

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

vs.

3:22-MJ-619

DUANE HOLLENBECK,

Defendant.

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Transcript of a Video Detention Hearing held
on October 24, 2022, the HONORABLE ANDREW T. BAXTER,
United States Magistrate Judge, Presiding.

A P P E A R A N C E S

(By Microsoft Teams)

For The Government: UNITED STATES ATTORNEY'S OFFICE
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1 (All present by Microsoft Teams, 1:06 p.m.)

2 THE CLERK: This is United States versus Duane
3 Hollenbeck, Case Number 3:22-MJ-619 for a detention hearing.
4 Counsel, please state your appearances for the record.

5 MR. BROWN: Geoff Brown for the United States, good
6 afternoon, your Honor.

7 THE COURT: Good afternoon.

8 MS. DiBELLA: Good afternoon, Gabriella DiBella on
9 behalf of Mr. Hollenbeck who's also appearing by
10 videoconferencing.

11 THE COURT: All right, good afternoon. So
12 Mr. Hollenbeck, we discussed this before but you have no
13 objection to having this detention hearing go by way of this
14 video connection?

15 THE DEFENDANT: That is correct.

16 THE COURT: Okay. I will find under our General
17 Order 59 based on the lingering COVID concerns and the
18 logistics involved that a, it is appropriate to conduct this
19 detention hearing by way of a video connection.

20 So Mr. Hollenbeck, the government has the burden to
21 prove that you constitute a danger to the community by clear
22 and convincing evidence or a risk of flight by a
23 preponderance of the evidence and that no condition or
24 combination of conditions would adequately address those
25 risks. Because they have the burden of proof, they're going

1 to go first. They typically proceed by what we call a
2 proffer which means that they summarize the evidence they're
3 going to rely upon rather than calling witnesses. When
4 they're done, Ms. DiBella is going to be able to present your
5 side of the case, and then I will make a decision. So you
6 understand what's going on here today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Mr. Brown.

9 MR. BROWN: Thank you, your Honor. The government
10 would request to proceed by proffer.

11 THE COURT: Granted.

12 MR. BROWN: Thank you, your Honor. In making a
13 detention determination, the court must consider the
14 following factors: Nature and circumstances of the offense
15 charged, including whether the offense is a crime of
16 violence; weight of the evidence against the person; history
17 and characteristics of the person; and the nature and
18 seriousness of the danger to any person or the community that
19 would be posed by the person's release. To support detention
20 based on danger, government proof must be clear and
21 convincing, while risk of flight must be preponderance of the
22 evidence.

23 With respect to this case, the nature and
24 circumstances of the offense charged, by complaint defendant
25 is charged with possession of a short-barreled rifle not

1 registered with the NFTR. On or about June 20th, 2022, he
2 possessed that firearm at issue in this case as well as what
3 can only be described as an arsenal of weapons. Those
4 weapons ranged from short-barrel assault rifles to ghost guns
5 to silencers and were stored in an open, unsecured home that
6 he owned in which his two children, one of them still a
7 minor, had unfettered access to and one of whom lived in that
8 location.

9 The weight of the evidence against the defendant in
10 this case is overwhelming. In a post-Miranda
11 audio/video-recorded statement, the defendant admitted to not
12 only owning the firearm in question but to building it
13 himself and purposely using a ten-inch barrel on the firearm.
14 Defendant also admitted to owning all the firearms at the
15 residence and the silencers and making many of them with his
16 children. His adult son, who's now 19, has resided at the
17 home for four or five years unsupervised with these weapons,
18 stated that all the weapons inside the home were owned by his
19 father and provided a sworn statement to that effect
20 confirming what the defendant has also said.

21 As far as history and characteristics of the
22 defendant in this case, we have a defendant who has a history
23 of two sex abuse third convictions and an assault third
24 conviction -- I'm sorry, sex abuse third and two assault
25 third convictions with intent to cause physical injury. One

1 of the assault third convictions is a domestic violence
2 misdemeanor conviction which makes him a prohibited person
3 for owning firearms under 18 U.S.C. 922(g)(9), as he was
4 convicted as a misdemeanor crime of domestic violence.

