
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

UNITED STATES OF AMERICA,

Appellee

v.

ANTHONY STEVEN LOBOS-RUIZ,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

BRIEF FOR THE UNITED STATES AS APPELLEE

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STATEMENT OF JURISDICTION

The district court had subject matter jurisdiction over the case because the indictment charged defendant Anthony Steven Lobos-Ruiz with a federal offense. 18 U.S.C. 3231. On September 21, 2021, the district court denied Lobos-Ruiz's motion to revoke a magistrate judge's order detaining him pending trial. Add. 1. Lobos-Ruiz filed a timely notice of appeal on September 22, 2021. App. 7. This Court has jurisdiction under 18 U.S.C. 3145(c) and 28 U.S.C. 1291.

STATEMENT OF THE ISSUE

Whether this Court should remand the case for further proceedings in light of the role the district court's erroneous factual finding—that Lobos-Ruiz was arrested at the airport attempting to leave Puerto Rico—played in concluding that he must be detained pending trial pursuant to 18 U.S.C. 3142(e).

STATEMENT OF THE CASE

1. Statutory Background

The Bail Reform Act, 18 U.S.C. 3141 *et seq.*, outlines the circumstances under which a person accused of a crime may be detained pending trial. The statute requires a district court to hold a hearing before detaining the person pending trial, and sets forth the factors required to trigger such a hearing. As relevant here, a court must hold a detention hearing in cases involving a “crime of violence,” a felony involving the use of a “dangerous weapon,” or a “serious risk” that the person will flee or obstruct justice. 18 U.S.C. 3142(f)(1)(A) and (E), (f)(2)(A) and (B).

After the detention hearing, the court may order the person detained pending trial only when “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)(1). To determine whether such conditions exist, the court examines a set of factors listed in 18 U.S.C. 3142(g): (1) the nature and

circumstances of the offense, including whether it is a crime of violence; (2) the weight of the evidence; (3) the history and characteristics of the person, including the person's record of appearance at court proceedings; and (4) the nature and seriousness of the danger posed by the defendant's release.

The standard of proof required to detain a person due to dangerousness is clear and convincing evidence, while the standard of proof required to detain a person due to risk of flight is preponderance of the evidence. 18 U.S.C. 3142(f); *United States v. Patriarca*, 948 F.2d 789, 793 (1st Cir. 1991).

2. *Factual Background*

On August 4, 2021, a federal grand jury returned a three-count indictment charging defendant Anthony Steven Lobos-Ruiz and two other individuals with conspiracy to commit a hate crime under 18 U.S.C. 371 (Count I), commission of a hate crime under 18 U.S.C. 249(a)(2) (Count II), and obstruction of justice under 18 U.S.C. 1519 (Count III). Add. 8-13.

The indictment alleges that a year-and-a-half earlier, on February 24, 2020, Lobos-Ruiz and his co-defendants committed a verbal and physical assault with a paintball gun on A.N.L., a transgender woman, in Toa Baja, Puerto Rico. Add. 8-13; App. 12-15.¹ The day before the assault, A.N.L. had been accused on social

¹ "Add. __" refers to pages of the Addendum to Appellant's Opening Brief. "App. __" refers to pages of the Appendix. "Supp. App. __" refers to pages of the Supplemental Appendix. "Br. __" refers to pages of Appellant's Opening Brief.

media of being a man using the women's restroom and trying to look under the stall at a local McDonald's restaurant. Add. 9; App. 12. Early the next morning, Lobos-Ruiz and his co-defendants spotted A.N.L. standing beneath an abandoned fruit-stand tent as they were driving through Toa Baja. Add. 9; App. 13. They recognized her from social media and Lobos-Ruiz shouted derogatory and harassing comments at her while recording the incident on his phone. Add. 9; App. 13. The trio left to obtain a paintball gun and then returned to the tent, where one of them shot A.N.L. with multiple paintballs while Lobos-Ruiz recorded the assault on his phone. Add. 10; App. 13-14. Lobos-Ruiz shared the video recording with others. App. 14.

