

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 21-cr-692 (CKK)
	:	
MARILYN FASSELL,	:	
	:	
THOMAS FASSELL,	:	
	:	
Defendants.	:	
_____	:	

**GOVERNMENT’S MEMORANDUM IN OPPOSITION TO DEFENDANTS’
MOTION TO MODIFY CONDITIONS OF RELEASE**

The United States of America, by and through its attorney, the United States Attorney for the District of Columbia, respectfully submits this memorandum in opposition to defendant Marilyn Fassell’s Motion to Modify Conditions of Release (ECF No. 30), joined by her co-defendant and husband Thomas Fassell (ECF No. 34).

Marilyn and Thomas Fassell unlawfully entered the United States Capitol during a violent riot. The government has agreed that they may remain on release pending trial, without a curfew, home detention, or monitoring—but not without conditions. Here, the condition that the Fassells may not possess firearms must be included among the minimum conditions necessary to ensure the safety of the community, particularly the Pretrial Services Officers who conduct home visits. Their involvement in the January 6, 2021 riot and Marilyn Fassell’s history of substance-abuse-related crimes justify restricting their access to firearms pending trial. Accordingly, the Court should deny the joint motion.

BACKGROUND

I. The Fassells' Participation in the Capitol Riot

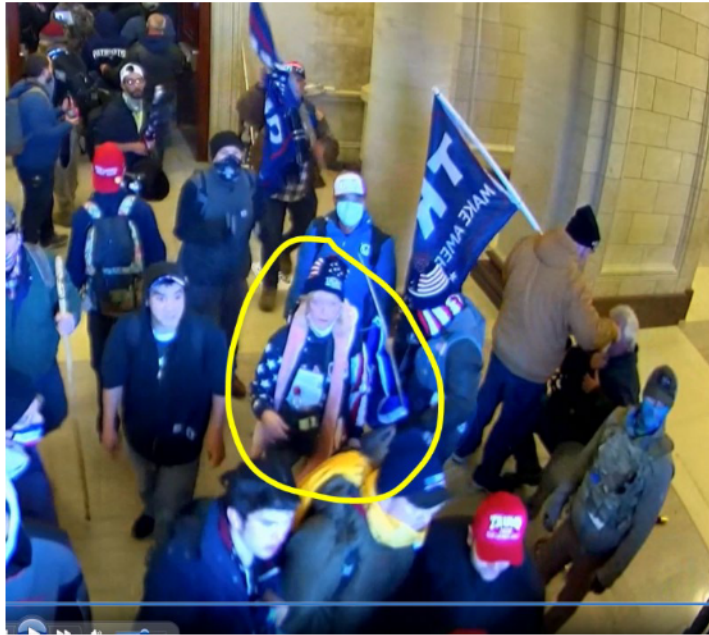
The defendants unlawfully entered the U.S. Capitol on January 6, 2021. They drove from their home in Key Largo, Florida, to Washington D.C. to participate in the “Stop the Steal” rally against the results of the 2020 Presidential Election. After attending the rally, the defendants walked to the Capitol.

After walking past broken windows and through what Marilyn Fassell described as “partially broken” doors, the Fassells entered the Capitol and walked through hallways and offices for approximately forty minutes. Marilyn Fassell filmed videos both outside and inside the Capitol, and can be heard on video participating in various chants. In one clip, she says “Take it! Take it! Take it!”—referring to taking the Capitol. Later, she says “We busted in the Capitol.” Thomas Fassell can also be heard in the background of the videos. As she was leaving the Capitol, Marilyn Fassell said “This is my house, we pay taxes for this” and “we pay their salary.”

Marilyn also took a selfie-style picture of herself smoking a cigarette in the Capitol:



Capitol building surveillance also captured Marilyn Fassell:



Upon returning home, defendant Thomas Fassell bragged about their involvement in the riot to acquaintances. A tipster reported that he was bragging to a group of people and showing the above selfie of Marilyn inside the Capitol. Both Fassells have been cooperative with law enforcement, admitting to their participation in the riot and willingly allowing agents to search their phone and seize the clothing they wore that day.

II. Procedural History

On September 15, 2021, Marilyn and Thomas Fassell were arrested pursuant to a criminal complaint charging them with four misdemeanors: violations of 18 U.S.C. §§ 1752(a)(1) and (2) and 40 U.S.C. §§ 5104(e)(2)(D) and (G). ECF Nos. 1, 5, 6. An information has since been filed charging those same crimes. After their initial appearances in the Middle District of Florida, they were released on conditions.

On September 21, 2021, the Pretrial Services Agency for the District of Columbia submitted Pretrial Services Reports for the Fassells in connection with their initial appearances in this district. In those reports, Pretrial Services recommended that both Marilyn and Thomas Fassell be released on several conditions, including that they “do not possess firearms.” ECF Nos. 7, 8. On September 16, 2021, Magistrate Judge Faruqui imposed the release condition that Marilyn and Thomas not possess firearms. ECF Nos. 9, 10. Marilyn and Thomas Fassell are also required to submit to supervision by Pretrial Services, notify Pretrial Services of travel outside the Middle District of Florida, obtain Court approval for travel outside of the continental United States, stay away from Washington D.C. except for court-related matters, not violate state, federal, or local law, cooperate in the collection of a DNA sample if authorized by statute, advise the court or Pretrial Services before changing residence or phone number, and appear in court as required. *Id.*

On April 20, 2022, Marilyn Fassell filed a request to remove the firearms restriction from her release conditions for the reason that she is alone in the evenings while her husband umpires baseball games and wants to possess firearms for her protection. ECF. No. 30. On April 25, 2022, Thomas Fassell filed a motion to join Marilyn Fassell’s motion (ECF. No. 34), which the Court granted.

