

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Hon. Joel Schneider
v. : Mag. No. 07-2050 (JS)
AGRON ABDULLAHU :

MEMORANDUM OF LAW OF THE UNITED STATES IN OPPOSITION TO DEFENDANT
AGRON ABDULLAHU'S MOTION FOR BAIL

CHRISTOPHER J. CHRISTIE
United States Attorney
970 Broad Street
Newark, New Jersey 07102

On the Memorandum:

William E. Fitzpatrick
Deputy United States Attorney
R. Stephen Stigall
Assistant United States Attorney
Camden Federal Building &
U.S. Courthouse
401 Market Street, 4th Floor
Camden, New Jersey 08101
(856) 757-5031



PRELIMINARY STATEMENT

Defendant Agron Abdullahu supplied high-powered, dangerous weapons to three illegal aliens who were part of an alarming plot to attack United States military installations in New Jersey, Pennsylvania, and Delaware. Abdullahu also secreted those weapons for the illegal aliens so that they could avoid getting caught with them. Abdullahu's willingness to provide weapons to persons whom he knew to be preaching jihad makes him a particularly dangerous person whose release will threaten the community. Additionally, Abdullahu's ties to a foreign country that would not extradite him to the United States to be tried on the pending charge creates a powerful incentive for him to flee, given the likely sentence in this case of more than 5 years imprisonment. Finally, Abdullahu is apparently unmarried and has no children living in the United States. He works as a baker using skills that could be readily applied elsewhere in the United States or in his native Macedonia. It is against this backdrop that Abdullahu moves for bail pending trial.

The United States submits this memorandum of law in opposition to Abdullahu's motion.

FACTS AND PROCEDURAL HISTORY

On or about January 3, 2006, defendant Agron Abdullahu, Dritan Duka, a/k/a "Distan Duka," a/k/a "Anthony Duka," a/k/a "Tony Duka," Eljvir Duka, a/k/a "Elvis Duka," a/k/a "Sulayman," Shain Duka, and six other men conducted firearms training in the Pocono mountains of Pennsylvania. A video of this training shows the men shooting assault weapons at a firing range in a militia-like style while calling for *ji had* and shouting in Arabic "Allah Akbar" ("God is Great"). Immigration and Customs Enforcement checks show that Dritan Duka, Eljvir Duka, and Shain Duka (who are brothers) are illegally residing in the United States. Accordingly, federal law prohibits the Duka brothers from possessing firearms. See 18 U.S.C. § 922(g)(5). Abdullahu is a lawful permanent resident of the United States. Despite such status, Abdullahu faces deportation should he be convicted of an "aggravated felony," as will be shown herein.

Law enforcement officers learned of the firearms training in late January 2006 when a representative of a retail store informed law enforcement officials that an individual had brought a video to their store to be duplicated into a digital video disk ("DVD") that depicted conduct the store representative described as disturbing. The Federal Bureau of Investigation ("FBI") and Joint Terrorism Task Force ("JTTF") immediately commenced an investigation into the activities of the men

depicted in the DVD.

In summary, the investigation revealed that the Duka brothers, Mohamad Ibrahim Shnewer, and Serdar Tatar share radical Islamic and jihadist beliefs, most of whom have expressed their intent to engage in armed paramilitary style attacks on government facilities in New Jersey, Pennsylvania, Delaware, and elsewhere. In addition, the investigation revealed that those individuals have recruited and attempted to recruit others to radical Islamic theology, conducted small arms training using handguns, shotguns, and semi-automatic assault weapons, conducted tactical exercises using paint-ball devices, conducted surveillance operations at several federal facilities, including the United States Army base at Fort Dix, New Jersey, obtained a detailed map of the Fort Dix facility, and have attempted to obtain additional weaponry to, presumably, carry out their attacks.

