

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA

v.

Criminal No. 2:20-cr-00023

JAMES DANIEL CANTY

**DEFENDANT'S MOTION
FOR RECONSIDERATION FOR RELEASE ON BOND**

Defendant, James Daniel Canty, by his counsel, moves this Court to reconsider its March 6, 2020, decision to continue to detain the defendant for further proceedings and to reconvene the detention hearing to allow for the release the defendant on bond. This Motion is based upon mounting public health concerns and recent measures implemented by federal and state governments to reduce the spread of the COVID-19 virus in the United States. In support of this Motion, the defendant states as follows:

(1) On February 4, 2020, a federal grand jury returned an Indictment against the defendant which charged him with three felony counts. Count One charged the defendant with possession with the intent to distribute a quantity of methamphetamine in violation of 21 U.S.C. § 841(a)(1). Count Two charged the defendant with using and carrying a firearm in relation to the felony drug trafficking crime charged in Count One in violation of 18 U.S.C. § 924(c)(1)(A). Count Three

charged the defendant with being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). Dkt. No. 1.

(2) On March 2, 2020, the Government filed a Motion for Detention which alleged that the nature of two of the charged offenses invoked the statutory rebuttable presumption for detention. Dkt. No. 10. At the March 5, 2020, detention hearing, the defendant called Tammy Canty, his wife, and Sherry Radcliffe, his sister, to offer testimony that the defendant would not pose a danger to anyone in his community if he were released on bond to stay with his wife at their home in Parkersburg, West Virginia. Mrs. Canty further volunteered to serve as a third-party custodian for bond purposes.

(3) Having heard the testimony of the defendant's two witnesses, this Court found that the defendant had rebutted the statutory presumption for detention. The Government made a proffer concerning the alleged nature of the circumstances which led to the November 30, 2019, discovery of the charged quantities of methamphetamine and the firearm. For the reasons more fully set forth in the Court's Detention Order, the Court granted the Government's Motion for Detention and directed the defendant to be placed in the custody of the U.S. Marshal's Service.

(4) The defendant is currently being housed in the Carter County Detention Center in Grayson, Kentucky. As of the date of the filing of this motion, there were 1,832 confirmed cases of COVID-19 within the United States with eleven reported

cases in the Commonwealth of Kentucky.¹ The defendant has advised counsel that he is currently being housed in a dormitory-style pod along with twenty other inmates and is currently sleeping on a floor as all bunks have been taken.

(5) Counsel is concerned that the defendant's age (59) places him on the borderline for being at risk for serious health complications should he contract the COVID-19 virus at the detention center. The Center for Disease Control has specifically advised older adults to avoid large gatherings of people since they are at risk of developing serious health complications. The consequences of an outbreak of the virus in a correctional setting would likely spread like wildfire due to the number of people who are being held in close quarters. There would be no way of imposing a self-quarantine for any inmate at the Carter County Detention Center since everyone is housed in a dormitory style pod. Moreover, if the defendant were to become infected, he could become a carrier who could infect staff members at the detention center which would, in turn, increase the spread of the virus to others within the outside community.

(6) This Court has recognized the serious threat posed to the community with the entry of a General Order continuing all civil and criminal trials in this district for a period of at least two weeks. *See* Misc. Case. No. 2:20-mc-00052. State governments have started implementing measures to further reduce the spread of the virus. For example, West Virginia Governor, Jim Justice, has closed all public

¹See www.cdc.gov/coronavirus/2019-ncov/index.html and www.chfs.ky.gov/agencies/cph/Pages/covid19.aspx.

schools in this state for an indefinite period. There may be further quarantine measures imposed by federal and state authorities depending upon the number of reported cases.

(7) On March 11, 2020, the Carter County Detention Facility advised the U.S. Marshal's Service that attorneys could no longer have face-to-face meetings with clients at their facility. This measure was instituted as a safeguard to help contain the further spread of the COVID-19 virus. The facility has presently has only one non-contact visitation room made available for attorney visits where a telephone can be used to communicate with an inmate. Allowing the defendant to be place on bond would allow counsel to have face-to-face meeting with the defendant to go over discovery matters at his home in Parkersburg or at counsel's office in Charleston.

(8) Counsel has spoken with Jeremy B. Wolfe, the Assistant United States Attorney for Mr. Canty's case, about this Motion. Mr. Wolfe has indicated that the Government would oppose the defendant's Motion and request that the defendant remain in custody.

For the reasons set forth in this Motion, the defendant would request that this Motion be granted and that this Court reconvene the detention hearing to allow the Court to consider releasing the defendant to the custody of his wife, Tammy Canty.

Respectfully submitted this 13th day of March, 2020.

JAMES DANIEL CANTY

By Counsel

**WESLEY P. PAGE
FEDERAL PUBLIC DEFENDER**

s/David R. Bungard

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