A few hours later, A.N.L. was murdered. App. 14. Local police found her body under the fruit-stand tent, riddled with gunshot wounds. App. 14. Later that same morning, Lobos-Ruiz exchanged text messages with one of his co-defendants, expressing concern that they would be accused of A.N.L.'s murder; he then deleted the recorded encounters with A.N.L. from his phone. Add. 12; App. 14-15.

3. *Procedural Background*

Lobos-Ruiz and his co-defendants were arrested on August 6, 2021, and had their first appearance before a magistrate judge the same day. App. 3-4. At that initial appearance, the government moved to have all three defendants detained

pending trial. App. 4. The magistrate judge held a detention hearing for Lobos-Ruiz on August 10 (see generally App. 32-69) before issuing a written order that Lobos-Ruiz should be detained pending trial (see Add. 3-5).

The magistrate judge's detention order concluded that Lobos-Ruiz was eligible for detention under 18 U.S.C. 3142(f), and that no conditions of release would reasonably assure his appearance at trial or the safety of the community, as required by 18 U.S.C. 3142(e). Add. 3-4. The order cited the evidence against Lobos-Ruiz, the lengthy period of incarceration he faced if convicted, his prior criminal history, and a prior probation violation. Add. 4-5. The magistrate judge also cited Lobos-Ruiz's lack of familial support, shifting housing status, mental health, apparent lack of impulse control, and the fact that "[t]he current crime with which he is charged is a crime of violence." Add. 5.

Lobos-Ruiz moved to revoke the pretrial detention order, arguing that the magistrate judge had no basis for holding the detention hearing under 18 U.S.C. 3142(f). Supp. App. 8-9, 11-24. He also argued that the government had not met its burden under 18 U.S.C. 3142(e) to show that "no conditions or combination of conditions [would] reasonably assure" his appearance at trial. Supp. App. 24, 28-36. He cited, among other things, the conditions of release recommended in the pretrial services report. Supp. App. 33-35. And he argued that the 18 U.S.C. 3142(g) factors supported granting bail. Supp. App. 28-36.

The district court denied Lobos-Ruiz's motion in a one-paragraph order, which it entered directly on the docket. The order reads as follows:

Upon de novo review, the Court concurs with the Magistrate Judge's detention order. Moreover, the Court also finds the Government's response to be on point. At the time of his arrest, defendant was at the airport leaving for Florida. This meets the preponderance standard as to risk of flight for detention purposes. Moreover, the Court adopts its earlier order finding that all defendants engaged in a crime of violence. See Order at Docket 46. Defendant's proffered authority to the contrary is non-persuasive. The facts of this case, based on the evidence before the Court for bail/detention purposes, constitutes clear and convincing evidence of dangerousness as well.

Add. 1.

SUMMARY OF ARGUMENT

The United States concedes that the district court's order rests on an erroneous finding of fact. In reaching its conclusion that Lobos-Ruiz presented a risk of flight, the district court relied on the erroneous factual premise that Lobos-Ruiz was "arrested" at the airport. He was not. In fact, Lobos-Ruiz was arrested at home. In light of this error, and its apparent impact on the district court's ultimate decision to deny Lobos-Ruiz's motion to revoke the detention order, this Court should vacate the district court's order and remand the case for further proceedings to determine if pretrial detention is warranted.

ARGUMENT

THE DISTRICT COURT’S ORDER SHOULD BE VACATED AND THE CASE REMANDED BECAUSE THE COURT RELIED ON A FACTUAL INACCURACY REGARDING LOBOS-RUIZ’S RISK OF FLIGHT

A. Standard Of Review

This Court conducts an “independent review” of bail determinations that is “tempered by deference to the district court’s firsthand judgment of the situation.” *United States v. Zimny*, 857 F.3d 97, 98 & n.3 (1st Cir. 2017) (citation omitted). “[I]ndependent review represents an intermediate level of scrutiny, more rigorous than the abuse-of-discretion or clear-error standards, but stopping short of plenary or de novo review.” *United States v. Patriarca*, 948 F.2d 789, 791 (1st Cir. 1991) (citation omitted).