Abdullahu, for his part, supplied the weapons the above-referenced individuals used during firearms training and, along with another person, stored the weapons because the Duka brothers knew that they could not legally possess firearms. For example, during the investigation in which a cooperating witness recorded a meeting with Dritan Duka, Eljvir Duka, and Shain Duka on January 19, 2007, the Duka brothers said that they could not possess firearms because they do not have "green cards." Dritan

Duka said that the group had four firearms. Eljvir Duka also said that they had a 9 millimeter handgun, an assault rifle, and a semi-automatic assault weapon. Dritan Duka explained that Abdullahu would bring the rifle and ammunition to the Dukas because he had a license for the weapon. During the meeting on January 19, 2007, plans were finalized for a second firearms training trip to the Poconos, according to which everyone would spend the night at Dritan Duka's house on January 31, 2007 and then leave for the Poconos early the next morning.

Between January 31 and February 1, 2007, law enforcement officers conducted video and photographic surveillance of Dritan Duka's residence in Cherry Hill, New Jersey. Law enforcement officers observed Abdullahu and Dritan Duka at separate times carrying dark colored rifle style bags into Dritan Duka's residence. A cooperating witness who was present at Dritan Duka's residence reported to law enforcement officers that Abdullahu had brought two firearms to Dritan Duka's residence - a 9 millimeter handgun and a Yugoslavian semi-automatic rifle. Law enforcement officers observed Shain Duka carrying a green rifle style softcase from Dritan Duka's residence to Abdullahu who loaded it into Abdullahu's vehicle. The cooperating witness also reported that Abdullahu placed the two firearms he had previously brought into Dritan Duka's residence into his vehicle to transport to the Poconos along with

a shotgun and a Beretta rifle that were also at Dritan Duka's residence. Law enforcement officers observed Abdullahu, the Duka brothers, and others depart Dritan Duka's residence on February 1, 2007. A cooperating witness traveled to 2717 Eagleview Drive, Gouldsboro, Pennsylvania on February 1, 2007 with the Duka brothers, Abdullahu, and others - the location of the house the Duka brothers rented for the Pocono trip.

On or about February 2, 2007, law enforcement officers conducting video surveillance at Pennsylvania State Game Land 127 - the same firearms range captured on the January 3, 2006 DVD described above - observed the Duka brothers all firing an SKS semi-automatic rifle, a Beretta Storm semi-automatic rifle, a Mossberg 12 gauge pump shotgun, and a 9 millimeter Beretta handgun. Law enforcement officers observed Abdullahu teaching several individuals where to place the shotgun when firing it.

On February 4, 2007, Mohamad Shnewer and another cooperating witness arrived at the rental house in the Poconos. The cooperating witness recorded the events that occurred that evening in the rental house, which included Shnewer playing videos on his laptop computer which members of the group referred to as Mujahideen and terrorist training videos. Members of the group pointed out that United States military vehicles were shown being destroyed in various attacks. Shain Duka pointed out that a United States Marine's arm had been blown off, at which point

laughter erupted from the group. In the early hours of February 5, 2007, while the cooperating witness was still consensually recording conversations involving the targets at the rental house, several members of the group engaged in a discussion concerning bombs, nitroglycerin, and the explosive C-4. In addition, on or about February 6, 2007, Abdullahu discussed his knowledge about making explosives:

. . . If you get fat, heat it up, evaporate it. Cool it down. You will get a nice bullet. The most explosive and the most unstable explosive in the world. It's very powerful but very unstable. . .

I tried. I got 10 times of fucking fat from a shopper. But I couldn't melt it. It stinks. That fucking stinks. You can't burn it. I wish I no boil it, but it didn't work. You have to have the fucking chemistry. You have to have the perfect temperature. You have nitroglycerin. You can make a bomb with the fucking ammonium. Fucking Windshield viper . . Burns like fucking gasoline.

In a fucking bottle. You can use it in an assault. You can do only one raid but you can do only one raid, because it contaminates the oil . . . It's made out of alcohol though.

(In response to the cooperating witness' question how Abdullahu knew so much about bombs) "I love that shit. I looked for it, I learnt about it . . . I like to know everything in case very time comes. Because it the times. If any moment if somebody turns against me. If they turn against me, I would have a fighting chance. You don't have to have that fucking military [stuff] to making bombs. You can break into fucking house and steal stuff to make a bomb. You can break into a gun store and steal the stuff and make the bomb . . . I can break into the Home Depot and make a fucking bomb. Make a fucking bomb . . . RPG [rocket propelled grenade] thing? It will not be as effective if you don't have high explosion, like you can just gun powder it's not going to be good bomb. But if you put

nitroglycerin on it, stable it up, that's it.¹

After this firearms training trip in the Poconos, Dritan Duka and Mohamad Shnewer discussed purchasing fully-automatic AK-47 machine guns from a cooperating witness' "source" of weapons. Ultimately, May 7, 2007 was set as the date Dritan Duka and Shnewer would take delivery of the AK-47 machine guns and other weapons Dritan Duka had ordered. Dritan Duka and Shain Duka came to the deal, purchased three AK-47 fully automatic machine guns and four M-16 rifles, and were arrested pursuant to criminal complaints and arrest warrants issued by the Court.

On May 7, 2007, Abdullahu was arrested at his residence in Williamstown, New Jersey pursuant to a federal criminal complaint and arrest warrant issued by the Court. The complaint charged Abdullahu with aiding and abetting the Duka brothers' illegal possession of firearms, in violation of Title 18, United States Code, Sections 922(g)(5) and 2.

Following arrest, Abdullahu waived his Miranda rights and agreed to be interviewed by law enforcement officers. Abdullahu admitted, in substance and in part, that he kept a 9 millimeter Beretta rifle and a shotgun given to him by the Duka

¹ During the discussion, Abdullahu said that he would not kill anyone. When the cooperating witness asked "You don't want to kill somebody, but you want to build bombs and rockets that can kill many," Abdullahu replied, "No, you got it wrong. I said 'knowledge is power' and just in case somebody pushes me to the limits."

brothers because he knew they were illegally in the United States and could not possess firearms. Abdullahu also admitted, in substance and in part, that he provided a 9 millimeter Beretta handgun and an SKS semi-automatic rifle to the Dukas which were used during the January 2006 and February 2007 firearms training trips in the Poconos. Abdullahu also stated, in substance and in part, that the night before the February 2007 trip, he and Shain Duka traveled to Philadelphia where Shain Duka took possession of a 9 millimeter Beretta rifle from an unknown male at a pizza shop. They then traveled to a storage facility near the pizza shop where the unknown male gave Shain Duka and Abdullahu the shotgun used in the February 2007 Pocono firearms training trip. Abdullahu also admitted that he purchased the ammunition for the February 2007 trip with his credit card and collected money from members of the group.

Demonstrating Abdullahu's knowledge about the Duka's propensity for violence, Abdullahu recounted to the interviewing agents a conversation he had with the Dukas concerning attacks on the U.S. military. Abdullahu said that when he mentioned that under Islam one could not kill civilians, one of the Duka's responded that maybe "you could attack a military base."² Abdullahu claimed that he told the Duka brother who mentioned attacking a military base that it would be crazy to do so. When

² Abdullahu could not recall which Duka brother said this.

the Duka brother responded that they could find a way, Abdullahu suggested that they needed to think about their children and family to which the Duka brother responded that Allah would find a way to take care of family and children.

Abdullahu also admitted, in substance and in part, that he was present when Mohamad Shnewer showed jihadist videos during the February 2007 firearms training trip in the Poconos. Abdullahu described the videos as showing Al Qaeda killing U.S. soldiers in Iraq. Abdullahu also believed that Shnewer may have been present during conversations regarding jihad as well as the attack on a military base.

Abdullahu claimed that he had neither formal military training nor bomb-building training. He did, however, tell the interviewing agents that he has used gun powder to blow up logs in his back yard. Abdullahu explained that he ignited the gun powder with a fusing system that incorporated an extension cord and a "lighter-wire" that he placed into an electrical socket which heated the lighter-wire which, in turn, ignited the gun powder.

