

FILED

April 25, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-20302
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN DAVID WILEY, III

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:04-CR-442-10

Before JONES, BARKSDALE, and PRADO, Circuit Judges.

PER CURIAM:*

Wiley, a pharmacist, is on trial in the Southern District of Texas, charged with offenses relating to the unlawful distribution of controlled substances through a pharmacy named I-10 East Pharmaceutical Services, Inc. On motion of the Government, Wiley's release on bond pending trial was revoked after the court heard evidence that Wiley continues to engage in the conduct for which he has been indicted.

On appeal, absent an error of law, this court must affirm the district court's order revoking bond and detaining Wiley

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

pending trial if the order "is supported by the proceedings below." The statute states that, "If there is probable cause to believe that, while on release, the person committed a Federal . . . felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person in the community." 18 U.S.C. § 3148(B).

Wiley offered no evidence challenging the testimony of Inspector Callahan that Wiley has continued to dispense dosages of hydrocodone in amounts far in excess of usual medical practice, under conditions that suggested dispensation for non-medical reasons. Wiley's appeal does not challenge the evidence, but instead simply disagrees with the legal characterization of his conduct, i.e., with the characterization of the conduct for which he is also now on trial. We express no opinion on the ultimate legal issues. The district court's order, in any event, is fully supported by the record.

AFFIRMED.