FILED
United States Court of Appeals
Tenth Circuit

November 8, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JALON TORRES,

Defendant - Appellant.

No. 23-1296
(D.C. No. 1:23-CR-00113-RMR-1)
(D. Colo.)

ORDER AND JUDGMENT*

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

Jalon Torres was charged with numerous counts of wire fraud, money laundering, and conspiracy to commit money laundering. A magistrate judge ordered Mr. Torres's pretrial detention under the Bail Reform Act, 18 U.S.C. § 3142, and the district court agreed with the magistrate judge's analysis on de novo review. Mr. Torres has appealed. Exercising jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3145(c), we affirm.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

I. Background

Mr. Torres was arrested in Colorado on March 12, 2021, in connection with criminal charges in the Western District of North Carolina. During his arrest on those charges, FBI agents searched his Colorado Springs residence, yielding information relating to The Student Loan Resolution Center LLC ("SLRC"), a business entity Mr. Torres ran. That information included communications between Mr. Torres and customers of SLRC. The agents also found a check printing machine, multiple checks, and indications of Mr. Torres using at least ten different aliases on electronic devices in his home.

These discoveries and a subsequent investigation resulted in the government bringing additional criminal charges against Mr. Torres in the District of Colorado for wire fraud, money laundering, and conspiracy to commit money laundering. The indictment alleges that Mr. Torres ran a scheme through SLRC in which he promised to reduce or eliminate his customers' student loans, but stole from them instead.

In early April 2023, Mr. Torres was arrested in Florida on the Colorado charges, and the government sought pretrial detention. A Florida magistrate judge held a detention hearing and took testimony from an IRS special agent who described Mr. Torres's scheme. As described by the agent, that scheme involved SLRC signing contracts that permitted SLRC to withdraw money from customers' bank accounts a set number of times. Mr. Torres withdrew money from accounts of about 300 SLRC customers more times than their contracts authorized.

When some customers closed their accounts or reported the fraud to their banks, Mr. Torres threatened them. For instance, the IRS agent played one voicemail in which someone using an alias but sounding like Mr. Torres threatened to take a quarter of the customer's future paychecks if the customer did not pay a certain amount by the afternoon. The caller also threatened to report the customer to the IRS. In an email to another customer, Mr. Torres pretended to be an attorney and threatened the customer with litigation if she did not keep paying SLRC. He also attached photos of the customer and her family to the email. Investigators found more than 20 such emails to customers originating from the same email address.

The IRS agent also testified as to the facts underlying the earlier North Carolina case. As charged in that case, after a bank employee closed a bank account controlled by Mr. Torres for violations of bank policy, Mr. Torres sent the employee threatening text messages. Some of those messages contained pictures of the employee and the employee's family. He threatened to kill the employee and the employee's family, and one of his texts even made threats of a sexual nature against one of the employee's children. Mr. Torres was indicted for cyberstalking and making interstate threats, pleaded guilty, and was sentenced to a term of 27 months imprisonment, which he completed a few months before his arrest for the Colorado charges. The agent further testified Mr. Torres similarly had threatened a bank employee in Kansas City, although that allegation was not included in the North Carolina charges.

After the hearing, the magistrate judge issued an Order of Detention, finding under § 3142(e) that no conditions or combination of conditions will reasonably assure the safety of the community. The magistrate judge based her decision on evidence she characterized as showing Mr. Torres's "pattern of becoming very aggressive with people and threatening them in shockingly aggressive and scary ways." App. at 159 (internal quotation marks omitted).

Mr. Torres then filed a motion for de novo review of the magistrate judge's pretrial detention order. The district court, having reviewed de novo the evidence and testimony presented to the magistrate judge, agreed with the magistrate judge's conclusion in a written decision. This appeal followed.

II. Discussion

We review the district court's ultimate detention decision de novo because it presents mixed questions of law and fact; however, we review the underlying findings of fact for clear error. *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). We review the district court's findings with significant deference, cognizant that "our role is not to re-weigh the evidence." *Id.* at 515-16.

We examine four factors in determining whether any release conditions will reasonably assure the safety of others and the community: "(1) the nature and

circumstances of the offense charged . . . ; (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).

