

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-2669

(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICHARD MASON DEANE,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas
(CR H 93 178 1)

(October 22, 1993)

Before SMITH, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Richard Mason Deane appeals from the order of the district court affirming Deane's pretrial detention without bond under the Bail Reform Act of 1984, 18 U.S.C. § 3141 et seq. (1988). Finding the district court's order supported by the proceedings below, we affirm.

Deane was charged in a 52-count indictment with money laundering and conspiracy to commit mail fraud and wire fraud. The

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

government moved for pretrial detention pursuant to 18 U.S.C. § 3142(e), (f)(2), alleging that Deane presented a flight risk and a danger to the community. Following a detention hearing during which the government submitted evidence under seal to protect the identity of the witnesses, the magistrate judge ordered Deane detained pending trial because: (1) the defendant had threatened and intimidated prospective government witnesses; and (2) clear and convincing evidence established that no condition or combination of conditions would reasonably assure the safety of those witnesses. Deane then filed a motion to revoke the detention order. Following a de novo hearing, the district court denied the motion, from which Deane filed a timely notice of appeal. See 18 U.S.C. § 3145(c).

Deane argues that the district court erred in denying his motion to revoke the detention order. "Absent an error of law, we must uphold a district court's pretrial detention order 'if it is supported by the proceedings below,' a deferential standard of review that we equate to the abuse-of-discretion standard." *United States v. Hare*, 873 F.2d 796, 798 (5th Cir. 1989); see also *United States v. Jackson*, 845 F.2d 1262, 1263 (5th Cir. 1988). "The same standard applies to a determination in response to a motion to revoke a detention order." *Hare*, 873 F.2d at 798.

Under the Bail Reform Act, a district court shall order the detention of a defendant prior to trial, "if it finds [by clear and convincing evidence] that no condition or combination of conditions will reasonably assure . . . the safety of any other person and the community." 18 U.S.C. § 3142(e); *Hare*, 873 F.2d at 799; see also

Jackson, 845 F.2d at 1264 n.3. In making this determination, a district court must consider: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. 18 U.S.C. § 3142(g); *Jackson*, 845 F.2d 1264 n.2. After reviewing the record, we conclude that both the magistrate judge and district court properly applied this standard. Furthermore, in light of the severity and frequency of Deane's threats of violence directed at prospective government witnesses,¹ we are convinced that clear and convincing evidence established that no condition or combination of conditions would reasonably assure the safety of those witnesses. See, e.g., *United States v. Leon*, 766 F.2d 77, 81 (2d Cir. 1985) (stating that "in a case involving threats to witnesses, evidence of such threats is a significant factor" in determining whether to permit detention before trial under the Bail Reform Act of 1984). We therefore hold that the district court's order affirming the detention order was supported by the proceedings below.

Accordingly, the district court's order is AFFIRMED.

¹ We further note the detention hearing testimony of Postal Inspector Warren Heikes, who testified that he was aware of someone who had been physically assaulted per Deane's instructions.