Pretrial Services has not reported any violations of bond conditions for either defendant. ECF Nos. 22, 23, 26, 28, 29.

ARGUMENT

I. Applicable Authority

Under the Bail Reform Act, if a judicial officer determines that release under two standard conditions (not committing crimes and cooperating in the collection of DNA) “will not

reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community,” the judicial officer may impose additional conditions. 18 U.S.C. §§ 3142(b), (c)(1). In that event, the judicial officer shall release the defendant “subject to the least restrictive further condition, or combination of conditions” that “reasonably assure the appearance of the person as required and the safety of any other person and the community.” 18 U.S.C. § 3142(c)(1)(B). These conditions may include the condition that the person “refrain from possessing a firearm, destructive device, or other dangerous weapon.” 18 U.S.C. § 3142(c)(1)(B)(viii).

In determining appropriate conditions of release, the judicial officer considers factors including: (1) “the nature and circumstances of the offense charged”; (2) “the weight of the evidence”; (3) “the history and characteristics” of the defendant and (4) “the nature and seriousness of the danger to any person or the community that would be posed by the [defendant’s] release.” 18 U.S.C. § 3142(g) (“Section 3142(g) factors”). The judicial officer may amend a release order “at any time.” 18 U.S.C. § 3142(c)(3).

II. The Court Should Not Modify the Fassells’ Release Conditions

Marilyn and Thomas Fassell are already subject to the “least restrictive” combination of conditions necessary to ensure the safety of the community. 18 U.S.C. § 3142(c)(1)(B). The nature and circumstances of the Fassells’ offense (their participation in an unprecedented riot at the Capitol) demonstrate that they both pose a danger to society. And yet, the Fassells are not subject to home detention, a curfew, or GPS monitoring; instead, they must submit to supervision by Pretrial Services and are subject to certain travel restrictions. Together with these relatively limited conditions, the prohibition on firearms possession creates the least restrictive combination of conditions required to mitigate the danger that they pose to the community.

A. The Section 3142(g) Factors Favor Maintaining the Firearms Restriction

The Section 3142(g) factors justify including the firearms restriction among the Fassells' conditions of release. While both are charged with misdemeanors, the nature and circumstances of the offense support restricting their ability to possess firearms before trial. Fully aware that rioters were storming the Capitol, breaking inside and attacking officers, the Fassells joined in and unlawfully entered the building, knowing full well that law enforcement officers were struggling against the tide of rioters.

Later, Thomas Fassell boasted of his participation in the riot, after the full picture of what happened that day had come out on the news, after it was obvious to all that the riot led to injuries, deaths, and disrupted the peaceful and democratic transition of power. Both Thomas and Marilyn Fassell joined this violent attack on our nation's democracy and at least Thomas celebrated their participation after the fact. The nature and circumstances of these offenses suggest that the Fassells pose a danger to the community and warrant a weapons restriction.

The weight of the evidence of the Fassells' crimes is strong. The evidence in this case includes videos and pictures of Marilyn and Thomas Fassell participating in the January 6 riot, CCTV footage, clothing worn that day, and a full confession to their participation.

Marilyn Fassell's history and characteristics also support the imposition of a firearms restriction. She has two prior criminal convictions, both misdemeanors, one for drug possession and one for driving while impaired. ECF No. 7. Her history of substance use suggests she may pose at least enough of a risk to justify restricting her access to firearms while she is on bond for these crimes.

As to the fourth Section 3142(g) factor, the nature of and seriousness of the danger posed, justifies the weapons restriction. Marilyn and Thomas Fassell willingly joined in a violent and

destructive attack on the Capitol. If they are to remain on release, a firearms restriction here is the minimally necessary condition required to ensure the safety of the community. *See United States v. Green*, No. 3:18-CR-356, 2019 WL 6529446, at *3 (N.D. Tex. Dec. 4, 2019) (in a tax fraud case, denying motion to modify conditions of release because “Even if Defendant is not charged with a crime of violence and has no history of violence . . . Defendant’s possession of firearms endangers officers of the Pretrial Services who may make unannounced visits to ensure that Defendant is complying with the conditions of his release”). Marilyn Fassell’s claim that she would have enough time to secure her firearms before a Pretrial Services Officer arrives for a visit does not mitigate the danger. Government counsel spoke with Marilyn Fassell’s Pretrial Services Officer, who indicated that he conducts in-person home visits and does not announce that he is coming beforehand. Therefore, for the safety of the Pretrial Services Officers in this case as well as the community as a whole, the firearms restriction is warranted.

CONCLUSION

Restricting the defendants' access to firearms is the least restrictive condition the Court can impose to assure the safety of the community. The Court should deny the joint motion for modification of bond conditions.

Respectfully submitted,

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