

FILED

UNITED STATES COURT OF APPEALS

JUN 12 2012

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

OTIS MOBLEY,

Defendant - Appellee.

No. 12-10245

D.C. No. 4:12-cr-00235-YGR-2
Northern District of California,
Oakland

ORDER

Before: LEAVY, HAWKINS, and McKEOWN, Circuit Judges.

Appellant's motion for leave to file Exhibits 12 and 15 under seal is granted.

This is an appeal from the district court's pretrial order granting appellee Otis Mobley's ("Mobley") release pending trial. We have jurisdiction pursuant to 18 U.S.C. § 3145(c) and 28 U.S.C. § 1291.

We review the district court's factual findings concerning risk of flight and the danger that appellant poses to the community under a "deferential, clearly erroneous standard." *United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008) (quoting *United States v. Townsend*, 897 F.2d 989, 994 (9th Cir. 1990)). The conclusions based on such factual findings, however, present a mixed question of fact and law. *Hir*, 517 F.3d at 1086. Thus, "the question of whether the district

court's factual determinations justify the pretrial detention order is reviewed de novo." *Id.* at 1086-87 (citations omitted).

Because Mobley is charged with a crime of violence, "a rebuttable presumption arises that no condition or combination of conditions will reasonably assure" his appearance or the community's safety. 18 U.S.C. § 3142(e)(2).

Based on the factual findings made by the district court, pretrial detention is warranted. Mobley has been charged with, among other things, armed robbery and conspiracy to commit armed robbery, which are serious and violent crimes.

Transcript at 14.¹ The district court found the nature and circumstances of the offenses charged weighed in favor of detention. Transcript at 11. Further, the district court concluded because Mobley was present at the scene of the crime before he fled, that the weight of the evidence "weighs in favor of detention."

Transcript at 12. The district court also found that Mobley was "comfortable" with the use of firearms based on his numerous prior arrests involving firearms.

Transcript at 14. A review of the district court record also reflects that Mobley has a lengthy criminal history, a history of drug and alcohol abuse, and previously failed to appear for six court proceedings.

¹Transcript of May 14, 2012 proceedings before the Honorable Judge Gonzalez Rogers, submitted as Exhibit 9 of appellant's memorandum.

Accordingly, the district court erred in finding that the government failed to meet its burden of showing, by a preponderance of the evidence, that “no condition or combination of conditions will reasonably assure the [appellee’s] appearance,” 18 U.S.C. § 3142(e), and that Mobley therefore poses a risk of flight. *See United States v. Motamedi*, 767 F.2d 1403, 1406 (9th Cir. 1985). The district court’s conclusion that the government failed to demonstrate, by clear and convincing evidence, that “no condition or combination of conditions will reasonably assure . . . the safety of . . . the community,” 18 U.S.C. § 3142(e), is erroneous.

We are ordinarily reluctant to interfere with a decision of this type. *Hir*, 517 F.3d at 1086 (reviewing district court’s factual findings under a “deferential, clearly erroneous standard”). However, the specific findings made by the district court, including the significant findings weighing in favor of detention, along with the circumstances of this case require reversal of the district court’s release order. We therefore remand to the district court to deny release pending trial with instructions to enter an order denying release pending trial.

The mandate shall issue forthwith.

REVERSED and REMANDED.