

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
)	No. 4:15-CR-49 DDN/CDP
)	
NIHAD ROSIC,)	
)	
Defendant.)	

DETENTION HEARING

BEFORE THE HONORABLE DAVID D. NOCE
UNITED STATES MAGISTRATE JUDGE

MARCH 31, 2015

APPEARANCES:

For Plaintiff: Matthew Drake, Esq.
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St. Louis, MO 63102

For Defendant: JoAnn Trog, Esq.
MENEES WHITNEY BURNET & TROG
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(PROCEEDINGS STARTED AT 1:09 PM.)

(THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT AND WITH
THE DEFENDANT PRESENT:)

THE COURT: United States against Nihad Rosic, Case No. 4:15-CR-49. The matter is before the Court this afternoon for a detention hearing. Mr. Drake is here for the United States. Ms. Trog is here representing the defendant, and the defendant is present.

All right. I believe the last time that we had this proceeding that there was certain information provided to the Court and the defense wished further -- an opportunity for more time to obtain further information, then, to make arguments.

So, Ms. Trog, did you have any other information or evidence to offer at this time?

MS. TROG: I do, Your Honor -- (inaudible).

THE COURT: Yes.

MS. TROG: They're all the same -- (inaudible) -- Your Honor. They're all the same statement, and different people have signed off on them. And I just got them late -- well, yesterday afternoon, and I provided Mr. Drake a copy. Obviously, nobody is here, but they're just letters of support. If we could enter those for the limited purpose of this hearing.

MR. DRAKE: Absolutely. No objection.

1 THE COURT: All right.

2 MS. TROG: Thank you.

3 THE COURT: All right. The record should reflect the
4 defense has provided the Court with one, two, three, four
5 prepared statements in behalf of Mr. Rosic. Each of them are
6 identical paragraphs, but they're signed by a number of
7 different people, and that would be taken by the Court as
8 evidence of a -- a proffer evidence of information for the
9 Court to consider on the issue of detention or release.

10 And for the record, Mr. Drake, did you have any
11 objection to that information being provided to the Court?

12 MR. DRAKE: No, Your Honor. Thank you.

13 THE COURT: All right. Did you have any other
14 factual information, Ms. Trog?

15 MS. TROG: No. Your Honor, we did file a memorandum
16 under seal, and we did provide the Government's attorneys copy
17 via email -- via email so that they were all privy to it.
18 Minutes after I filed it with the Court under seal, I did an
19 email to each of the attorneys who are listed so that they
20 would know exactly where we would be coming from, Your Honor.

21 THE COURT: All right. Let me ask you, Mr. Drake,
22 does the Government have any factual information, further
23 factual information, that you would provide to the Court?

24 MR. DRAKE: No further factual information, Your
25 Honor. Thank you.

1 THE COURT: All right. Either one can go first -- it
2 doesn't matter -- with respect to argument.

3 MS. TROG: Your Honor, we believe that the additional
4 information provided with regards to Mr. and Mrs. Rosic, the
5 parents of Nihad Rosic, relocating here to St. Louis would
6 dictate and obviate one of the difficulties that perhaps
7 pretrial services had, and that was his unstable living
8 arrangements.

9 As we listed in the memorandum, the address and the
10 phone number for his mother, we believe, Your Honor, that, in
11 tandem with the various numerous conditions that we have
12 listed in that memorandum, that there would be numerous
13 safeguards to allow Mr. Nihad -- excuse me -- to provide Mr.
14 Rosic the ability to be out, to be earning gainful employment
15 for his family, and with the numerous restrictions that,
16 including the appointment of his mother, it was a third
17 party -- third-party custodian, that there would be enough
18 indicia that it would allow the Court to be satisfied that Mr.
19 Rosic would appear at each and every instance that he was
20 required to by this Court.

21 I would note by -- that the Eighth Circuit's ruling
22 in the *United States v. Orta* Says that the Court can -- this
23 Court, when I'm talking about "the Court" -- that this Court
24 cannot require more than an objectively reasonable assurance
25 of community safety and the defendant's appearance at trial.

1 And this is in reference to the detention hearing.

2 We're not here to talk about the ultimate guilt or
3 innocence. We're not here to talk about anything else, Your
4 Honor, I believe, than to assure that Mr. Rosic will appear at
5 each and every court appearance that this Court would mandate
6 and certainly at any subsequent trial.

7 There are a couple other things, and I don't intend
8 to revisit the entire memorandum, Your Honor, but I believe
9 that the Government has provided certain exhibits that we
10 stipulated to. And Exhibits 1, 2, and 2-A are references to
11 various communications between Mr. Rosic utilizing the name
12 that it was registered under his email address, which we said
13 that is perfectly true, that he wasn't using his real name on
14 these Facebook postings, but many people do not. I certainly
15 do not. And the other individual involved is an individual
16 that the Government has admitted that they believe he's dead
17 or was killed, and there hasn't been any subsequent postings
18 other than the last being on May 19 of 2014.