A. Nature and Circumstances of the Offense Charged

The government has charged Mr. Torres with multiple counts of wire fraud and money laundering and, if convicted on all counts, he faces an estimated sentencing range of 235 to 293 months in prison. His victims allegedly number in the hundreds, with a total financial loss of approximately $1 million. The district court reviewed testimony that Mr. Torres threatened customers who closed their accounts or reported fraud to their banks. In several instances, he posed as an attorney and threatened litigation and even sent photos to one victim of her and her family. In short, there is record support for the conclusion that the nature and circumstances of the offenses charged are serious and weigh in favor of detention.[1]

Mr. Torres asserts that he is not charged with a crime of violence and that his alleged crimes are economic in nature. Even accepting these assertions as true, however, they do not establish that the district court committed clear error in evaluating this factor.

[1] Although the district court did not explicitly find that the first, third, and fourth factors weighed in favor of detention, its recitation of supporting details makes clear that the district court implicitly found that these factors weighed against Mr. Torres and in favor of the government's request for pretrial detention.

B. Weight of the Evidence

The district court found the weight of the evidence against Mr. Torres "very strong." App. at 11 (detailing the evidence supporting the charges, including communications between Mr. Torres and customers of SLRC, bank records, and interviews of dozens of victims of the fraudulent scheme). Mr. Torres makes no effort to challenge that finding, and we find no fault with it. This factor therefore weighs in favor of detention.

C. History and Characteristics of the Person

Mr. Torres's history and characteristics, as the district court found, demonstrate a "pattern of threats and harassment." App. at 12. This pattern includes evidence of the many threats he made against the people who signed contracts with SLRC in the underlying case, and evidence of heinous threats he made against bank employees and their families when the employees closed a bank account that he controlled.

Mr. Torres objects that the district court relied upon past criminal conduct for which he has already accepted responsibility and completed his prison sentence. But the statute explicitly permits consideration of Mr. Torres's "past conduct" and "criminal history." *See* 18 U.S.C. § 3142(g)(3)(A). Mr. Torres also emphasizes that his criminal history is limited, that he has not contacted any of his victims since being ordered not to do so, and that he adhered to the conditions of his supervised release after completing his prison term in January. Our task, however, "is not to re-weigh the evidence," *Gilgert*, 314 F.3d at 515-16, but to determine whether the

district court's findings are clearly erroneous. We discern no clear error in the district court's analysis.

D. Danger to the Community

The fourth factor requires the judicial officer to assess "the nature and seriousness of the danger to any person or the community that would be posed by [Mr. Torres's] release." § 3142(g)(4). "The concern about safety is to be given a broader construction than the mere danger of physical violence. Safety of the community refers to the danger that the defendant might engage in criminal activity to the detriment of the community." *United States v. Cook*, 880 F.2d 1158, 1161 (10th Cir. 1989) (per curiam) (internal quotation marks omitted); *see also United States v. Reynolds*, 956 F.2d 192, 192 (9th Cir. 1992) ("[D]anger may, at least in some cases, encompass pecuniary or economic harm.").

In determining that Mr. Torres posed a danger to the community, the district court found Mr. Torres exhibited a "pattern of becoming very aggressive and threatening people who do not do what he wants them to do," App. at 13, and that Mr. Torres had defrauded hundreds of members of the community, resulting in his obtaining more than $1 million. The record amply supports these findings.

In light of these findings, the district court explicitly held that "it is not satisfied that there are conditions that the Court could impose to provide the reasonable assurance of the safety of the community." *Id.* at 14. Mr. Torres argues, however, that the district court did not "meaningfully consider" the least restrictive conditions that would reasonably assure the safety of the community. Memo. Br. at 5

(citing 18 U.S.C. § 3142(c)(1)(B)). He contends that at least one of seven conditions, or some unspecified combination of them, "would have mitigated any risk to the community." *Id.* The conditions he suggests—for example, remaining in the custody of a designated person, maintaining employment, travel restrictions, or commencing an educational program—have little bearing on assuring the safety of the community. And restrictions regarding contact with victims or co-defendants would not assure that still other individuals would not be victimized. In short, Mr. Torres's argument merely asks this court to second-guess the district court's determination in light of its consideration of the § 3142(g) factors. We decline to do so.

III. Conclusion

The district court considered the evidence in light of the relevant statutory factors, and it made the necessary factual findings to support its pretrial detention order. We affirm. The government's motion to dismiss is denied as moot.

Entered for the Court

Per Curiam