

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

June 9, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PAUL ANTHONY THOMPSON,

Defendant - Appellant.

No. 23-5037
(D.C. No. 4:23-CR-00121-GKF-1)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **HARTZ, MORITZ, and ROSSMAN**, Circuit Judges.

Paul Anthony Thompson appeals the district court’s pretrial detention order. Exercising jurisdiction under 18 U.S.C. § 3145(c) and 28 U.S.C. § 1291, we affirm.

I

Mr. Thompson was charged by criminal complaint with violating several statutes by strangling, suffocating, or attempting to strangle or suffocate his wife, C.T., in Indian country. A magistrate judge ordered Mr. Thompson’s release with

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

conditions pending trial, but that ruling was stayed at the government’s request pending the government’s motion to revoke the release order, *see* 18 U.S.C. § 3145(a). Mr. Thompson remained in custody, and a hearing on the government’s motion to revoke the order setting conditions for release was set for a week later. While the detention appeal to the district court was pending, Mr. Thompson was indicted on the charge in the criminal complaint and two additional charges. The indictment charged Mr. Thompson with kidnapping, assault of a spouse by strangling and suffocating, and assault with a dangerous weapon—all in Indian country. *See* 18 U.S.C. §§ 1201(a)(2), 113(a)(8), 113(a)(3), 1151, and 1153. The government then filed a supplemental brief, arguing that the additional charges provided new grounds for seeking his detention.

The district court held a hearing on the government’s motion to revoke the release conditions. It granted the motion and ordered that Mr. Thompson be detained pending trial, finding that he did not pose a flight risk, but the government had established by clear and convincing evidence that no condition or combination of conditions of release would reasonably assure the safety of any other person or the community. Mr. Thompson appealed.

II

We review a district court’s pretrial detention decision *de novo* because it involves mixed questions of law and fact, although we review the underlying factual findings for clear error. *See United States v. Cisneros*, 328 F.3d 610, 613 (10th Cir. 2003). “A finding is clearly erroneous when, although there is evidence to support it,

the reviewing court, on review of the entire record, is left with the definite and firm conviction that a mistake has been committed.” *United States v. Gilgert*, 314 F.3d 506, 515 (10th Cir. 2002) (brackets and internal quotation marks omitted).

The standards governing pretrial release are set by the Bail Reform Act, 18 U.S.C. § 3142. Under § 3142(e), a defendant may be detained pending trial only if a “judicial officer finds 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.”¹ It is the government’s burden to “prove dangerousness to any other person or to the community by clear and convincing evidence.” *Cisneros*, 328 F.3d at 616 (citing 18 U.S.C. § 3142(f)).

Courts must consider four factors when assessing whether some condition or combination of conditions of release will reasonably assure the safety of any other person and the community: “(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence,” (2) the weight of the evidence, (3) the defendant’s history and characteristics, and “(4) the nature and seriousness of the danger to any person or the community” that would be posed by the defendant’s release. 18 U.S.C. § 3142(g).

The district court considered these factors and concluded they all weigh in favor of detention. On appeal, Mr. Thompson does not dispute the district court’s

¹ The magistrate judge and the district court both determined Mr. Thompson did not pose a flight risk. The government does not challenge that ruling, and we do not consider it.

factual findings, but he says the district court overlooked the critical inquiry of whether some combination of conditions could reasonably assure the safety of the community. In fact, however, the district court carefully considered the available information as it pertained to each of the four factors, finding that each factor weighed in favor of detention and ultimately concluding that the government had shown by clear and convincing evidence that no conditions of release could assure the safety of any other person and the community. The district court did not specifically discuss possible conditions of release because it found that, in light of its findings and considering them in the statutory framework, detention was required because there were no conditions that would ensure the safety of others and the community. This is what the statute requires.

1. Nature & Circumstances of the Offenses

The district court found, based on the information before it, that the circumstances involved “a near-fatal strangulation in which the victim allegedly blacked out, urinated on herself, experienced difficulty breathing, felt tingling on the back of her head, was beaten by Mr. Thompson with a belt and his fists, and bitten by [him] on her knuckles when she tried to free herself”; it also noted the allegation that two minor children were in the house at the time. *Aplt. App.* at 202. The district court recognized that, as a result of the allegations in the complaint and the indictment, Mr. Thompson was charged with “Kidnapping, Assault with a Dangerous Weapon with Intent to do Bodily Harm in Indian Country, and Assault of a Spouse/Intimate/Dating Partner by Strangling and Suffocating and Attempting to

Strangle and Suffocate in Indian Country.” *Id.* at 202-03. The kidnapping charge alone carried a potential sentence of life in prison, *see* 18 U.S.C. § 1201(a)(2), which provided an additional basis for seeking his detention, *see id.*, § 3142(f)(1)(B).

Given this information, the district court determined the nature and circumstances of the charged offenses weighed in favor of detention.

2. Weight of the Evidence

The district court also determined that the government’s proffer of evidence weighed in favor of detention. The government proffered to the district court evidence obtained in the course of its investigation, including “the emergency medical screening of the victim; photographs of the victim’s injuries; witness statements; physical evidence, including but not limited to the broken belts used in the strangulation; the domestic violence evaluation of the victim; and the police reports and supplemental reports.” *Aplt. App.* at 203. The district court considered the proffered evidence (which Mr. Thompson does not dispute) and found that it weighed in favor of detention.

3. History & Characteristics of the Person

Next, the district court evaluated Mr. Thompson’s history and characteristics, observing that, at the time of the alleged crimes, Mr. Thompson had been released on bond by tribal authorities pending trial for a separate charge of domestic abuse in the presence of a child. The district court also considered the fact that C.T. and other women had obtained emergency protective orders against Mr. Thompson on at least four occasions and that he was under investigation for additional assaults and

strangulations. Additionally, the district court noted he allegedly had access to a firearm at his mother's house, where he proposed to reside while on pretrial release. Again, the district court determined this factor weighed in favor of detention.

4. Nature & Seriousness of the Danger to any Person or the Community

Finally, the district court determined the nature and seriousness of the danger posed to community weighed in favor of Mr. Thompson's detention. In reaching this conclusion, the district court considered allegations of repeated assaults and abuse against C.T. and another woman, both of whom had obtained protective orders against Mr. Thompson. The district court also relied on the fact that, contrary to what the magistrate judge had found in concluding that there were conditions that could assure the safety of the community, C.T. had not moved out of the area and resided within a 10-minute drive from Mr. Thompson's mother's house (where he would have resided as a condition of the magistrate judge's conditions of release).

III

On de novo review, we agree with the district court that there are no conditions that would assure the safety of any person or the community; considering the available information, the statutory factors favor detention. Accordingly, the district court's detention order is affirmed.

Entered for the Court
Per Curiam