19 And so because the Facebook postings concern Mr.
20 Rosic and the other individual who is now deceased, we do not
21 believe that there were any other contacts which would show
22 that Mr. Rosic had an ongoing communication with somebody
23 abroad.

24 We would contest any indication that the \$500
25 contribution that was forwarded on to Mr. Hodzic, Codefendant

1 Hodzic, was nothing more than a donation to help his country,
2 not in any way associated with fighting wars, terrorism, or
3 anything else, but to help the deprivation of his own country.

4 Yes, he did have two attempts to leave the country,
5 but on both attempts, Your Honor, he was going to Bosnia. He
6 wasn't allowed to leave on either instance, so Lord knows he's
7 not going to fly out of here because he couldn't fly when he
8 wanted to. And when he wanted to fly, he was only going to
9 fly to visit family members in Bosnia where he would like to
10 eventually relocate his family.

11 And you say, well, why would he want to go to Bosnia,
12 Your Honor -- Ms. Trog? Why over there? And the perception
13 of Mr. Rosic is an existence for his children, his two
14 daughters who are 4 and 2, to be away from the mainstream
15 environment that we have here in America.

16 Mr. Rosic, in around 2011, turned a corner, Your
17 Honor, and that corner that he turned around and turned down
18 did away with his, his liking for a mixed martial arts. Yes,
19 he had that. Yes, he has that degree, but -- and it's on
20 Facebook, and he wasn't so successful on it, but he realized
21 that there was more to life at the birth of his first
22 daughter. And he then turned, turned the corner, and he
23 realized that what he wanted to provide his daughters was a
24 peaceful existence. And he realized that, in his religion, he
25 needed to get away from all the opulence that we have here.

1 Whether we agree or disagree with it, that was where he was
2 coming from, Your Honor.

3 He has been together with Alma since probably around
4 2005, 2006. Yes, there was an incident, but they are still
5 together. She's very supportive of him. And if this Court
6 would allow Mr. Rosic to be released, that he would stay here
7 in St. Louis under all those prophylactic natures and that he
8 would be able to obtain a job at this company who's run by his
9 family or who is owned by his family, and that the ultimate
10 goal is to bring his wife, the mother of his children, and his
11 children here to St. Louis until he can sort out all of the
12 matters related to this case.

13 The other reason, Your Honor, is, finally, is we have
14 no idea, with all due respect to the Government, when we can
15 reasonably anticipate that there might be a trial date,
16 because, as this Court has set up 60-day status conferences
17 beginning -- the first one is tomorrow afternoon.

18 So to allow Mr. Rosic to stay in the Jennings jail
19 run by St. Louis County doesn't seem that it's going to do
20 anything except cost this court, the marshal service an
21 extraordinary amount of money, whereas he could be out; he
22 could be earning money; he could be under restrictions. And
23 as he and I have talked again earlier today, that if he would
24 violate any of these restrictions, he knows that this Court
25 would pull him in and he would go back to Jennings jail.

1 Rather, Your Honor, we're asking that this Court look
2 at what we're here for today and allow Mr. Rosic the ability
3 to be back with his family.

4 THE COURT: All right. Thank you very much.

5 Mr. Drake?

6 MR. DRAKE: Thank you, Judge. Thank you, Your Honor.
7 Judge, I think what we're really doing here is doing a risk
8 analysis, a risk analysis for two reasons or two factors
9 predominantly: A risk of a danger to the community at large
10 and a flight risk.

11 And in assessing that, the Court has to weigh the
12 various factors that are outlined in the Bail Reform Act.
13 That act has a presumption of detention in cases like that,
14 cases involving international terrorism offenses.

15 The exhibits that are provided to the Court that Ms.
16 Trog referenced, Exhibits 1, 2, and 2-A, speak to the weight
17 of the evidence and also to the risk not only of flight but of
18 danger to the community. In this instance, there's no doubt
19 in those exhibits that Mr. Rosic, the defendant, communicated
20 with Abdullah Ramo Pazara prior to Mr. Pazara's death on or
21 about September of 2014. He knew what Abdullah Pazara was
22 doing. He knew that Abdullah Pazara was in Syria. He
23 communicated with him about attempting to come and visit
24 Pazara and join him in his exploits. In fact, one of the
25 exhibits indicates that "my brother," referring to Mr.

1 Pazara -- the defendant wrote: "My brother, I cannot wait to
2 encounter the enemies. I swear to Allah."

3 One of the pictures that Mr. Rosic sent was of a
4 sniper rifle or an assault weapon. He asked Pazara to find
5 one for him and set it aside. Those are the activities of
6 someone who is engaged in violence or has a desire to engage
7 in violence, and that speaks volumes about the risk and danger
8 to the community should the defendant be released.

