IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

ORDER

Plaintiff,

08-cr-12-bbc

v.

STEVEN M. SKOIEN,

Defendant.

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Steven M. Skoien has filed a renewed motion for release pending a ruling on his petition for a writ of certiorari, arguing that new events in the case suggest an increasing likelihood that the Supreme Court will find that his petition raises a substantial question in need of review. Defendant may be correct, but the issue is not one that I can decide.

In August 2010, I denied defendant's previous motion for release. Defendant appealed the denial, but it was upheld by the Court of Appeals for the Seventh Circuit in an order entered on September 1, 2010. The court concluded that it was unlikely that the Supreme Court would reverse the court of appeals' en banc decision in United States v. Skoien, 614 F.3d 638 (7th Cir. 2010), holding that defendant's conviction for violation of 18 U.S.C. § 922(g)(9) was compatible with the Second Amendment. Order, Dkt. #78. This

holding is binding on this court unless there is good reason for reexamining it. United States v. Zamora-Mallari v. Mukasey, 514 F.3d 679, 695 (7th Cir. 2008); United States v. Mazak, 789 F.2d 580, 581 (7th Cir. 1986). The situation is different when the question is whether a district court may change a ruling of its own, made earlier in the case. Avitia v. Metropolitan Club of Chicago, Inc., 49 F.3d 1219, 1227 (7th Cir. 1995) ("The doctrine of law of the case establishes a presumption that a ruling made at one stage of a lawsuit will be adhered to throughout the suit. But it is no more than a presumption; one whose strength varies with the circumstances; it is not a straitjacket.") (internal citations omitted). At the least, the court of appeals' ruling raises the bar for reconsidering a decision at issue in the appellate decision.

Defendant argues that circumstances have changed sufficiently to undermine the factual basis on which both this court and the court of appeals rested their opinions. However, a close look shows that all he has shown is that the government has asked for three extensions of time in which to oppose defendant's petition for certiorari. It appears that one of those requests was for an extension of time in which to petition the Court of Appeals for the Fourth Circuit for an en banc review decision of its decision finding § 922(g)(9) unconstitutional under the Second Amendment. United States v. Chester, 628 F.3d 673(4th Cir. 2010), *superseding* 2010 WL 675261 (Feb. 23, 2010).

I am not persuaded that these new circumstances are such a change that this court

should undertake to reexamine its own decision, let alone that of the court of appeals. The issue is still a relatively new one and only one court of appeals has held the law unconstitutional. Both of these factors make it unlikely that the Supreme Court will hear a challenge to the law until the issue has been given additional consideration by more appellate courts.

ORDER

IT IS ORDERED that defendant Steven M. Skoien's motion for continued release pending a ruling on his petition for a writ of certiorari is DENIED. When defendant's shoulder rehabilitation is completed, he is to report for service of his sentence as previously ordered.

Entered this 14th day of February, 2011.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge