UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-2014
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

VERSUS

KELVIN JACKQUET,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR-H-92-137-13)

(February 26, 1993)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Appellant, Kelvin Jackquet, was one of thirty defendants named in a large-scale multi-count drug conspiracy and racketeering indictment for conspiracy to participate in a racketeering enterprise, participation in a racketeering enterprise, and conspiracy to possess with intent to distribute in excess of five kilograms of cocaine.

A magistrate judge ordered Jackquet detained pending trial.

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[1] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

On Jackquet's motion, the district court conducted a hearing and, acting de novo, determined that 1) Jackquet would pose a serious threat of danger to the community and a risk of flight, and 2) that no condition or combination of conditions would be adequate to insure his appearance. Jackquet filed timely notice of appeal.

DISCUSSION:

"Once the district court has determined that pretrial detention is necessary, this Court's review is limited. The order of the district court is to be sustained 'if it is supported by the proceedings below.'" United States v. Westbrook, 780 F.2d 1185, 1189 (5th Cir. 1986) (quoting United States v. Fortna, 769 F.2d 243, 250 (5th Cir. 1985)). This is a deferential standard analogous to the abuse-of-discretion standard of review. United States v. Rueben, 974 F.2d 580, 586 (5th Cir. 1992), (citation omitted).

Section 3142(e) of title 18 of the U.S. Code provides in part:

> Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substance Act (21 U.S.C. § 801 et seq.) . . . or an offense under section 924(c) of title 18 of the United States Code.

The presumption operates against Jackquet since the district court concluded that there was probable cause to believe that Jackquet had committed the requisite drug offense. See Rueben, 974 F.2d at 586. Moreover, "[t]he risk of continued narcotics trafficking on bail does constitute a risk to the community." Id. (citations

omitted). The presumption only shifts the burden of producing rebutting evidence to the defendant; the burden of persuasion remains with the Government.

Jackquet argues that he offered enough evidence to rebut the presumption, and that he presented the district court with a set of circumstances capable of insuring his presence at trial. Appellant's Brief, 6-15.

Before the magistrate judge and the district court, Jackquet presented evidence of his longstanding and solid ties to Houston, pointing to numerous family members who lived in the area. He also offered the testimony of Sharon Beamon, a representative of a bail bondsman, that Jackquet's relatives had sufficient assets to place a $50,000 secured bond and that her company had the facilities to monitor Jackquet on a daily basis.

The mere production of evidence, however, does not completely rebut the presumption and, in making its ultimate determination, the court may still consider Congress's conclusion that drug offenders present a special risk of flight and dangerousness to society. Rueben, 974 F.2d at 586 (citations omitted). In drug offenses, Congress intended magistrate judges to take account of the general rule that drug offenders pose a special risk of flight rather than focusing only upon the case before them. Fortna, 769 F.2d at 251.

The Government notes that law enforcement officials seized $30,000 in cash from Jacquet's house. The Government also offered evidence of telephone conversations which demonstrated Jackquet's

involvement in cocaine distribution, in addition to his prior conviction in 1989 for willfully carrying a weapon and assault causing bodily injury. Considering all the facts, the district court did not abuse its discretion when it declined to release Jackquet.

Jackquet also argues that his release is supported by the First Circuit's decision in United States v. Patriarca, 948 F.2d 789 (1st Cir. 1991), in which the court allowed the district court to devise an innovative set of conditions designed to insure that Patriarca would not flee. Id. at 792. While Jackquet argues that he, like Patriarca, has "no penchant or personal aptitude for violence," and therefore poses no threat to the safety of the community, Appellant's Brief, 9, 13, this is belied by the undisputed fact that during the attempted arrest Jackquet shot Texas Department of Public Safety Officer Larry Allen with a twelve-gauge shotgun. This action has resulted in a State court charge against Jackquet for attempted capital murder of a police officer.

In view of the evidence of Jackquet's involvement in the instant offense, his actions during his arrest, and his past activity, the district court's order of detention is AFFIRMED.