IN THE UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-20773
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee,

vs.

WILLIE B. JEFFERSON, JR.

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas
(CR-H-94-19-3)

(November 4, 1994)

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

PER CURIAM:[1]

The defendant appeals the district court's order denying his motion to reopen the detention hearing and for pretrial release. We must determine whether the district court abused its discretion in denying the defendant's motion. We hold that it did not and AFFIRM.

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[1]. 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. 5th Cir. R. 47.5.1. Therefore, this opinion has not been designated for publication.

I. FACTS

On January 26, 1994, Willie B. Jefferson, along with five co-defendants, was indicted for conspiring to possess with intent to distribute cocaine, in violation of 21 U.S.C. §§ 841(b)(1)(A) and 846. Following a detention hearing held on February 4, 1994, the magistrate judge concluded that there was probable cause to believe that Jefferson had committed a controlled substance offense for which the maximum prison term is at least ten years; that no condition or combination of conditions of bond could reasonably assure the appearance of Jefferson at trial; and that he was a danger to the community. She therefore issued an order that Jefferson be detained pending trial. Jefferson both moved for revocation of the detention order and appealed the detention order in the district court. Jefferson did not challenge the magistrate judge's factual findings in either pleading.

By order entered on March 11, 1994, District Judge Melinda Harmon denied the motion to revoke and the appeal from the detention order. On September 15, 1994, Jefferson's newly-appointed counsel filed a motion to reopen the detention hearing under 18 U.S.C. § 3142(f) or, in the alternative, for pretrial release. This section provides, in part, that a detention hearing may be reopened "at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue[s] [of flight and the safety of others]." By order entered on October 4, 1994, District Judge Harmon denied the motion, and Jefferson filed a timely notice of appeal.

II. DISCUSSION

This Court upholds the district court's pretrial detention order "if it is supported by the proceedings below," a standard equivalent to the abuse-of-discretion standard. *U.S. v. Hare*, 873 F.2d 796, 798 (5th Cir. 1989) (citations and internal quotation not indicated). The same standard of review applies to a motion for a new detention hearing under § 3142(f). *Id*.

Under the Bail Reform Act, probable cause to believe that the defendant has committed a controlled substance offense for which the maximum prison term is at least ten years creates a rebuttable presumption that no conditions of release will "reasonably assure the appearance of the person as required and the safety of . . . the community." 18 U.S.C. § 3142(e); *U.S. v. Rueben*, 974 F.2d 580, 586 (5th Cir. 1992), *cert. denied*, 113 S. Ct. 1336 (1993). The relevant factors in determining whether there are such conditions include the facts of the offense itself; the weight of the evidence; the defendant's history and characteristics, including his character, family ties, employment, financial situation, length of time in the locality, community ties, past conduct, criminal conduct, substance abuse, and reliability in making prior court appearances; and the danger posed to any other person. 18 U.S.C. § 3142(g); *Rueben*, 974 F.2d at 586. A defendant who fails to satisfy either the appearance or the safety element may not be released. *Id*.

A defendant can rebut the presumption of flight by presenting "considerable evidence of his longstanding ties to the locality in which he faces trial." *Id*. Nevertheless, the "risk of continued narcotics trafficking on bail does constitute a risk

to the community." *Id*. Furthermore, although the rebuttable presumption of § 3142(e) shifts to the defendant only the burden of producing rebutting evidence, not the burden of persuasion, the mere production of evidence does not completely rebut the presumption. *Id*. After hearing all of the evidence, "the court may still consider the finding by Congress that drug offenders pose a special risk of flight and dangerousness to society." *Id*. 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. *United States v. Fortna*, 769 F.2d 243, 251 (5th Cir. 1985).

Jefferson does not challenge the applicability of the § 3142(e) presumption to his case; rather, he argues that the court should have allowed him to submit new evidence that would overcome the presumption. Jefferson's proffered evidence indicates that he no longer has a business that requires him to travel because he and his wife have filed for bankruptcy. They live solely on his wife's income, which is insufficient to support his family. Jefferson's wife, who has never been involved in any criminal activity, is now able and willing to supervise him to insure compliance with any conditions of his release. Because Jefferson's father, whom the court found to be involved in the drug trafficking, died after the hearing and his two brothers are in detention, "there exists no conspiracy for Jefferson to return to[.]" Jefferson's criminal history involves only two convictions--a conviction approximately nine years ago for possessing less than 28 grams of a controlled substance and a

conviction for carrying a weapon. Jefferson also points out that another defendant in this case was released to the custody of his wife at the detention hearing.

The evidence proffered by Jefferson is not sufficient to overcome the presumption that he is a flight risk. As the Government points out, the alleged questionable character of Jefferson's financial condition erodes his claim that he has sufficient community ties. Also, the district court could discredit the testimony of Jefferson's wife on the basis of her relationship to her husband. *See U.S. v. Barker*, 876 F.2d 475, 476 (5th Cir. 1989). The other evidence is simply not supportive of the point for which it was offered. The court also found that "[t]he conspiracy was not limited to Defendant's family, but penetrated to the east coast and the connections may still be readily available to him." The district court found earlier that the defendant was part of a drug conspiracy operating from Colombia to Houston and Atlanta. Jefferson does not show that that finding is clearly erroneous.

The determination that Jefferson is a flight risk is supported by a preponderance of the evidence. *See Fortna*, 769 F.2d at 250 (the judicial officer making the flight-risk determination should apply "the simple preponderance standard"). The evidence at the detention hearing established that there was probable cause to believe that Jefferson participated in a large-scale drug-trafficking conspiracy involving considerable amounts of cocaine and money. Thus, in view of the nature and circumstances of the offenses charged and the weight of the evidence against Jefferson, he has a strong incentive to flee to

avoid prosecution. As Jefferson's proffered evidence is insufficient to overcome the presumption that he is a flight risk, the district court did not abuse its discretion in denying his motion to reopen the detention hearing and, in the alternative, for pretrial release. *See Hare*, 873 F.2d at 798.

III. CONCLUSION

For the reasons stated above, the district court's order is AFFIRMED.