

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TODD JAROD FUNDERMANN,

Defendant.

No. 08mj60

DETENTION ORDER

This matter came on for detention hearing on March 17, 2008, pursuant to 18 U.S.C. § 3142(f)(1)(E). Assistant U.S. Attorney Kevin Fletcher appeared on behalf of the plaintiff (the "Government"). The defendant Todd Jarod Fundermann appeared in person with his attorney, Alexander Esteves. The Government offered the testimony of ATF Special Agent Todd Monney.

The court must determine whether any condition or combination of conditions will reasonably assure Fundermann's appearance as required, as well as the safety of any other person and the community, in deciding whether to grant the Government's motion for detention. 18 U.S.C. § 3142(e) & (f). A defendant may be detained based on a showing of either dangerousness or risk of flight; it is not necessary to show both. *United States v. Apker*, 964 F.2d 742, 743 (8th Cir. 1992); *United States v. Sazenski*, 806 F.2d 846, 848 (8th Cir. 1986).

In the present case, Fundermann is charged with possessing a firearm while being subject to a court order of protection involving an intimate partner. The evidence shows that on January 2, 2008, an Order of Protection/Protective Order by Consent Agreement was entered against Fundermann by the District Court of Cherokee County, Iowa, prohibiting and restraining him from committing acts of abuse or making threats of abuse, and from having contact with, his estranged girlfriend, who is the mother of the

defendant's children. On February 25, 2008, the Cherokee County Sheriff executed a search warrant at Fundermann's residence after Fundermann's arrest by the Iowa State Patrol for possession of marijuana. During the search, officers observed and seized a rifle that was located in plain view on Fundermann's coffee table. The Sheriff contacted Agent Monney to determine whether Fundermann was a person prohibited by federal law from possessing a firearm. Agent Monney discovered the Order of Protection, which led to Fundermann's arrest on the current charges.

In the victim's affidavit in support of her application for the Order of Protection, the victim states Fundermann has threatened the lives of the victim and her entire family, including her stepfather. She stated Fundermann uses methamphetamine, which changes his personality. The victim stated she fears for herself and her children. Based on the victim's affidavit, and considering Fundermann's previous criminal history, the court finds the record contains overwhelming evidence of dangerousness that is unrebutted on this record.

Accordingly, the court finds the Government has proved by clear and convincing evidence that Fundermann would be a danger to the community if released, and no condition or combination of conditions of release would reasonably assure the safety of the community. Therefore, the court finds the following:

1. Fundermann is committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal.
2. The Attorney General shall afford Fundermann reasonable opportunity for private consultation with counsel while detained.
3. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver Fundermann to

the United States Marshal for the purpose of an appearance in connection with a court proceeding.

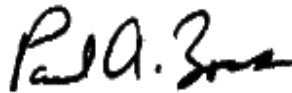
4. If a “review” motion for revocation or amendment is filed, pursuant to 28 U.S.C. § 3145(a) or (b), the party requesting a change in the original order *must*:

- (a) Attach a copy of the release/detention order to the appeal;
- (b) Promptly secure a transcript.

5. There is *no automatic stay* of this Order. Therefore, Fundermann must request such relief from the court.

IT IS SO ORDERED.

DATED this 17th day of March, 2008.



PAUL A. ZOSS
CHIEF MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT