FILED
United States Court of Appeals
Tenth Circuit

October 26, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DALLAS TYLER EWTON,

Defendant - Appellant.

No. 21-7052
(D.C. No. 6:21-CR-00252-TDD-1)
(E.D. Okla.)

ORDER AND JUDGMENT[*]

Before **PHILLIPS**, **MORITZ**, and **EID**, Circuit Judges.

Dallas Tyler Ewton appeals the district court's order denying his motion for revocation of his detention order. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3145(c), and we affirm.

I. Background

Mr. Ewton was charged in a criminal complaint with Aggravated Sexual Abuse in Indian Country, Sexual Abuse of a Minor or Ward in Indian Country, and

---

[*] 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

Abusive Sexual Contact in Indian Country. The government requested he be detained pending trial. The probation office prepared a pre-trial services report and recommended Mr. Ewton be detained pending trial. Prior to the detention hearing, a seventeen-count Indictment was returned charging him with six counts of Aggravated Sexual Abuse, six counts of Sexual Abuse of a Minor or Ward, four counts of Abusive Sexual Contact, and one count of Tampering with a Witness.

After the detention hearing, the magistrate judge ordered Mr. Ewton detained pending trial because he was subject to a presumption of detention under 18 U.S.C. § 3142(e)(3)(E), and he had failed to rebut the presumption. The magistrate judge also found that there was no condition or combination of conditions that could reasonably assure the safety of the community if Mr. Ewton was released.

Mr. Ewton then filed a motion for revocation of the detention order, which the government opposed. The district court conducted a de novo review of the detention order, denied the motion for revocation, and affirmed the magistrate judge's decision that Mr. Ewton should be detained pending trial. Although the district court found that he had overcome the presumption of detention, it found he would be a danger to the community and a flight risk if he was released. The court also found that no condition or combination of conditions would reasonably assure Mr. Ewton's appearance as required and the safety of the community. Mr. Ewton appeals the district court's order.

II. Legal Framework

Under the Bail Reform Act, a defendant may only be detained pending trial 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." 18 U.S.C. § 3142(e). The court considers four factors to determine whether there are release conditions that can ensure the defendant's appearance and the safety of the community. Those factors are:

> (1) "the nature and circumstances of the offense charged, including whether the offense . . . involves a minor victim"; (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).

If there is probable cause to believe that a defendant committed an offense involving a minor victim under 18 U.S.C. § 2241 (Aggravated Sexual Abuse), as is the case here, then a rebuttable presumption arises that there are no conditions that will reasonably assure the appearance of the person as required and the safety of any other person and the community. *Id.* § 3142(e)(3)(E). The burden of production on the defendant to overcome the presumption is not a heavy one, but the defendant must produce some evidence. *United States v. Stricklin*, 932 F.2d 1353, 1354-55 (10th Cir. 1991) (per curiam). Even if the presumption is overcome, the presumption remains a factor in the district court's detention decision. *Id.* at 1355. "However, the

burden of persuasion regarding risk-of-flight and danger to the community always remains with the government." *Id.* at 1354-55.

III. Discussion

"We apply de novo review to mixed questions of law and fact concerning the detention or release decision, but we accept the district court's findings of historical fact which support that decision unless they are clearly erroneous." *United States v. Cisneros*, 328 F.3d 610, 613 (10th Cir. 2003).

Mr. Ewton first argues that he presented sufficient evidence to overcome the presumption of detention in § 3142(e)(3)(E). But we agree with the government that this argument is "largely irrelevant here as the district court plainly found he introduced sufficient evidence to meet his burden of production to overcome the statutory presumption and the government has not challenged that conclusion on appeal." Aplee. Mem. Br. at 9. The presumption did, however, remain a factor that the district court considered as part of its determination that Mr. Ewton poses a flight risk and a danger to the community. Mr. Ewton does not assert that the district court erred in considering the presumption as part of that determination.

He next argues that the government did not meet its burden of showing he was a danger to the community by clear and convincing evidence. He asserts that in addition to showing that the four factors in § 3142(g) support a finding of dangerousness to the community, the government has an additional burden to show that "*imposed* conditions would not be effective." Aplt. Mem. Br. at 7 (emphasis added) (citing *United States v. Bustamante-Conchas*, 557 F. App'x 803, 807

(10th Cir. 2014)). And Mr. Ewton contends the government failed to carry its burden because it "ignored [his] *proposed* conditions altogether." *Id*. at 8 (emphasis added). *Bustamante-Conchas* is unpublished and non-precedential, but even considering that case, it is inapposite to the circumstances here. *Bustamante-Conchas* did not involve a defendant's appeal from a detention order as is the case here; instead, it involved the government's appeal from the district court's order granting pre-trial release and imposing certain conditions on release, *see* 557 F. App'x at 803-04. On appeal, the government argued that the release conditions were insufficient, but we were not persuaded by its argument and concluded that the district court did not err in releasing the defendant subject to the restrictive conditions it had imposed. *Id.* at 806-07. *Bustamante-Conchas* does not support Mr. Ewton's argument that the government had an additional burden here of showing that his proposed conditions of release would be ineffective. Moreover, contrary to his contention, the government did not ignore Mr. Ewton's proposed conditions; the government addressed them at the detention hearing. *See* Aplee. Suppl. App., Vol. I at 27.

Mr. Ewton also asserts that the government failed to carry its burden on dangerousness because it addressed only one of the four statutory factors and failed to provide any evidence beyond the Indictment. But these assertions are not accurate. The government addressed all four statutory factors in its brief in opposition to the defendant's motion to revoke the detention order. *See* Aplt. App. at A33-A35; A37-A40. And the government also presented evidence other than the Indictment. In a Notice of Submission of Supplemental Documents, it asked the

district court to review the following in support of Mr. Ewton's continued detention: the Indictment, the Complaint and Affidavit, the pre-trial services report, the detention hearing transcript, and reports of additional students and witnesses.

Finally, Mr. Ewton argues that the § 3142(g) factors weigh in favor of his pre-trial release because he is not a danger to the community. We disagree.

First, the nature and circumstances of the offenses weigh in favor of detention. As the district court explained, Mr. Ewton is "accused of multiple serious felony offenses." Aplt. App. at A47. These offenses involve allegations that he sexually abused two minors who were his students at the time of the alleged criminal acts. One of the victims reported that the abuse continued for four years and that same victim reported that Mr. Ewton threatened her if she told anyone about what had happened between them, which led to an additional charge for witness tampering.

Second, the weight of the evidence against Mr. Ewton is strong. Although he argues that the weight of the evidence goes to dangerousness, not to guilt, he only cites to a Sixth Circuit case for that proposition. But that out-of-circuit authority is not persuasive; in our circuit, we consider the weight of the evidence as to the criminal charges against the defendant. *See Cisneros*, 328 F.3d at 618. Here, the district court explained that "[t]he information leading to Defendant's arrest resulted from a law enforcement investigation, which included multiple interviews of the alleged victims, L.W. and P.D., and other students, interviews of the parents of Defendant's students, phone records of text messages between Defendant and L.W., and an interview of Defendant's ex-wife." Aplt. App. at A47.

Although we agree with Mr. Ewton that the third factor weighs in favor of his pre-trial release because he has no criminal history, this one factor does not outweigh the other three factors. On the fourth factor, Mr. Ewton presents a danger to the community based on the allegations that he sexually abused two of his students and threatened one of them if she reported what happened to her. Although he proposed that he could be released to live on his stepfather's farm with an ankle monitor, the government argued at the detention hearing that "putting him on a farm is not going to ensure the safety of the community" because "[t]he community knew about this and nothing happened and it continued for years and years and these victims have a right to be safe at this point . . . ." Aplee. Suppl. App., Vol. I at 27.

Considering all the evidence and the § 3142(g) factors, Mr. Ewton has failed to show that the district court erred in concluding that the government met its burden of showing he poses a serious risk of danger to the community if he is released and that no condition or combination of conditions could assure the safety of the community.[1] Accordingly, we affirm the district court's detention order.

The government filed a Supplemental Appendix with an unsealed Volume I and a Volume II that was provisionally sealed. The government filed a Motion to

[1] Because Mr. Ewton has not shown error in the district court's dangerousness determination, we need not consider his argument that the government failed to carry its evidentiary burden on risk of flight. *Cf. United States v. Montalvo-Murillo*, 495 U.S. 711, 717 (1990) (recognizing that the Bail Reform Act "directs a judicial officer to detain a person charged, pending trial, if the Government has made the necessary showing of dangerousness *or* risk of flight" (emphasis added)).

Seal the documents contained in Volume II, arguing that the documents should be sealed in this court because they were sealed in the district court.

We grant in part and deny in part the Motion to Seal. We grant the motion as to the pre-trial services report and the reports from additional students and witnesses. Those documents may remain in the sealed Volume II because they were sealed in the district court and contain sensitive information, including the names of minors who gave statements. The Indictment and Complaint and Affidavit were not sealed in district court and so those documents should be filed unsealed. The government is therefore directed to re-file its Supplemental Appendix with the Indictment and Complaint and Affidavit in the unsealed Volume I and the pre-trial services report and reports from additional students and witnesses in the sealed Volume II.

Entered for the Court
Per Curiam