

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA)
)
) Cause No. 3:09-CR-80
)
v.)
)
ASHTON LUNDEBY, a/k/a “TYRONE”)

**GOVERNMENT’S RESPONSE TO DEFENDANT’S
MOTION TO RECONSIDER ORDER OF DETENTION**

Comes now the United States of America, by United States Attorney David Capp and by Assistant United States Attorney Kenneth M. Hays, who file the Government’s Response to Defendant’s Motion to Reconsider Order of Detention. The government respectfully objects to reconsideration of the detention order and maintains that the original reasons to detain Ashton Lundeby still exist and that new circumstances present an even stronger case for detention.

Lundeby asserts that he should be released from detention because he needs dental work. Based on that claim, government’s counsel contacted Deputy United States Marshal Pam Mozdierz. DUSM Mozdierz advised that due to health information privacy concerns, she could not discuss Lundeby’s medical condition. Counsel explained to her that Lundeby had requested the Court to reconsider detention due to a dental problem. She advised that she was aware of Lundeby’s medical conditions, including the dental question raised in the motion to reconsider detention. She also advised that the United States Marshal’s Office is taking all steps necessary to assure that Lundeby’s dental needs (and all medical needs, for that matter) are attended to. Absent court process, she was unable to discuss the matter further.

On March 6, 2009, the Magistrate Judge in North Carolina ordered Lundeby detained. At the hearing on the government’s transfer motion the Court also reconsidered the detention

order and affirmed that Order. Since this Court has already reconsidered the detention order, it is at least arguable that it cannot reconsider the detention order again, see 18 U.S.C. § 3145, and thus Lundeby's only recourse is to appeal.

Because the Grand Jury has now returned an indictment against Lundeby, the reasons to detain him are even stronger. The indictment charges him with three counts: one count of conspiracy, in violation of Title 18, United States Code, Section 371; and two counts of making false bomb threats in violation of Title 18, United States Code, Section 844(e). If convicted of the conspiracy count, Lundeby faces up to five years incarceration and a fine of up to \$250,000; the bomb threat counts each carry up to ten years and the same fine; in total Lundeby faces up to twenty-five years incarceration and fines up to \$750,000. Because of the potential penalties the return of an indictment dramatically increases the motive to flee. When this Court initially reconsidered the detention order, Lundeby only faced a juvenile disposition with juvenile detention as a potential consequence; now he faces adult prison time.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 15, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Robert Truitt

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