

**NONPRECEDENTIAL DISPOSITION**

To be cited only in accordance with FED. R. APP. P. 32.1

**United States Court of Appeals**

**For the Seventh Circuit  
Chicago, Illinois 60604**

July 5, 2023

*By the Court:*

No. 23-2137

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

Appeal from the United States District  
Court for the Central District of Illinois.

*v.*

No. 22-cr-10025

DEVEAR L. LEWIS,  
*Defendant-Appellant.*

Joe Billy McDade,  
*Judge.*

**ORDER**

Devear Lewis appeals from the district court's order that he must be detained while awaiting trial. 18 U.S.C. § 3145(c); FED. RS. APP. P. 8(a), 9; CIR. R. 9. This is his second such appeal; we vacated and remanded the district judge's first pretrial detention order because the judge did not explain why Lewis's proposed conditions of release would not reasonably mitigate any future danger that he posed to the community. Lewis argues that the judge still did not address whether he poses a risk of future danger to the community or, if he does, whether that risk could be reasonably mitigated by release conditions. We agree, so we vacate and remand again.

After Lewis was charged with unlawfully possessing a weapon as a felon, *see* 18 U.S.C. § 922(g)(1), the government sought his pretrial detention. At the initial detention hearing, a magistrate judge concluded that Lewis was not a flight risk, *id.* § 3142(f)(2)(A), but was a danger to the community, *id.* § 3142(f)(2)(B). Based on that assessment alone, the judge ordered Lewis to be detained pending trial. The district judge then adopted the magistrate judge's pretrial detention order without elaboration.

We vacated that decision because the Bail Reform Act requires not only a finding of dangerousness, but also a finding that no condition, or combination of conditions, will reasonably assure the safety of the community if the person is released pending trial. 18 U.S.C. § 3142(e)(1), (f)(2), (g); *United States v. Dominguez*, 783 F.2d 702, 706–07 (7th Cir. 1986). We remanded for a “fresh look at whether there is any condition or combination of conditions of release that will reasonably assure the safety of the community during the pendency of this case.”

On remand, the district judge again ordered that Lewis must be detained. But the order omits any discussion of release conditions. Instead, it seems to conclude that pretrial detention is appropriate because Lewis is likely guilty, and Lewis’s charged conduct (i.e., putting guns in his trunk before driving a shooting victim to a nearby hospital) posed a danger to the community.

This was erroneous for three reasons. First, although the pretrial detention decision may incorporate some consideration of the accused’s guilt, a pretrial detention decision should not effectively prejudge the merits. *Dominguez*, 783 F.2d at 706–07. Whether Lewis may ultimately be found guilty of unlawfully possessing a weapon as a felon is relevant to the pretrial detention decision only to the extent that his charged conduct demonstrates that he poses a future risk to the community. See *United States v. Warneke*, 199 F.3d 906, 908 (7th Cir. 1999) (pretrial detention is based on “risk of flight and danger, and not on the determination of guilt and punishment”).

Second, the pretrial detention decision must be based on an assessment of the risk that Lewis poses to the community in the future, not simply the riskiness of his alleged offense. See *Dominguez*, 783 F.2d at 706–07; § 3142(g). The detention orders have, thus far, focused exclusively on the danger posed by Lewis’s charged conduct. But the orders have not addressed the important question of whether his release would endanger the community.

Third, dangerousness alone is an insufficient basis for pretrial detention. For if that danger can be reasonably mitigated by release conditions, then pretrial release is required. The government must prove by clear and convincing evidence that “no condition or combination of conditions will reasonably assure ... the safety of any other person and the community.” § 3142(e)(1), (f)(2). That inquiry is forward looking: “A defendant cannot be detained as dangerous ... based on evidence that he has been a danger in the past, except to the extent that his past conduct suggests the likelihood of future misconduct.” *Dominguez*, 783 F.2d at 706–07. Although Lewis proposed various release conditions, the judge has not addressed them. The judge must consider whether any of Lewis’s proposed conditions would mitigate concerns about the danger Lewis

might pose. § 3142(f); *United States v. Wilks*, 15 F.4th 842, 848 (7th Cir. 2021) (requiring an explanation for why the criteria for pretrial release had not been met).

On remand, the judge must consider whether the government has proven that Lewis's release would endanger the community. If the answer is yes, then the judge must also address whether any condition or combination of conditions, such as those suggested by Lewis, would reasonably mitigate the identified risk of danger. We leave it to the judge's sound discretion to decide these questions in the first instance and whether to do so after another hearing or based on the present record.

Accordingly, IT IS ORDERED that the motion is GRANTED to the extent that the district court's pretrial detention order is VACATED, and the case is REMANDED for further proceedings consistent with this order. This order resolves the appeal, and the mandate shall issue forthwith.