5 With respect to danger to the community, it's hard
6 to imagine a larger threat than somebody storing an arsenal
7 at his home that he's providing to his children who both
8 himself and the children have espoused using said weapons
9 against their community. With respect to this defendant,
10 he's got this arsenal designed to create mass casualties with
11 silencers, he's openly advocating in some of his posts for an
12 armed movement against the government, encouraging people to
13 go to D.C. on his political Facebook pages discussing taking
14 out a local government, going to D.C. armed. When federal
15 agents interviewed him about his posts, he lied to them about
16 the amount, nature of firearms he had. When he was
17 questioned about whether or not he had any of the firearms to
18 carry out these crimes, he claimed to only have a shotgun.

19 He has two children, one of whom is still a minor,
20 and that minor threatened, which the defendant knows, that he
21 was going to commit a Parkland-style attack on his school, a
22 threat for which he was suspended for the rest of the school
23 year, 70 days. How did the defendant respond to that
24 horrific event? He responded by providing that child with
25 access to the firearms that that child can use to

1 successfully perpetrate another Parkland. Such a horrific
2 attack on his classmates and his community is absolutely
3 being facilitated by this individual. That child, with those
4 same weapons owned by the defendant, can be seen holding them
5 in a picture posted on social media by his other son. These
6 same weapons were recovered by the agents in the defendant's
7 cabin.

8 Compounding matters, in an interview with that
9 child after the initial set of guns were recovered, the son
10 further admitted that the father had given him a pistol that
11 he stores at his mom's house. That .45-caliber pistol, made
12 by the defendant for his son after these threats, was
13 recovered from that residence. The 19-year-old child who's
14 been living in that cabin for years surrounded by these
15 weapons was investigated for threatening to blow up his
16 school and for bringing shell casings to school. How's that
17 son found living? Surrounded by an arsenal of his father's
18 weapons, unsecured throughout that home.

19 After that search, three other guns were turned in
20 by Alec, location where he was storing them is unknown, and
21 those were another assault rifle with a large capacity
22 magazine, a rifle and a shotgun. These late and continued
23 recoveries of more and more weapons leaves the government
24 with no confidence at all that all of the firearms in this
25 case have been recovered.

1 In conclusion, given the factors in 3142(g), the
2 court should find there's no condition or combination of
3 conditions that would assure the appearance of the defendant
4 and the safety of the community.

5 With respect to risk of flight, the defendant is a
6 long haul trucker, he's facing a significant sentence, and
7 his willingness to contravene the laws related to firearm
8 ownership and lie to agents about it make him a risk of
9 flight as well as the previously-mentioned danger to the
10 community. Thank you, your Honor.

11 THE COURT: Okay. Ms. DiBella.

12 MS. DiBELLA: I will start first with the risk of
13 flight. I would note that Mr. Hollenbeck is a resident of
14 the Northern District of New York and has been for his entire
15 life. He's always lived in this area. His family is in this
16 area, he does have a significant other and his children in
17 this area. He's very involved in his community in terms of
18 working, he's always held steady employment in this area. He
19 is a long haul trucker but he is based in Moravia and he's
20 working as a milk tank trucker now. And so he is always in
21 this area, he's going to remain in this area. He has no
22 motivation to leave the current area that he's residing in
23 because his family is here, his significant other is here,
24 his work is here. So he has a history of full-time
25 employment in this area and he advises that he could go back

1 to that job if he were released so he has every incentive to
2 stay here, to continue working here, and providing for his
3 family.

