

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
v.) No. 3:12-CR-107
)
MEGAN RICE,) (THAPAR / SHIRLEY)
)
)
Defendants.)

ORDER

This case is before the Court on the Motion of the Defendant Megan Rice for Temporary Release from Custody [Doc. 199], filed on July 16, 2013, and referred [Doc. 203] to the undersigned on July 19, 2013. On May 8, 2013, a jury convicted the Defendant of one count of willful destruction of government property and one count of injury of national-defense premises with intent to interfere with the national defense. The District Judge denied [Doc. 165] the Defendant's request to remain on release pending her sentencing hearing, finding that detention was required by statute and the exception did not apply. Accordingly, Defendant Rice was detained pending her sentencing hearing, which is scheduled for September 30, 2013. The Defendant now asks for temporary release from custody so that she can attend the memorial service of her brother-in-law on Saturday, July 27, 2013, in Manlius, New York.

The Defendant proposes a temporary release of five days.¹ She states that on July 25, 2013, she would travel with her nephew or his wife from Oscilla, Georgia, where she is presently detained, to Atlanta, Georgia, from where she proposes to fly to Syracuse, New York, on July 26,

¹The dates proposed in the Defendant's motion were modified by counsel in a telephone conference on July 24, 2013.

2013. She states that her nephew would accompany her on this trip and return her to the Irwin County Detention Center in Oscilla, on July 29, 2013. The Defendant also states that she will not speak to the media concerning her case while she is on release.

The Government opposes [Doc. 206] the temporary release of the Defendant. It contends that the Defendant has not provided any statutory authority for the requested release. It also argues that all the reasons that the District Court cited for denying the Defendant's motion for release pending her sentencing hearing still apply. In essence, the Government argues that nothing has changed about the Defendant's situation since District Judge Thapar determined that she did not qualify for release pending her sentencing. The Court disagrees.

On May 10, 2013, Judge Thapar ruled [Doc. 165] that Defendant Rice did not qualify for release pending her sentencing hearing. The Court found that the Defendant's convictions triggered a presumption in favor of detention unless she could show by clear and convincing evidence that she is not a danger or risk of flight *and* that it is substantially likely the court will grant a motion for acquittal or the government is not recommending incarceration. See 18 U.S.C. §3143(a)(2). The Court determined that Defendant Rice could not make this showing because the Defendant had moved for a judgment of acquittal only with regard to her conviction for injury of national-defense premises with intent to interfere with the national defense. The Court observed that the statute provides an exception for defendants who can clearly show "exceptional reasons why . . . detention would not be appropriate." 18 U.S.C. §3145(c). "Exceptional circumstances are those that are 'out of the ordinary.'" [Doc. 165, p.4 (quoting United States v. Miller, 568 F. Supp. 2d 764, 774 (E.D. Ky. 2008)] Judge Thapar found that Defendant Rice had "not pointed to any unique circumstances that weigh against detention." Id.

The Court finds that the characteristics of this particular defendant and the current circumstances now make her eligible for a temporary release to attend her brother-in-law's funeral. Although the death of Defendant Rice's relative is alone not an exceptional circumstance,² in the instant case, there are additional facts that make this case exceptional:

(1) In his Order [Doc. 165] requiring that the Defendant be detained pending sentencing, Judge Thapar made no finding that the defendant was a danger to the community or presented a risk of flight, concluding there was no need to make this determination because the Defendant could not overcome the first hurdle of showing that she was likely to succeed on a motion for judgment of acquittal.

(2) Following a detention hearing, the undersigned permitted [Doc. 9]³ the Defendant to be released on conditions pretrial, finding that she was not a danger. The Government initially sought to appeal that ruling but subsequently withdrew [Doc. 11] its appeal.

(3) While on pretrial release, the Defendant complied with all conditions of her release. One of the Defendant's conditions was that her travel was restricted to the District of Columbia, where she lived, and the Eastern District of Tennessee. The Defendant sought and was permitted to travel to other states while on pretrial release. Defendant Rice complied with all conditions and additional restrictions and directions while traveling and returned to her residence as required.

(4) Between her initial appearance on August 3, 2012, and being taken into custody on May 8, 2013, the Defendant was present as required for all Court appearances.

²The Court will not grant temporary release in every case in which a criminal defendant who is detained has a relative who dies. The District Court for the District of Maine has reasoned that “[f]rom the Court’s perspective, the death of a family member, even a close family member, does not necessarily cross the threshold from common to exceptional. The death of close family members, though infrequent, is after all inevitable.” *United States v. Kenney*, No. CR-07-66-B-W, 2009 WL 5217031, *2 (D. Me. Dec. 30, 2009).

³The initial Order Setting Conditions of Release [Doc. 9] was entered following the Defendant’s initial appearance on a Criminal Complaint. After the Defendant was indicted, the Court entered a new Order Setting Conditions of Release [Doc. 21] that provided the same conditions.

(5) Prior to the instant convictions, the Defendant had minimal criminal history with no violent offenses or crimes of escape.

(6) Although Defendant's brother-in-law is a more distant relative than a child or spouse, the Defendant is a Roman Catholic sister, who has no spouse or children. The Defendant's siblings and nieces and nephews are her closest relatives.