In addition to interviewing Abdullahu on the evening of May 7, 2007, law enforcement officers also searched his residence pursuant to a search warrant issued by the Court. The following weapons were found in Abdullahu's residence:

one 9 millimeter Beretta handgun bearing serial number BER341463 with one magazine containing 58 rounds of

ammunition;

one Mossberg 12 gauge shotgun, bearing serial number P380768;

one Beretta 9 millimeter CX4 Storm rifle, bearing serial number CX02876; and

one Model S9/66 Yugo rifle, bearing serial number 151946.

In addition, the following items were also found at Abdullahu's residence, among other things:

22 caliber pellet gun with a brown handle;

two boxes of Wolf ammunition;

one leather pouch with speed strip with 10 7.62 millimeter rounds of ammunition; and

one bayonet.

On or about May 8, 2007, Abdullahu had his initial appearance before this Court; Your Honor ordered Abdullahu detained. On May 11, 2007, Abdullahu consented to detention temporarily in order to afford an opportunity to have a more full detention hearing, presently scheduled for May 17, 2007 at 1:30 p.m. before Your Honor.

Abdullahu filed a Motion For Release On Bail on May 14, 2007. Abdullahu contends that he is neither a flight risk nor a danger to the community. The United States submits this memorandum of law in opposition to Abdullahu's motion.

ARGUMENT

ABDULLAHU SHOULD CONTINUE TO BE DETAINED WITHOUT BAIL

Congress formulated the Bail Reform Act of 1984, 18 U.S.C. § 3141 et seq., in response to "the alarming problem of crimes committed by persons on release." See United States v. Salerno, 481 U.S. 739, 742 (1987), quoting S. Rep. No. 98-225, at 3 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3185. Unlike the prior federal bail statute, the Bail Reform Act of 1984 codified a preventive detention provision because "there is a small but identifiable group of particularly dangerous defendants as to whom neither the imposition of stringent release conditions nor the prospect of revocation can reasonably assure the safety of the community. H.R. Rep. No. 98-1030, 98th Cong. 2d Sess., 6-7, reprinted in 1984 U.S.C.C.A.N. 3189. Abdullahu is a member of that group. Because there are no conditions or combination of conditions that will reasonably assure Abdullahu's appearance at trial and the safety of others and of the community, Abdullahu should continue to be detained.

Section 3142(a) of the Act provides that "[u]pon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be" released, temporarily detained, or "detained under subsection (e) of this section." 18 U.S.C. § 3142(a)(4). Section 3142(e) provides that the judicial officer

shall "order the detention of the person before trial" if, after a hearing pursuant to 18 U.S.C. § 3742(f),³ "the judicial officer finds that "no conditions or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 3142(e). If so, detention is "required by the Bail Reform Act of 1984." United States v. Montalvo-Murillo, 495 U.S. 711, 713 (1990).

The factors the Court must consider in determining whether to admit Abdullahu to bail are set forth in Title 18, United States Code, Section 3142(g):

(1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence, a Federal crime of

³ The United States observes that it was entitled to move for pretrial detention in this matter pursuant to Title 18, United States Code, Section 3142(f)(1)(E) (requiring the judicial officer to hold a detention hearing upon motion of the government in a case that involves "any felony that is not otherwise a crime of violence . . . that involves the possession or use of a firearm or destructive device (as those terms are defined in Section 921), or any other dangerous weapon"). This provision, added by the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-428 (effective July 27, 2006), amended the Bail Reform Act to include cases involving firearms as among those for which the United States may move for pretrial detention. Cf. United States v. Bowers, 432 F.3d 518, 519 (3d Cir. 2005) (holding that "the crime of felon in possession is not a crime of violence within the meaning of [18 U.S.C.] § 3156(a)(4)"). This provision is applicable to current defendants regardless of when their criminal activity occurred. See United States v. Miller, 753 F.2d 19, 21 (3d Cir. 1985).

terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including--

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

18 U.S.C. § 3142(g). Each of those factors militate in favor of continued detention here.

A. Nature And Circumstances Of The Offense Charged.

Abdullahu has been charged with aiding and abetting the illegal possession of firearms by illegal and unlawful aliens. The crux of the allegations against Abdullahu as detailed in the Criminal Complaint is that he supplied weapons to a radical Islamic and jihadist group who conspired to kill and attempt to kill uniformed military personnel. Abdullahu also secreted

weapons for the Dukas - members of this radical group - because he and the Dukas knew that if they were caught possessing firearms as illegal aliens they could be imprisoned (which would prevent the Dukas from carrying out their mission).

