

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :
 :
 v. :
 :
 :
TERRANCE M. JOHNSON, :
 :
 :
 Defendant. :

Criminal Action No. 04-109 JJF

Colm F. Connolly, Esquire, United States Attorney, and Adam Safwat, Esquire, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware. Attorneys for Plaintiff.

Charles E. Whitehurst, Esquire, WHITEHURST CURLEY & SUNSHINE, P.A., Dover, Delaware. Attorney for Defendant.

MEMORANDUM OPINION

July 11, 2005
Wilmington, Delaware


Farnan, District Judge.

Pending before the Court is the Government's Motion For Detention Pursuant To 18 U.S.C. § 3143(a)(2) (D.I. 21). For the reasons discussed, the Court will grant the Motion.

I. Background

On March 9, 2005, Defendant Terrance M. Johnson pled guilty to violating 18 U.S.C. § 922(g)(1), the felon-in-possession statute. After the Court accepted Mr. Johnson's guilty plea, the Government moved to detain Mr. Johnson pending sentencing.

II. Parties' Contentions

By its motion, the Government contends that the crime Mr. Johnson pled, the felon-in-possession offense, is a "crime of violence" and, therefore, the Court should detain Mr. Johnson pending sentencing. In response, Mr. Johnson contends that the felon-in-possession offense is not a crime of violence and, even if it were, "exceptional reasons" preclude his detention.

III. Discussion

A. Whether the felon-in-possession offense is a crime of violence

18 U.S.C. § 3143(a)(2) requires that, absent certain narrow exceptions,¹ a district court must detain a person convicted of a

¹Section 3143(a)(2) exceptions to detention are:

(A)(I) the judicial officer finds there is a substantial likelihood that a motion for acquittal or new trial will be granted; or

crime of violence pending sentencing. 18 U.S.C. § 3142(f)(1)(A).

Section 3156(a)(4) defines a crime of violence as:

(A) an offense that has an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another;

(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense; or

(C) any felony under chapter 109A, 110, or 117.

The Third Circuit has not addressed the issue of whether the felon-in-possession offense is a crime of violence. Of the four circuits that have, only the Second Circuit has answered in the affirmative. Compare United States v. Dillard, 214 F.3d 88 (2d Cir. 2000), with United States v. Johnson, 399 F.3d 1297 (11th Cir. 2005), United States v. Lane, 252 F.3d 905 (7th Cir. 2001), and United States v. Singleton, 182 F.3d 7 (D.C. Cir. 1999). The Courts agree, however, that, if the felon-in-possession offense is a crime of violence, it must fall within clause B of section 3156(a)(4). Further, the courts agree that, to determine whether an offense qualifies as a crime of violence under clause B, a court must apply a "categorical approach" to the offense in question, rather than a case-by-case approach. That is, a court must examine whether the offense "'by its nature' involves the risk that force will be used," regardless of the circumstances of

(ii) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; and
(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

the specific case. Dillard, 241 F.3d at 92; Singleton, 182 F.3d at 100.

I agree with the reasoning of the Second Circuit in United States v. Dillard, 214 F.3d 88, and therefore, conclude that the felon-in-possession offense is a crime of violence.

B. Whether exceptional reasons preclude Mr. Johnson's detention

Mr. Johnson contends that, even if the felon-in-possession offense is a crime of violence, I should release him pending sentencing pursuant to 18 U.S.C. § 3145(c), which provides release to defendants who can show "exceptional reasons why such person's detention would not be appropriate." Specifically, Mr. Johnson contends that the act itself, possession of a firearm, does not involve a great risk of injury to others. Further, Mr. Johnson contends that his circumstances are exceptional because the legal question before the Court—namely, whether the felon-in-possession offense is a crime of violence—is novel and unusual. The Government responds that no exceptional reasons exist.

On the facts presented, I find that Mr. Johnson has not proven that exceptional reasons exist to preclude his detention. As I have stated, the felon-in-possession offense is sufficiently dangerous to warrant detention, and I do not believe that the pending legal question supports a claim of an exceptional reason for detention to be deemed inappropriate. Accordingly, I

conclude that the Government's Motion For Detention Pursuant To
18 U.S.C. § 3143(a)(2) (D.I. 21) should be granted.

An appropriate order will be entered.

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ORDER

NOW THEREFORE, For The Reasons discussed in the Memorandum Opinion issued this date, IT IS HEREBY ORDERED this 11 day of July 2005, that the Government's Motion For Detention Pursuant To 18 U.S.C. § 3143(a)(2) (D.I. 21) is **GRANTED**.


UNITED STATES DISTRICT JUDGE