B. The District Court’s Pretrial Detention Order Is Deficient Because It Rested Heavily On An Erroneous Factual Finding

In denying Lobos-Ruiz’s motion, the district court relied expressly on the premise that, “[a]t the time of his arrest, defendant was at the airport leaving for Florida.” Add. 1. That finding—which provided the central basis for the court’s conclusion that the government had satisfied “the preponderance standard as to risk of flight for detention purposes” (Add. 1)—was erroneous.

The court’s belief that Lobos-Ruiz was attempting to flee the jurisdiction appears to rest on the government’s statement during the detention hearing that Lobos-Ruiz was “arrested” at the airport. App. 42. Although local police did

intercept and detain Lobos-Ruiz at the airport in February 2020 (shortly after A.N.L.'s death), they did not arrest him at that time. They questioned him and then released him. He remained in Puerto Rico, at the request of the police, until he was ultimately arrested by federal law-enforcement authorities in August 2021. The district court, understandably, appears to have misapprehended the nature and timing of the airport encounter and, as a result, may have mistakenly believed that the encounter was more recent and that Lobos-Ruiz's departure was thwarted only by his August 2021 arrest.

The district court's order sheds no light on whether any other facts or factors contributed to the risk-of-flight finding; none are mentioned in the order. Nor is it clear from the order whether, absent the court's mistaken belief about the timing and nature of the airport encounter, the district court would have reached the same conclusion that no conditions of release reasonably would assure Lobos-Ruiz's appearance and community safety.² See 18 U.S.C. 3142(e) and (g). Thus, on the current record, it is not possible to determine to what extent the non-flight detention factors under 18 U.S.C. 3142(e) and (g) informed the court's ultimate decision.

² Although the district court made a finding of "dangerousness" (Add. 1), the order does not reflect whether this factor by itself would have led the court to conclude that no conditions of release were sufficient and that pretrial detention was required under 18 U.S.C. 3142(e).

The case therefore should be remanded for further proceedings to enable the district court—the proper arbiter of “fact bound disputes,” see *Patriarca*, 948 F.2d at 791—to make its judgment of the situation anew, without the taint of mistaken facts. Such a remand would accord with one of Lobos-Ruiz’s own proposed resolutions for this appeal. See Br. 61 (“In the alternative, this Court should remand the case to the district court for a hearing to determine whether any combination of conditions could reasonably assure Anthony’s appearance and the safety of the community if released on bail.”). And it would comport with this Court’s caselaw on the appropriate circumstances under which it should accept the government’s concession of error in a criminal matter. See *United States v. Mescual-Cruz*, 387 F.3d 1, 8 n.2 (1st Cir. 2004) (noting that it is appropriate to accept the concession when the legal questions at issue are not recurrent in the district courts and do not require clarification; relying on the mistaken legal proposition would be unseemly for purposes of resolving the case; and the issues are complex and would benefit from adversary briefing), cert. denied, 543 U.S. 1175, and 543 U.S. 1176 (2005).

CONCLUSION

For the foregoing reasons, the Court should vacate the district court's order denying Lobos-Ruiz's motion to revoke the detention order, and remand the case for further proceedings to determine whether Lobos-Ruiz should continue to be detained pending trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE:

1. Complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 1,945 words; and

2. Complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2019, in 14-point Times New Roman font.

s/ Katherine E. Lamm
KATHERINE E. LAMM
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Date: October 29, 2021

CERTIFICATE OF SERVICE

I certify that on October 29, 2021, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system.

I certify that defendant in this case is a registered CM/ECF user and that service will be accomplished by the appellate CM/ECF system.

s/ Katherine E. Lamm
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