

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-11278  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ELIZABETH P. JOHNSTON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 01-CR-246-ALL  
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November 14, 2001

Before JOLLY, JONES and DENNIS, Circuit Judges.

PER CURIAM:\*

Elizabeth P. Johnston was charged in a two-count indictment with mail fraud. The magistrate judge ordered that Johnston be detained without bond pending disposition of the case. Johnston moved the district court to reopen the detention hearing, arguing that the magistrate judge had erred in concluding that the case involved a "crime of violence" under 18 U.S.C. § 3142(f)(1)(A). The motion was denied and Johnston has appealed the district court's order.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Absent an error of law, we must uphold a district court's order "if it is supported by the proceedings below," a deferential standard of review which we have equated to the abuse-of-discretion standard. United States v. Hare, 873 F.2d 796, 798 (5th Cir. 1989).

Johnston does not contend that the district court erred in concluding that she has not met the standard for reopening the detention hearing pursuant to 18 U.S.C. § 3142(f). She argues, instead, that the district court should have revoked the magistrate judge's detention order because the Government did not contend expressly that the case involved a crime of violence. The district court did not abuse its discretion in concluding that the issue had been presented adequately to the magistrate judge by the Government's motion.

The district court concluded that the magistrate judge had determined properly that the case involved a crime of violence under the reasoning of our opinion in United States v. Byrd, 969 F.2d 106, 109-10 (5th Cir. 1992). Johnston contends that the portion of the Byrd opinion relied upon by the district court was dictum and that Byrd was decided wrongly. Johnston has failed to show that the district court abused its discretion in applying Byrd. The district court's order is

AFFIRMED.