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**In the Superior Court of the State of Arizona
in and for the County of Maricopa**

State of Arizona,
Plaintiff

v.

Derrick Raymond Thompson,
Defendant

No. CR2016-159174-001

**Reply to the State:
Motion to Modify Release Conditions**

(Honorable J. Sinclair)

Mr. Thompson replies to address the following arguments by the state:

1. That Mr. Thompson poses a danger to the community
2. That Mr. Thompson was actively seeking a firearm to carry out a terrorist attack
3. That Mr. Thompson is a flight risk

Each argument is weak, based on questionable evidence, or relies on misleading inferences.

Mr. Thompson also argues that the state's evidence is not only meagre, but the state has failed to meet the disclosure deadlines more than 30 days after his not guilty arraignment.

1 Argument

1.1 Mr. Thompson does not pose a danger to the community.

The state alleges that Mr. Thompson poses a danger to the community, not based on Mr. Thompson's conduct, but because of an article on Reuters stating that an individu-

al named Abu Muhammad al-Adnani encouraged violence in the West during Ramadan. The article is dated May 2016. Ramadan in 2016 took place June 6 and July 5 of that year.

Reviewing the discovery, there does not appear to be any indication that Mr. Thompson was aware of this Reuters article. There is also no indication that Mr. Thompson was involved in or planning any criminal activity during the month of Ramadan or had any interest in this topic.

The state also argues that Mr. Thompson supports the Islamic State (IS) and is therefore a danger. In support of this inference, the state cites social media posts demonstrating that Mr. Thompson allegedly is aware of the IS, that Mr. Thompson is a muslim, and the state provides a brief excerpt from a communication that has been disclosed in part to the defense, stating that Mr. Thompson had a dream of “sleeping in the trenches, loading my magazine making a prayer that every bullet with be the death of one nonbeliever.” This quotation is misleading and the larger quotation from the Grand Jury transcript is provided below:

Tonight I sat on my prayer rug after salat [prayer] and contemplated at times my feelings for the Daulah [dynasty]/state to be victorious becomes almost like a person that hopes his favorite football team would win and astaghfirullah [shame]. Don't get me wrong. I stay aware of the happenings of the Burma, at least as much as possible in dar al-harb [house of war, or regions where Islamic law is not implemented]. But tonight Allah truly opened my eyes and my heart to the struggle of the mujahideen. When I began envision sleeping in the trenches, loading my magazine, making du'aa [prayer] that every bullet will be the death of one kafir [nonbeliever]. Bullets flying over my head on a daily basis and bombs killing those around me and cursing the drones and the coalition aircraft in the sky, feeling the cold of our winter and the hunger, I began to cry. This is not football game. This is not light matter. Our brothers are fighting for me right now. They are fight for my deam.

They left their mothers, children and warmth of their wives for make Allah word the highest. My words can't begin to explain the feeling in my heard, but I leave with this. May Allah give comfort, calmness and determination to the mujahideen. May Allah grant victory to Daulah and blacked the faces of all that oppose them.

These statements appear to be a general feeling of kinship for individuals who are fighting within a warzone and not a statement about Mr. Thompson preparing a weapon to kill nonbelievers, as it is presented by the state. The defense has yet to receive the entire context for this conversation or any proof that it is tied to Mr. Thompson, but the larger excerpt makes it clear that the individual who wrote this post is not making any statements about their own desire to do any harm to anyone.

This excerpt reflects the state's overall evidence in this case. The state is seeking to prosecute an individual for their speech. Mr. Thompson has been charged under a statute that criminalized inciting or inducing others to participate in criminal activity. Speech that advocates no illegal conduct is per se protected, and even when speech may advocate illegal conduct, that speech is also categorically protected. *Brandenburg v. Ohio*, 395 U.S. 444, 448, 89 S. Ct. 1827, 1830, 23 L. Ed. 2d 430 (1969), (which held as unconstitutional Ohio's Criminal Syndicalism Act, which criminalized the justification of the commission of violent acts 'with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism'). Unless the state can prove that Mr. Thompson engaged in speech that would cause immediate, serious harm, they have no case.

1.2 Mr. Thompson was not seeking a firearm to carry out a terrorist attack.

The state alleges that Mr. Thompson *attempted* to commit misconduct involving weapons by possessing a firearm. As evidence, the state cites a January 26, 2015 email which has yet to be provided to the defense as anything other than a print out and with any connection to Mr. Thompson such as an Internet Protocol address or Internet Service Provider account.

That email was allegedly sent to an individual offering a gun online. The email allegedly reads:

I would love to get the cw9 from you but won't be in Phx again for a month or so wondering if you have other firearms ? If so I will definitely be in touch

Again, this statement appears to a hypothetical wish to get a firearm, which the sender is admitting will never be fulfilled. The sender asks if there are any other potential weapons, but there is no indication that they would want or be interested in what the seller has to offer. In response, the seller said that they did not have any other firearms.

It should also be noted that Mr. Thompson was allegedly searching google for information about whether felons are allowed to possess firearms, e.g.

- “Can a felon have a crossbow”
- “Can a felon own a crossbow in Arizona”
- “muzzleloader”
- “Black powder inline rifles.”
- “Black powder inline rifles”
- “Felons with muzzleloader”
- “Felons with muzzleloader in Arizona”
- “Can felons legally own muzzleloading guns”
- “muzzleloading”
- “muzzleloader law ins Arizona”
- “Muszzloader regulations by state”
- “Muzzleloader considered a firearm in Maine”
- “is muzzleloader considered a firearm in Arizona”
- “can a felon have a crossbow”
- “No weapons felon prohibited”

Which are all legitimate questions and would represent a keen and appropriate interest in the law.

1.3 Mr. Thompson is not a flight risk.

In support of this argument, the state cites to Mr. Thompson having prior felonies and argues that Mr. Thompson's potential prison sentence as a reason for him to flee.

Mr. Thompson, has ties to the community and is no plans to leave the state. Other than a baseless accusation that he will travel to Syria, the state offers no evidence in support of this assertion, despite their access to years of his alleged Google search activity.

1.4 The state has not met their discovery obligations more than 30 days after the not guilty arraignment.

This case involves no FBI summary report, but merely a bundle of documents from Google, including lists of searches, lists of Google Plus profile posts, list of Youtube Comments. The state has yet to provide any documents demonstrating that Mr. Thompson is linked to these accounts through his ISP or an IP address. The state has also provided a PDF with Special Agent Kuhn's excerpts of parts of the discovery in his possession, including a copy and pasted email that allegedly shows Mr. Thompson asking a backpage seller about a firearm. Again, the actual digital document is nowhere to be found and there is no direct link to Mr. Thompson that has been disclosed at this point.

It appears that this case is based on the disorganized evidence assembled by Special Agent Kuhn that did not merit a summary or formal report.

A not guilty arraignment was held on January 5, 2017. If the state has more evidence in its possession, that discovery is late. Because the state is late in producing basic discovery, or basic discovery is non-existent, in this case and because the weight of what the state has produced is feather light, this court should release Mr. Thompson.

2 Conclusion

Because the charges against Mr. Thompson are both weak and unconstitutional, and the state's cited reason for holding Mr. Thompson are either misleading or derived from invalid inferences, this court should release Mr. Thompson.

Respectfully Submitted
Thursday, March 09, 2017
Maricopa County Public Defender

By: /s/ John Champagne
John Champagne
Deputy Public Defender

Copy of the foregoing motion
electronically filed
Thursday, March 09, 2017

Honorable Joan Sinclair
Judge of the Superior Court
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