4 In terms of being a danger to the community, so
5 this is charged as a possession case. I'm unaware of any
6 evidence that there was any distribution of firearms. I
7 understand that there are allegations that there were at
8 least one minor child that had access to firearms. I've seen
9 a picture that was submitted by the government, but there are
10 no allegations that these firearms were ever distributed to
11 anybody else, that they were sold or borrowed or anything
12 like that. So these are firearms that were found at a
13 seasonal camp. Mr. Hollenbeck inherited this camp when his
14 father passed, it's seasonal, it's like a hunting cabin, it's
15 kind of out in the woods and Mr. Hollenbeck uses the cabin
16 primarily for target practice. He would go out there and he
17 advises that he would shoot clay pigeons, steel gongs, soda
18 cans, go out there for target practice.

19 The government has mentioned some posts on social
20 media, I have seen some of these posts. Mr. Hollenbeck
21 advises that he would share some posts just to kind of see,
22 you know, what people's opinions were. He did post a lot of
23 things related to religion and religious opinions just to
24 kind of see, you know, what people were thinking, and kind of
25 put some contrarian views out there. That is something that,

1 you know, he is open about. When he was confronted about his
2 posts by the FBI, I believe this was back in October, he was
3 confronted about a post, he was open and cooperative with the
4 agent and he did, he spoke with them voluntarily, twice. So
5 he could have hung up the phone and said, forget it, you
6 know, I have no obligation to speak with you, leave me alone.
7 He didn't. He spoke with them twice and he told them what he
8 knew. Not only that, he gave them his phone. So he turns
9 his phone over and says, you can take a look at it, you can
10 find, you know, what you want on my social media, find these
11 groups, find these posts, and they did. So he's been open
12 about that.

13 I would also note that the pretrial report notes
14 that probation believes that he can be supervised, there are
15 conditions or combination of conditions that can assure that
16 he does come back to court and assure that he is not a danger
17 to the community, and so I think that there are conditions
18 that would help.

19 The government has concerns about firearms not
20 being located. Obviously if he were released and there were
21 a condition that he were not to possess firearms and he were
22 later found to be in possession of firearms, it would be a
23 significant problem, not only in terms of his release status
24 but also any future criminal liability. I think checking in
25 with a probation officer even if it's just by phone, I think

1 checking in with a probation officer could also help so they
2 could be assured that he is where he says he is, he's doing
3 what he says he's doing, and he is working and spending time
4 with his family.

5 So I think that there are some restrictions that
6 can be imposed on Mr. Hollenbeck to be released that can
7 address some of these concerns.

8 THE COURT: Mr. Brown?

9 MR. BROWN: Your Honor, I -- in this day of school
10 shootings, when a parent is providing his children with
11 weapons of mass carnage, having known about both of their
12 previous threats to those schools, and the fact that one of
13 his children was suspended for 70 days for that threat is
14 beyond troubling to the government. I can't understand it on
15 any level. I fear that it will continue if he's released. I
16 have no confidence that given their love for guns and his
17 love for guns that that won't continue, and I believe
18 detention is appropriate. Thank you, your Honor.

19 THE COURT: All right. Just for the record, I
20 would confirm that the government has submitted an Exhibit A
21 which includes some of the posts, a law enforcement report
22 from the FBI, some of -- when I say the posts, I mean
23 Mr. Hollenbeck's social media posts, as well as photographs
24 of a number of the weapons. I also received a letter of
25 support on behalf of Mr. Hollenbeck from his significant

1 other Amy Schiavi. All right. Is there anything else from
2 you, Ms. DiBella?

3 MS. DiBELLA: Your Honor, I would just highlight
4 that I'm not sure the extent of which Mr. Hollenbeck knows
5 about the one event that Mr. Brown is referring to in terms
6 of the Parkland school shooting comments. The reports that I
7 have, I'm not sure that they indicate that Mr. Hollenbeck was
8 ever actually talked to or interviewed regarding that. I
9 believe that they went and interviewed the minor's mother
10 about that, so I really can't say for sure what his knowledge
11 and understanding was of that event.

12 THE COURT: Mr. Brown, anything further?

13 MR. BROWN: Well, with respect to that, his child
14 was suspended from school for 70 days, I would think why that
15 happened probably came up.

