IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10414
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

KEDRICK HAWKINS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(3:94 CR 148 H)

(June 9, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.[*]

PER CURIAM:

Kendrick Hawkins was arrested on March 30, 1994, based upon a complaint alleging that he was a felon in possession of a firearm in violation of 18 U.S.C. § 922(g). During the course of a federal investigation, information was provided to the police by the owner of a gun repair shop in Dallas, indicating that an individual who called himself Kedrick Hawkins had given Murray a Cobra MAC-11 .9 millimeter semi-automatic machine pistol to repair.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Murray and another witness later identified Hawkins from a photo lineup as the man who had left the gun and signed his name to the repair invoice. The government established that the gun had travelled in interstate commerce and that Hawkins had three prior felony convictions.

Hawkins was arrested, and the Government moved for a detention hearing. The magistrate judge granted the Government's motion and ordered Hawkins detained without bond. Hawkins appealed. The district court conducted a de novo review and ordered Hawkins detained without bond. Hawkins has appealed to this court. Finding the detention order supported by the proceedings below, we affirm.

Hawkins argues on appeal that the district court erroneously concluded that he posed a serious flight risk and that the district court erroneously determined that, for the purposes of the Bail Reform Act, 18 U.S.C. § 3142, the Texas state-law crime of "theft from a person" constitutes a "crime of violence." Absent an error of law, this Court will uphold a district court's pretrial detention order if it is supported by the proceedings below, a standard of review this Court equates to an abuse of discretion standard. U.S. v. Rueben, 974 F.2d 580, 586 (5th Cir. 1992), cert. denied, 113 S. Ct. 1336 (1993).

Under the Bail Reform Act, detention pending trial may be ordered "only 'in a case that involves' one of the six circumstances listed in [§ 3142](f), and in which the judicial officer finds, after a hearing, that no condition or combination of

conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community." U.S. v. Byrd, 969 F.2d 106, 109 (5th Cir. 1992). Following consideration of testimony taken at the detention hearing before the magistrate judge, the district court concluded that there were no conditions of release which would assure Hawkins's appearance and the safety of the community. The district court also concluded that Hawkins had satisfied at least one of the six conditions enumerated in § 3142(f), namely, that Hawkins had two prior felony convictions for crimes of violence. Id. at 40-41 & n.3.

Hawkins contends that the district court abused its discretion by determining that he posed a serious flight risk. Hawkins's argument appears to confuse a determination that no condition or combination of conditions will reasonably assure the appearance of the person as required -- one of the two findings which must be made **after** a hearing in order to detain a defendant --- with one of the six factors which must be demonstrated **prior** to the hearing in order to justify the hearing itself. See § 3142(f)(2)(A) (a hearing is justified if the Government demonstrates a "serious risk that the person will flee"); see also Byrd, 969 F.2d at 109.

Hawkins's first argument on appeal, therefore, will be construed as a challenge to the district court's conclusion that no condition or combination of conditions would reasonably assure his appearance as required. The district court based its conclusion on the following factors: Hawkins is unemployed, without substantial

ties to the community, has admitted controlled substance usage, is facing substantial time in a federal penitentiary, has two nolo contendere pleas to charges of evading arrest, and has been treated for psychiatric difficulties while in prison. These findings are, for the most part, supported by the record below.[1] Therefore, as the district court's findings are supported by the proceedings below, the district court did not abuse its discretion by concluding that no condition or combination of conditions would reasonably assure Hawkins's appearance.

Hawkins also contends that the district court erroneously concluded that the crime of theft from a person is a crime of violence for the purposes of § 3142(f)(1)(D). As the district court noted, Hawkins does not contest that his conviction for aggravated assault is a felony conviction for a crime of violence for the purposes of § 3142(f)(1)(D).

For the purposes of the Bail Reform Act, "[t]he term `crime of violence' means . . . (B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force may be used in the course of committing the offense." 18 U.S.C. § 3156(4). Section 31.03 of the Texas Penal Code defines theft as the appropriation of property without the owner's effective consent. Tex. Penal Code Ann. §§ 31.03(a), (b)(1) (West 1989). Section 31.03(e)(4)(B) provides that theft is

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[1] Hawkins did provide testimony from his father that he has substantial family ties to the Dallas community. Loose Papers, Tab A at 12-13.

a third-degree felony if the property is stolen from the person of another. Tex. Penal Code Ann. § 31.03(e)(4)(B) (West 1989).

Hawkins contends that this particular crime is not a crime of violence, especially when read in conjunction with the Texas Penal Code's definition of robbery. He contends that when there is violence in the context of a theft, under Texas law the crime is robbery. In Earls v. State, 707 S.W.2d 82, 86 (Tex. Crim. App. 1986), however, the Texas Court of Criminal Appeals described the crime of theft from a person as consisting of "conduct which involves the risk of injury inherent in taking property from a person." See also Sanders v. State, 664 S.W.2d 705, 707 (Tex. Crim. App. 1982) ("[t]heft from the person includes a risk of injury to the person from whom the property is taken").

Therefore, as theft from a person is a felony, see Tex. Penal Code § 31.03(e)(4)(B), and as the crime involves an "inherent" risk of injury to the victim, see Earls, 707 S.W.2d at 86, it satisfies the conditions of a "crime of violence" in 18 U.S.C. § 3156(4)(B).

For the foregoing reasons, the district court's order of detention is **AFFIRMED**.