(7) The Defendant proposes that she will travel with her nephew Peter Finnerty, Jr., and will be continuously in his company and that of other relatives during her travels.

Accordingly, the Court finds by clear and convincing evidence that Defendant Rice is not a danger and is not likely to flee. See 18 U.S.C. 3145(c) (requiring that persons also meet the conditions in 18 U.S.C. §3143(a)(1)). The Court also finds that the facts as stated above clearly show "that there are exceptional reasons why [Defendant Rice's] detention would not be appropriate" for the five-day period described herein. See 18 U.S.C. 3145(c).

The Motion of the Defendant Megan Rice for Temporary Release from Custody [**Doc. 199**] is **GRANTED**. While on release, the Defendant is to remain on all the conditions of release to which she was previously subject during pretrial release, with the exception of the travel restriction. A list of the Defendant's conditions is attached to this Order. Additionally, the Defendant is subject to the following conditions:

(1) The Defendant is to be released from the Irwin County Detention Center to Carolyn Finnerty, the wife of her nephew Peter Finnerty, Jr., on the morning of July 25, 2013. Mr. and Mrs. Finnerty are to be responsible for her travel/transportation during her release and responsible for her return to the Irwin County Detention Center.

(2) The Defendant is permitted to travel to Atlanta, Georgia on July 25, 2013.

(3) On July 26, 2013, the Defendant is permitted to travel from Atlanta to Manlius, New York. The *sole* purpose of this release is to

attend the memorial service and funeral of her brother-in-law Peter Finnerty, Sr. The Defendant is not to engage in any other travel or activity during her release.

(4) The Defendant will travel from Syracuse, New York, to Atlanta, Georgia, on July 28, 2013.

(5) On July 29, 2013, the Defendant will voluntarily report back to the Irwin County Detention Center.

(6) The details of the Defendant's itinerary have been provided to the Court and to United States Probation Officer Trine Robinette. The Defendant is to check in as required with Officer Robinette.

IT IS THEREFORE ORDERED that the United States Marshal temporarily **RELEASE** Defendant Megan Rice on the conditions set forth in this order and in the attached list of conditions of release. The Clerk of Court is **ORDERED** to provide a certified copy of this Order to the United States Marshal's Office.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge

ADDITIONAL CONDITIONS OF RELEASE For Megan Rice

IT IS FURTHER ORDERED that the defendant's release is subject to the conditions marked below:

() (6) The defendant is placed in the custody of:

Person or organization _____
Address (only if above is an organization) _____
City and state _____ Tel. No. _____

who agrees to (a) supervise the defendant, (b) use every effort to assure the defendant's appearance at all court proceedings, and (c) notify the court immediately if the defendant violates a condition of release or is no longer in the custodian's custody.

Signed: _____
Custodian Date

(x) (7) The defendant must:

(x) (a) submit to supervision by and report for supervision to the U.S. Probation Officer Trine Robinette, telephone number (865) 201-8327, no later than call Officer Robinette daily by 8:00 a.m. for reporting purposes.

() (b) continue or actively seek employment.

() (c) continue or start an education program.

() (d) surrender any passport to: _____

(x) (e) not obtain a passport or other international travel document.

(x) (f) abide by the following restrictions on personal association, residence, or travel: Travel restricted to the Middle District of GA and the Northern District of NY unless permission is granted by the U.S. Probation Office.

(x) (g) avoid all contact, directly or indirectly, with any person who is or may be a victim or witness in the investigation or prosecution, including: No entry onto government facilities including Y-12, the Y-12 National Security Complex, Oak Ridge, TN and any other national nuclear security complex.

() (h) get medical or psychiatric treatment: _____

(x) (i) return to custody each on 07/30/13 at _____ o'clock after being released at _____ o'clock for employment, schooling, or the following purposes: attendance at brother-in-law's funeral.

() (j) maintain residence at a halfway house or community corrections center, as the pretrial services office or supervising officer considers necessary.

(x) (k) not possess a firearm, destructive device, or other weapon.

() (l) not use alcohol () at all () excessively.

() (m) not use or unlawfully possess a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.

() (n) submit to testing for a prohibited substance if required by the pretrial services office or supervising officer. Testing may be used with random frequency and may include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing. The defendant must not obstruct, attempt to obstruct, or tamper with the efficiency and accuracy of prohibited substance screening or testing.

() (o) participate in a program of inpatient or outpatient substance abuse therapy and counseling if directed by the pretrial services office or supervising officer.

() (p) participate in one of the following location restriction programs and comply with its requirements as directed.

() (i) Curfew. You are restricted to your residence every day () from _____ to _____, or () as directed by the pretrial services office or supervising officer; or

() (ii) Home Detention. You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities approved in advance by the pretrial services office or supervising officer; or

() (iii) Home Incarceration. You are restricted to 24-hour-a-day lock-down at your residence except for medical necessities and court appearances or other activities specifically approved by the court.

() (q) submit to location monitoring as directed by the pretrial services office or supervising officer and comply with all of the program requirements and instructions provided.

() You must pay all or part of the cost of the program based on your ability to pay as determined by the pretrial services office or supervising officer.

(x) (r) report as soon as possible, to the pretrial services office or supervising officer, every contact with law enforcement personnel, including arrests, questioning, or traffic stops.

(x) (s) No verbal or written contact and/or communication with the local or national media.