16 THE COURT: Okay. Fair enough. All right. So
17 presently before the court is the government's motion for
18 pretrial detention of the defendant Duane Hollenbeck. The
19 defendant has been charged by complaint with possession of an
20 unregistered short-barreled rifle, in violation of Title 26
21 United States Code Section 5861(d) and 5845(a)(3). The
22 government has moved for detention based on risk of flight
23 and danger to others and to the community. The detention
24 motion may be based on danger under several sections of the
25 Bail Reform Act. Some of them have been questioned because

1 of the recent Supreme Court cases about what constitutes a
2 crime of violence and, you know, I think all of -- all of the
3 relevant sections apply but most clearly, because the
4 defendant is charged with a felony that is, may or may not be
5 a crime of violence, it involves possession or use of a
6 firearm or destructive device under 18 U.S.C. Section
7 3142(f)(1)(E) that allows the government to move for
8 detention based on danger. It is probably also, based on
9 case law which I don't need to recite, a crime of violence
10 for the purposes of the Bail Reform Act, whether categorical
11 crime of violence or one that falls under a residual clause,
12 but rather than getting into the debate about the first two,
13 I'm going to make, it's clear under 3142(f)(1)(E) that the
14 government can move for detention based on danger because of
15 the involvement of a firearm in this felony charged.

16 A detention hearing was obviously conducted today.
17 The court has considered the pending charges which are set
18 forth in a criminal complaint of six pages. As I mentioned,
19 the government submitted a fairly detailed Exhibit A, I have
20 a letter of support and a pretrial services report as well as
21 obviously the proffers that the parties made today. To
22 support its motion for detention, the government, as it
23 acknowledges, bears the burden of proving risk of flight by
24 preponderance of the evidence and of proving danger to others
25 or the community by clear and convincing evidence. That is

1 established by, among other cases, *United States v. Artis*,
2 607 F.App'x 95 at 96, a Second Circuit case from 2015. The
3 factors for the court to consider, again, as the government
4 acknowledged, include the nature and characteristics of the
5 offense charged; the history and the characteristics of the
6 defendant; the weight of the evidence against the defendant;
7 and the nature and seriousness of the risk to the community
8 if the defendant were to be released.

9 I conclude that the government has sustained its
10 burden to prove, by clear and convincing evidence, that the
11 defendant presents an unreasonable risk of danger to others
12 and to the community through his possession of dangerous
13 firearms and conduct that risks inciting others to acts of
14 gun violence, and that no condition of release will
15 adequately mitigate that risk. In light of that finding, I
16 won't dwell on risk of flight as to which I think the defense
17 makes a stronger case.

18 In terms of the nature and the characteristics of
19 the offense charged, in addition to the short-barreled rifle
20 recovered from the defendant's cabin, which is the basis for
21 the pending charge, the FBI found what I think Mr. Brown
22 appropriately characterized as an arsenal of other
23 semiautomatic firearms, including three AR-15 style rifles,
24 some of which were unserialized, five unserialized pistols,
25 assembled from Polymer80, Inc. to mimic Glock pistols, and

1 five metal tubes or canisters believed to be homemade
2 silencers.

3 As noted by Mr. Brown, the sons of the defendant or
4 one son of the defendant subsequently produced several
5 additional firearms that were not found in the search. The
6 government's exhibit provides evidence that defendant's
7 conduct risks inciting others to engage in dangerous and
8 violent conduct involving firearms. The defendant's two
9 teenage sons have been involved in incidents in school
10 involving threats of gun violence and were involved in a
11 social media image posted by the younger son of the older son
12 brandishing the short-barreled rifle and an AR-15 style
13 rifle. The older son's purchase of large quantities of
14 ammunition helped tip off law enforcement about the potential
15 dangers posed by him and his family as indicated in the
16 complaint, and most telling, the government in Exhibit A
17 produced a Facebook communication where the defendant urged
18 other "patriots" to go to the District of Columbia for what
19 appeared to be a tentatively planned event and saying, and
20 I'm quoting, "We won't be waving flags, or holding signs. We
21 are going in armed." One member of that group replied,
22 according to the first page of Exhibit A, I'm quoting, "About
23 time, let's go!" So I do think the -- not only the charge
24 that is pending but the surrounding circumstances as
25 reflected in the complaint are particularly alarming.