Abdullahu did not merely and unlawfully conceal the firearms for the Dukas simply because they were illegal aliens. To the contrary, he secreted the weapons and then recklessly provided them to the Dukas whom he knew had expressed their intentions to attack the U.S. military, espoused radical jihadist beliefs, and were clearly intending to exact violence on others. There can be no question, then, that the circumstances of Abdullahu's conduct demonstrate his extreme indifference to violent behavior by others who stated their intentions to attack the United States military.

The weapons Abdullahu supplied and hid on behalf of the Dukas included a Mossberg 12 gauge shotgun, Beretta 9 millimeter CX4 storm rifle, Model S9/66 Yugo rifle, and a Beretta 9 millimeter handgun - as Abdullahu stated in his confession. Those weapons were used during tactical, firearms training sessions at which Abdullahu not only was present but actively instructed those members of the group on how to use the weapons.

Abdullahu now appears to make much of the fact that two of the firearms belonged to him which he lawfully owned. Abdullahu's argument fundamentally misses the point. Even if the

weapons in Abdullahu's hands were legal, his provision of them to illegal aliens makes him criminally responsible for the illegal possession of firearms by illegal and unlawful aliens. See 18 U.S.C. § 2; see also 18 U.S.C. § 922(g)(5).

The nature and circumstances of the offense therefore warrant Abdullahu's continued detention.

B. The Weight of the Evidence.

Contrary to Abdullahu's argument in his bail motion, the weight of the evidence against Abdullahu is strong. Most significantly, Abdullahu confessed to the crime with which he is charged following a waiver of his Miranda warnings. In addition, video surveillance captured Abdullahu instructing members of the group on how to fire weapons during the firearms training in the Poconos.

Moreover, consensually recorded conversations by cooperating witnesses captured the Dukas identifying Abdullahu as the person who secreted their weapons for them because they were illegal. Video surveillance captured Abdullahu bringing weapons to Dritan Duka's residence before the February 2007 firearms training trip to the Poconos. Video surveillance also captured Abdullahu placing those weapons into his car to drive them to the Poconos because the Duka's did not want to get caught with them as they cannot legally possess the weapons. Notably, the four firearms used in the firearms training sessions in January 2006

and February 2007 were found at Abdullahu's residence during execution of the search warrant authorized by the Court.

C. The Nature And Characteristics Of The Defendant.

Abdullahu is a legal permanent resident of the United States - but not a citizen. Instead, he is a citizen of Macedonia. As such, Abdullahu does not enjoy protection from being deported back to Macedonia - his homeland - if convicted of an "aggravated felony." As set forth in Title 8, United States Code, Section 1227, a legal permanent resident can be deported from the United States if convicted of an aggravated felony. An aggravated felony includes, among other things, "an offense described in . . . section 922(g)(5) of Title 18 (relating to firearms offenses)". 8 U.S.C. § 1101(a)(43)(E)(i).

Abdullahu claims that he "loves" America and has received many benefits from being permitted to live here as a permanent resident. Abdullahu thus has a strong incentive to flee in order to avoid almost certain conviction and likely deportation. If Abdullahu fled, he likely would not return to Macedonia but would relocate somewhere in the United States. Abdullahu could then assume a new identity, change his appearance, and blend in with others. He could thus avoid trial and likely conviction, and would present a serious danger to whatever community to which he moved because of his willingness to provide weapons to those who are willing to commit violent

acts.

Additionally, Abdullahu also presents a risk of flight to Macedonia. Contrary to Abdullahu's suggestion that he faces an advisory Sentencing Guideline range of 15 to 21 months imprisonment, a more accurate Guideline calculation reveals that Abdullahu faces 63 to 78 months imprisonment.⁴ Moreover, Abdullahu ignores that a sentencing court, after consideration of all the sentencing factors set forth in Title 18, United States Code, Section 3553(a) could impose a sentence above the Sentencing Guideline range, up to the maximum of ten years in prison, given the significant danger Abdullahu's conduct posed in aiding the Dukas to acquire firearms for training missions and

⁴ The applicable Guideline provision for a defendant convicted of aiding and abetting an offense is Section 2X2.1. Under that section, "[t]he offense level is the same level as that for the underlying offense." U.S.S.G. § 2X2.1. The applicable Guideline provision for illegal possession of a firearm by an illegal and unlawful alien - the crime Abdullahu aided and abetted - is Section 2K2.1. The Base Offense Level is 20 because the offense involved a semiautomatic firearm that is capable of accepting a large capacity magazine and the defendants Abdullahu aided and abetted were prohibited persons at the time of the offense. See U.S.S.G. § 2K2.1(a)(4)(B). The offense involved more than three but less than eight firearms; accordingly, a two level increase in the Base Offense Level is warranted. See U.S.S.G. § 2K2.1(b)(1)(A). In addition, the defendant possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense; accordingly a four-level increase to the Offense Level is warranted. See U.S.S.G. § 2K2.1(b)(6). The total Offense Level based on the foregoing is Level 26 for which the applicable Guideline range is 63 - 78 months for a defendant in Criminal History Category I.

for a planned attack on the U.S. military.⁵

Such a potential, substantial sentence obviously creates a strong incentive to flee. If Abdullahu were to flee to Macedonia, the United States would be unable to compel his attendance at trial through extradition. This is because the offense charged is not an extraditable offense under the extradition treaty between Macedonia and the United States. See United States Extradition Treaty With Macedonia, 12 Bevans 1238.⁶ More importantly, Macedonia will not extradite one of its nationals. Accordingly, if Abdullahu were to flee to his homeland, there would be no way to ensure that he stand trial for the instant offense. The Court should not countenance such a risk here.

D. Danger To The Community.

Contrary to Abdullahu's assertion, Abdullahu presents a serious danger to the community if released. The Court cannot

⁵ Indeed, should Abdullahu be convicted, the United States very likely would move for a sentence above the Guidelines range under United States v. Booker, 543 U.S. 220 (2005).

⁶ A representative of the Department of Justice's Office of International Affairs has advised that the extradition treaty between Macedonia and the United States was originally signed with the Kingdom of Serbia on October 25, 1901 and entered into on June 12, 1902. Following World War II, Serbia was incorporated into the former Yugoslavia. Yugoslavia subsequently fractured into other countries, including Macedonia. Macedonia then elected to retain the original treaty between the United States and Serbia in place.

overlook the facts, as detailed in the Criminal Complaint, that Abdullahu provided dangerous firearms to a group whose mission it was to attack and kill military personnel. Abdullahu also apparently has a penchant for explosives and admitted to interviewing law enforcement officers that he has used explosives before.⁷

Thus, the final factor - the nature and seriousness of the danger to the community posed by the defendant's release - is great and weighs in favor of Abdullahu's continued detention.

There is, therefore, no condition or combination of conditions that can reasonably assure Abdullahu's appearance at future court proceedings, ensure his compliance with court-imposed bail conditions, or that can protect the community from the risk of danger Abdullahu poses.

⁷ Abdullahu clearly minimized his knowledge of explosives to the interviewing agents as evidenced by his unguarded statements to others during the February 2007 firearms training trip set forth above.

CONCLUSION

For the foregoing reasons, no set of conditions or combination of conditions will reasonably assure defendant Agron Abdullahu's appearance at trial or the safety of others and the community. Accordingly, the Court should deny Abdullahu's application for bail and order his continued detention pending trial.

Respectfully submitted,

CHRISTOPHER J. CHRISTIE
United States Attorney

/s R. Stephen Stigall

By: WILLIAM E. FITZPATRICK
Deputy U.S. Attorney
R. STEPHEN STIGALL
Assistant U.S. Attorney

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Camden, New Jersey