) Whether defendant will comply with a specified curfew;
- (Q) Whether defendant will refrain from possessing a firearm, destructive

- device, or other dangerous weapon;
- (R) Whether defendant will refrain from excessive use of alcohol, or any use of a narcotic drug;
- (S) Whether defendant will undergo medical or psychiatric treatment, including treatment for drug or alcohol dependency, if required;
- (T) Whether defendant will execute a bail bond.

4. Title 18, United States Code, Section 3142(f) provides for a review of the detention hearing. It states that:

The hearing may be reopened before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

5. On February 3, 2010, Mr. O'Dwyer was seen by Dr. C. Lei, a psychiatrist who attends inmates at the St. Bernard Parish Prison, the facility wherein Mr. O'Dwyer has been housed since January 30, 2010. Dr. Lei found Mr. O'Dwyer in a calm state of mind with no suicidal or homicidal ideation.

6. If released from custody, Mr. O'Dwyer would reside at his home located at 6034 St. Charles Avenue, New Orleans, Louisiana with his daughter Kathleen O'Dwyer. He agrees to modify his telephone service to install the equipment necessary for home monitoring. He would remain at his home unless he has an appearance in court, a reporting requirement with Pretrial Services, or a doctor's appointment. In those instances, he will have Pretrial Services pre-approve his absence from the home. Should his appearance in court be required, a representative of the Federal Public Defender's office will escort him to

court and remain with him until his court business is completed. Further, the Federal Public Defender's office will advise the court security officers of his presence in the courthouse. He has agreed to undergo regular psychological counseling, take all prescribed psychotropic medication and abide by other conditions of release as the Court deems necessary.

7. Ashton O'Dwyer represents that he is the owner of the above described property and has sufficient (\$500,000) equity in his home to secure any property bond set by the court.

8. He will tender his passport to Pretrial Services.

9. He agrees not to possess any firearm until this matter is resolved and the court formally orders that he may do so.

10. Ashton O'Dwyer agrees to avoid all contact with the alleged victim of the crime charged.

11. Mr. O'Dwyer agrees to refrain from excessive use of alcohol.

WHEREFORE, the defendant Ashton R. O'Dwyer, Jr. prays that this Honorable Court grant his motion to reconsider detention in this case and order an appropriate bond so

as to secure his release from custody as he has no criminal convictions, is a lifelong resident of this area, and has close family ties.

Respectfully submitted this 10th day of February 2010.

VIRGINIA LAUGHLIN SCHLUETER
Federal Public Defender, Standby Counsel

/s/Cynthia Cimino

CYNTHIA CIMINO

Assistant Federal Public Defender,
Standby Counsel

500 Poydras Street, Suite 318

New Orleans, Louisiana 70130

Telephone: (504) 589-7930

Bar # 30874

e-mail: cynthia_cimino@fd.org

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2010, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to the following: Gregory Kennedy, Assistant United States Attorney, 500 Poydras Street, New Orleans, Louisiana 70130. I further certify that I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participant: Timothy Gantner, United States Pretrial Services Officers, 500 Poydras Street, New Orleans, Louisiana 70130.

/s/Cynthia Cimino
CYNTHIA CIMINO
Assistant Federal Public Defender