1 As noted, I'm not going to dwell on flight. The
2 defendant is a lifelong resident of Central New York. His
3 work as a truck driver I suppose gives him some additional
4 opportunity to flee, but that's really not the issue here.

5 In terms of the criminal history of the defendant,
6 he has a 1990 sexual assault misdemeanor conviction at age 20
7 for which he was sentenced to 60 days. He has a 2016 arrest
8 for sexual abuse first based on his ex-wife's allegation of
9 rape. He was sentenced to three years probation. It was not
10 clear from the pretrial services report what charge he pled
11 guilty to. He also had a 2016 assault third misdemeanor
12 which led to a 60-day sentence and a three-year probationary
13 term. The defendant completed both probationary terms at the
14 maximum expiration date with no apparent violations which is
15 obviously a point in his favor.

16 The defendant, according to the pretrial services,
17 has no -- report has no history of substance abuse or mental
18 health issues.

19 The government I think fairly characterized the
20 weight of the evidence against the defendant as very strong.
21 His sons basically gave the government access to the cache of
22 weapons at the defendant's cabin, acknowledged their dad
23 owned them, and the defendant subsequently, after being
24 Mirandized, admitted to not only owning and possessing those
25 rifles but building some of them from internet kits into

1 unserialized firearms.

2 In terms of the nature and the risk, seriousness of
3 the risk to the community, I'm going to quote extensively
4 from a District of Connecticut case from 1994, *United States*
5 *v. Dodge*, 842 F.Supp. 643 at 644 to 645. And it's not
6 entirely applicable but it basically accentuates the risk of
7 danger to the community from possession of weapons that are
8 defined under the RFA. "The term 'firearm' is narrowly
9 defined in 26 U.S.C. Section 5845 to include only those
10 weapons and devices which Congress believed to be either so
11 inherently dangerous and lacking in legitimate utilitarian
12 purpose or so susceptible to misuse in criminal activities
13 that they should not be possessed by private citizens freely
14 and without federal regulation. Because of the potential
15 danger which unregistered firearms pose to society, the
16 simple possession of such a firearm by a private citizen --
17 even one with no prior criminal record -- is a federal felony
18 offense. Because of their dangerousness and the high
19 likelihood of their being employed to inflict grievous injury
20 on innocent victims, the simple possession of such
21 'firearms,' such as machineguns and sawed-off shotguns, have
22 been held to be 'crimes of violence' under 18 U.S.C. Section
23 3156 without the necessity of the government's proving that
24 the particular firearm was actually used."

25 The District of Connecticut case goes on to talk

1 about silencers. "The noise of a firearm and the attention
2 that it attracts often are the only restraints preventing a
3 criminal from using a weapon in the commission of a crime.
4 By suppressing the report of a firearm, a silencer enables
5 the weapon to be discharged stealthily, without notice and
6 attention, thus eliminating that restraint and creating a
7 serious danger."

8 Similarly -- and that's the end of the quote. The
9 manufacture and sale of firearms without serial numbers and
10 those which are not registered makes it more difficult for
11 law enforcement to investigate offenses involving the use of
12 such weapons. The purchasers or the creators of such
13 difficult-to-trace weapons are more likely to be planning to
14 use them for criminal activity, so selling such weapons
15 creates a substantial risk of danger to the community from
16 criminal activity involving guns.

17 Now let me emphasize that I am not detaining the
18 defendant because of his beliefs or his contrarian opinions
19 or the fact that he may have expressed them on the internet.
20 I draw the line, however, at statements which would incite
21 others or conduct which would incite others or lead others to
22 consider using such weapons as weapons of mass casualty. And
23 while I acknowledge that the sons have never carried out
24 their threats, the leaving one son in a cabin surrounded by
25 these weapons while he has displayed a tendency to make such

1 threats is beyond irresponsible and poses substantial danger
2 to the community.

