

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

UNITED STATES OF AMERICA)	
)	
)	Case No. 1:07CR00051
)	
v.)	OPINION AND ORDER
)	
MELISSA JENE THOMPSON,)	By: James P. Jones
)	Chief United States District Judge
Defendant.)	

Jennifer R. Bockhorst, Assistant United States Attorney, Abingdon, Virginia, for United States; Joel C. Hoppe, Assistant Federal Public Defender, Abingdon, Virginia, for Defendant.

The defendant, who pled guilty to the use of a false social security number, seeks to modify the conditions of her release pending sentencing. I find that the defendant’s Motion to Modify Conditions of Bond must be denied because she has failed to meet her burden of proving that she would not be a danger to the community or a flight risk without the current conditions.

The defendant, Melissa Jene Thompson, pled guilty to the use of a false social security number in violation of 42 U.S.C.A. § 408(a)(7)(B) (West 2003). She was released on bond pending sentencing subject to the same conditions of release she

received at her initial appearance and arraignment. Those conditions include a requirement that the defendant “shall submit to warrantless search and seizure of [her] person and property as directed by the probation officer for the purpose of determining if [she] is in compliance with [her] conditions” (Order Setting Conditions of Release 1.) The defendant did not object to the conditions of her release at her initial appearance and arraignment or at her change of plea hearing. She now seeks to modify those conditions, requesting the removal of the warrantless search condition and any other condition the court finds not reasonably necessary.

II

At the defendant’s initial appearance and arraignment, the applicable standard governing the imposition of conditions of release under the Bail Reform Act was governed by 18 U.S.C.A. § 3142 (West 2000 & Supp. 2008), titled, “Release or detention of a defendant pending trial.” Once Thompson’s guilty plea was accepted, however, the governing standard became that described in § 3143(a), “Release or detention pending sentence.” Section 3143(a)(1) provides:

[T]he judicial officer shall order that a person who has been found guilty of an offense and who is awaiting imposition . . . of [a] sentence . . . [when the sentencing guidelines recommend a term of imprisonment] be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the

safety of any other person or the community if released under section 3142(b) or (c) [the provisions regarding release subject to conditions].

18 U.S.C.A. § 3143(a)(1) (West 2000).

The government has represented, and the defendant does not contest, that the federal sentencing guidelines will recommend a term of imprisonment for the defendant's offense. Accordingly, in order to rebut the presumption in favor of detention, Thompson has the burden of proving by clear and convincing evidence that if released, she would not be a flight risk or pose a danger to the community. *See* S. Rep. No. 98-225, at 27 (1983) (reporting on revision of Bail Reform Act) ("The committee intends that in overcoming the presumption in favor of detention the burden of proof rests with the defendant."); *United States v. Vance*, 851 F.2d 166, 168 (6th Cir. 1988) (finding that "defendant must present 'clear and convincing evidence' that he does not 'pose a danger to the safety of any other person or the community' after conviction").

In light of this clear statutory mandate, it follows that Thompson has the burden to prove not simply that she would not be dangerous or a flight risk if released, but that she would not be dangerous or a flight risk if released subject to certain conditions under § 3142(c). Therefore, when evaluating the necessity of a condition, the defendant has the burden of proving by clear and convincing evidence that the

condition at issue is not needed to reasonably assure the defendant's presence at sentencing or the safety of the community.

The defendant has failed to meet her burden of proving that the warrantless search condition is not needed to assure the safety of the community. The defendant points to *United States v. Scott*, 450 F.3d 863 (9th Cir. 2006), in which the Ninth Circuit invalidated a search of a pretrial defendant's residence where the search was based on conditions of bond that subjected him to a drug screen and a warrantless search. But the Ninth Circuit did not hold that pretrial release subject to a condition permitting warrantless searches was per se unreasonable. Instead, the court concluded that the pretrial defendant's consent to search would be valid only if the search was reasonable, *id.* at 868, and the search of that particular defendant's home was not justified by either special circumstances or the totality of the circumstances, *id.* at 872, 874.

The case of *United States v. Kills Enemy*, 3 F.3d 1201 (8th Cir. 1993), is more on point. The court in *Kills Enemy* found that a warrantless search pursuant to a condition of release was permissible for an offender who had pled guilty and was awaiting sentencing. *Id.* at 1203 (noting that "[a] convicted person awaiting sentence is no longer entitled to a presumption of innocence or presumptively entitled to his freedom").

Moreover, beyond the legal argument presented, the defendant does not submit any facts or circumstances indicating that the warrantless search requirement is not needed in this case. The government aptly argues that the warrantless search condition protects the community against further identity theft while Thompson awaits sentencing. “Safety of the community” may include security against future criminal activity, and is not solely relegated to protection against physical violence. *See* S. Rep. No. 98-225, at 13 (1983) (“[T]he language referring to the safety of the community refers to the danger that the defendant might engage in criminal activity to the detriment of the community. The committee intends that the concern about safety be given a broader construction than merely danger of harm involving physical violence.”).

The defendant has not presented any evidence or argument regarding the other conditions imposed while she awaits sentencing. Therefore, the defendant has failed to meet her burden of proving by clear and convincing evidence that she would not be a danger to the community or a flight risk without the conditions currently imposed.

III

For the foregoing reasons, it is **ORDERED** that the defendant's Motion to Modify Conditions of Bond is DENIED.

ENTER: October 2, 2008

/s/ JAMES P. JONES
Chief United States District Judge