

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
v.	§	
	§	No: 5:18-CR-390-OLG
ROBERT MIKELL USSERY	§	
	§	
Defendant.	§	

**GOVERNMENT'S RESPONSE TO DEFENDANT'S
MOTION TO REVOKE DETENTION ORDER**

TO THE HONORABLE UNITED STATES CHIEF DISTRICT JUDGE ORLANDO GARCIA:

The United States of America by and through the United States Attorney for the Western District of Texas and the undersigned Assistant United States Attorney, files this Government's Response to Defendant's Motion to Revoke Detention Order.

I. BACKGROUND

On May 24, 2018, defendant Robert Mikell Ussery was arrested via federal complaint for felon in possession of a firearm. He was subsequently indicted on June 6, 2018. The Government filed a motion to detain the defendant. Judge Henry Bemporad conducted a contested detention hearing on May 29, 2018. Judge Bemporad ordered the defendant detained. The defendant now appeals that ruling.

II. FACTUAL SUMMARY

The defendant has been terrorizing the community of Sutherland Springs. As background, on November 5, 2017, the Sutherland Springs First Baptist Church was the scene of a mass shooting, where 26 people were killed as they attended church services. The defendant and his co-

defendant, Jodie Marie Mann, both believe this mass church shooting was a government hoax. 1

As detailed in Ussery's federal criminal complaint (Doc. 1) as well as at his detention hearing, on March 5, 2018 Ussery and Mann confronted Pastor Pomeroy. Pastor Pomeroy is the pastor of Sutherland Springs First Baptist Church. He not only lost 26 members of his congregation, but he also lost his daughter who was killed in the massacre. Ussery filmed himself confronting the pastor. Ussery and Mann used threatening, ugly, hateful language during his confrontation. Alcohol, Tobacco, Firearms, and Explosives (ATF) Special Agent Kaitlin O'Connell described the incident at the detention hearing. On pages 7-8 of the transcript from the detention hearing (attached as exhibit A), Agent O'Connell testified:

Q (AUSA Wannarka). Okay. Where did this confrontation occur?

A (Agent O'Connell). On the property of the Sutherland Springs church.

Q. And what type of confrontation ensued between this defendant and the pastor?

A. It started off as a conversation, then escalated.

Q. A conversation about what?

A. About the shooting at the Sutherland Springs church.

Q. And what was this defendant saying about that?

A. He was saying that it was a hoax and that nobody was killed to the pastor and one of the other church members.

Q. And, in fact, didn't the pastor lose a daughter in the shooting?

A. He did.

Q. Describe the tone that this defendant approached the pastor with.

A. It was confrontational and then became threatening towards the end as they continued.

Q. Did he use curse words towards the pastor?

A. Yes, ma'am.

Q. And then was there actually a part where the defendant told the pastor that the people would hang him for perpetrating the hoax?

A. Yes, ma'am.

Q. Tell the Court about that.

A. At that point in the conversation Mr. Ussery was talking to the pastor with his voice raised, using curse words, saying that the people would come after him, hang him, and then he would piss on them -- and piss on him in the wind.

Q. The defendant would urinate on the pastor after he was hung?

A. Yes, ma'am.

1 Jodie Marie Mann was detained after a detention hearing before Judge Richard Farrer on June 8, 2018. (Doc. 24).

The Wilson County Sherriff's Department responded to this confrontation. They arrested Ussery for Terroristic Threats to the Pastor, Criminal Trespass, Resisting Arrest, and Possession of Marijuana. ² A search warrant for the Go-Pro video camera that Ussery was wearing during the confrontation yielded the video of the encounter at the Sutherland Springs church. The video also depicts the defendant possessing a firearm. Ussery's federal indictment for Felon in Possession of a Firearm is based on his possession of the pistol on this video.

On May 24, 2018, ATF arrested Ussery on a federal complaint for Felon in Possession of a Firearm. In addition, ATF executed a search warrant at his residence in Caldwell County. Agents recovered ten firearms and 1,561 rounds of assorted ammunition. The recovered firearms include a .50 caliber rifle and two AR style rifles, one of which is a large capacity rifle.

III. ARGUMENT

Ussery claims he is "not violent and is peaceful." (Doc. 28, page 5). However, Ussery has demonstrated quite the opposite. On March 5, 2018, being a felon with a firearm, Ussery and Mann confronted Pastor Pomeroy at the Sutherland Springs First Baptist Church. Ussery and Mann used threatening language and tone. This confrontation occurred on the six month anniversary of this church shooting that killed 26 people, which included Pastor Pomeroy's daughter. The basis of the confrontation was Ussery and Mann's ludicrous beliefs that the shooting was a government hoax. To be clear, Ussery went to the scene of the church shooting and told the Pastor of that church that Ussery would urinate on him while the Pastor hung. There is nothing peaceful about confronting a father who lost his daughter or a Pastor who lost church members in such a hurtful way.

Ussery alleges in his motion that he believes his life is in danger. However, at the detention

² Mann was also arrested for Resisting Arrest and Criminal Trespass.

hearing, Agent O'Connell provides some insight.

Q. (AUSA Wannarka) Are you aware of any of these death threats that have been made against the defendant and why they've been made against

A. (Agent O'Connell) I have heard of them. I've never witnessed any of them.

Q. And what is it that you've heard?

A. I have heard that he was making threats against some of the victims and threatening them.

Q. And then they were threatening him back?

A. Yes, ma'am.

Detention Hearing Transcript, page 21.

In detaining Ussery, Judge Bemporad found clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community. Judge Bemporad added that the detention ruling was based, among other things, on the circumstances of the offense and the testimony presented by the Government of the numerous other firearms. (Doc. 13).

Lastly, Ussery believes his guideline calculation is a level 12, criminal history category I. However, this calculation does not consider the 10 guns found at his residence and the fact that one of the rifles is a large capacity rifle. The Government calculates Ussery's guideline range to be a 24.

In this country, Ussery can believe anything he wants. What makes him dangerous however, is that he went to a community in mourning to espouse his beliefs in a threatening way. As well, he is a felon who had a firearm, as seen in his video. Ussery had significant fire power at his residence. The Government strongly asks the Court to keep Ussery in custody.

IV. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the Government respectfully requests that

the Court DENY Defendant’s Motion to Revoke Detention Order and order that he remain in custody.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 22, 2018 a true and correct copy of the foregoing instrument was filed via the CM/ECF system which will transmit a copy to the defense attorney of record.

_____/s/_____
SARAH WANNARKA
Assistant United States Attorney

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ORDER

Upon consideration of Defendant’s Motion to Revoke Detention Order, the Government’s Response, as well as the entire record, the Motion to Revoke Detention Order is **DENIED**.

SIGNED AND ENTERED on this the _____ day of June _____, 2018.

HONORABLE CHIEF JUDGE ORLANDO GARCIA
UNITED STATES DISTRICT JUDGE
WESTERN DISTRICT OF TEXAS