3 Similarly, the incitement of potential patriots to
4 use weapons against the government suggests that we're not
5 just talking about a gun enthusiast who spends a lot of time
6 doing target practice. These were semiautomatic rifles.
7 There's no need to use them in hunting, there's no need for
8 silencers in connection with hunting and sports and target
9 shooting, and it's just, you know, it has nothing to do with
10 one's beliefs or opinions, it has to do with the imminent
11 threat of danger to the community from the use of these
12 firearms.

13 I would also note that the defendant's criminal
14 history, although it may not involve a felony conviction,
15 indicates a history of impulsive and sometimes violent
16 conduct, which gives the court even greater concern that even
17 the most stringent of conditions of release would not prevent
18 the defendant from, or perhaps one of his sons from being
19 incited by some conduct and engaging in gun violence.

20 So I have considered alternative conditions of
21 release, even beyond those that were proposed by probation,
22 and I just do not, I cannot fathom a set of conditions that
23 would reasonably assure me that the defendant would not
24 continue to pose a serious risk of danger to others and to
25 the community.

1 I do want to say that, notwithstanding the fact
2 that I'm disagreeing with the suggestion of the probation
3 office, they come at this from the direction of the
4 background and the history of the defendant and they don't
5 focus, as the government does, on the circumstances of the
6 offense and the other evidence with respect to the
7 defendant's conduct. So you know, I respect the probation
8 office and their opinions and I understand that the defendant
9 in many ways is a productive and decent member of the
10 community, and you know, he seems -- he's been shaking his
11 head the whole time so he seems to be insisting that he's not
12 the person that is portrayed by the government that has
13 persuaded me, but I just cannot ignore the overwhelming
14 evidence presented by the seizures from this defendant, his
15 comments on social media with others prone to gun violence
16 and his interaction or lack of supervision of his sons and
17 giving them the opportunities to carry out the types of
18 threats that they have made.

19 So based on all of that, it is the ruling of this
20 court that the defendant be detained pending further
21 proceedings. Ms. DiBella, as is my practice, I'm going to
22 confirm this in a fairly brief order but rely on the
23 transcript of this proceeding for the underlying reasons
24 should your client choose to appeal.

25 All right. Do we want to discuss the preliminary

1 hearing?

2 MS. DiBELLA: Your Honor, I have spoken with
3 Mr. Hollenbeck last week about a preliminary hearing, what it
4 is in theory, what it would entail in reality, and what we
5 agreed is that if we received early discovery, we would waive
6 a preliminary hearing. I have started to receive early
7 discovery and so we would be willing to waive the scheduling
8 of a preliminary hearing based on that.

9 THE COURT: I will find then that the defendant has
10 made a knowing and voluntary waiver of his right to a
11 preliminary hearing based on the government's agreement to
12 provide early discovery. I would note, Mr. Hollenbeck, that
13 the government can avoid having a preliminary hearing by
14 presenting the case to a grand jury and getting an
15 indictment, so, you know, practically speaking, it usually
16 never works out that a defendant gets a preliminary hearing
17 in any event. So your client -- or your lawyer has done the
18 most she can with that strategic option and in return has
19 gotten early discovery which will help the two of you get
20 jump started on your defense against these charges. All
21 right. Is there anything further from the government?

22 MR. BROWN: No, your Honor, thank you.

23 THE COURT: From the defense?

24 MS. DiBELLA: No, your Honor.

25 THE COURT: All right. The defendant is remanded,

1 court is adjourned.

2 (Court Adjourned, 1:35 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

I, JODI L. HIBBARD, RPR, CRR, CSR, Federal Official Realtime Court Reporter, in and for the United States District Court for the Northern District of New York, DO HEREBY CERTIFY that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 30th day of Novvember, 2022.

/S/ JODI L. HIBBARD
JODI L. HIBBARD, RPR, CRR, CSR
Official U.S. Court Reporter