9 Secondly, it also speaks of his flight risk. With
10 all due respect to Ms. Trog and the defense, the Government's
11 belief that Mr. Rosic was attempting to travel to Syria --
12 that is self-evident from the exhibits. They reference the
13 word "Sham," which is a common terminology for the region of
14 Syria, and they were discussing in Exhibit 2-A arrangements to
15 meet Pazara in Sham and join him and join the others that he
16 was fighting with.

17 Granted, those communications did stop, and Ms. Trog
18 is correct in that, but after Mr. Pazara was killed, their
19 communications ceased, obviously. However, after that
20 happened is the time, is the second time, that Mr. Rosic
21 attempted to travel abroad. So whether he's trying to travel
22 to Syria, obviously, that weighs heavily in the criminal case,
23 or Bosnia, to go home, visit family or friends, the salient
24 point is that he's trying to leave the country on two
25 different occasions.

1 He has very limited ties to this district other than
2 the fact that his mother and father recently relocated here to
3 be closer to him during the pendency of these proceedings.
4 However, as we stand here right now and today, he does not
5 have a permanent residence. He does not have a permanent job.
6 The mother of his children resides in a district outside of
7 the Eastern District of Missouri.

8 Furthermore, she is the subject of the Government's
9 other exhibit which indicates the assaultive behavior Mr.
10 Rosic was involved in, which again weighs heavily against him
11 as being a danger to the community and to others should he be
12 released.

13 He also has -- he also has at least some measure of a
14 failure to abide by the conditions of release from reporting.
15 There is some honest, I think, not disagreement but honestly
16 different views of what he would do while he was on probation
17 with his assaultive behavior but then clearly was unable to or
18 did not -- was not aware that he was supposed to report to his
19 probation officer, and as a result, he was cited for failure
20 to appear, and his probation was revoked, Judge.

21 So on at least a couple of occasions that are noted
22 in the report, his track record for appearance at court
23 proceedings is less than stellar, Judge.

24 For those reasons, Judge, I think that the risk
25 analysis that the Court must engage in, not only the danger to

1 the community but of flight, weigh heavily against the
2 defendant. And there are no combination of conditions that
3 would allow him to be released to make sure that he will
4 appear for future court proceedings.

5 THE COURT: Thank you.

6 Ms. Trog, do you have any reply?

7 MS. TROG: Very briefly, Your Honor. The Government
8 has brought up the domestic violence incident that occurred in
9 2012 involving Alma, the mother of his children, his wife.
10 One, the reason she's not here, she hasn't been able to
11 relocate to St. Louis, is because she doesn't have any funds
12 to relocate. And it would be Mr. Rosic's sincere desire that,
13 if allowed on bond, that he could provide resources to allow
14 his wife and children to be here with him.

15 The 2012 incident -- yes, it happened, yes, there was
16 a violation, and, yes, there was miscommunication. He
17 admitted his fault in it, and he was resentenced by the court
18 up there, and he served his time. That was one instance. The
19 only other instance is a brief failure to appear in a
20 municipal court here where there was a warrant. He simply
21 forgot about it. And the record will reflect that there are
22 tens of thousands of people in the state of Missouri who don't
23 attend to their traffic matters. That's a whole other
24 different story.

25 But Mr. Rosic's case -- there is no longer any

1 warrant, we're waiting for disposition, and when that
2 disposition comes in, it will be resolved.

3 I do not believe that one failure-to-appear incident
4 based on the subject matter of these proceedings should cause
5 this Court to think that he is a flight risk. He certainly
6 isn't going anywhere. We have enough prophylactic measures,
7 and we believe, Your Honor, that we have made our statutory
8 requirement under the rebuttable presumption that he is not a
9 flight risk, is not a danger to this community.

10 And, again, finally, lastly, we would ask this Court
11 reflect on our memorandum and allow Mr. Rosic to be placed on
12 bond. If it wants additional information from his mother or
13 any other things, we will do whatever we can to provide the
14 information, Your Honor.

15 THE COURT: All right. Thank you all very much. I
16 will take the matter under submission.

17 MR. DRAKE: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 MS. TROG: Thank you, Judge.

20 THE COURT: You're welcome.

21 **(PROCEEDINGS CONCLUDED AT 1:27 PM.)**

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CERTIFICATE

I, Shannon L. White, do hereby certify that I am a duly appointed official court reporter for the United States District Court for the Eastern District of Missouri.

I further certify the foregoing is a true and accurate transcription as heard and understood from the taped proceedings held in the above-entitled case as has been transcribed from said tape to the best of my ability.

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04-29-15

Shannon L. White