DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

UNITED STATES OF AMERICA

v.

RAKEM ANGEL HENDRICKSON,

Defendant.

1:24-cr-00016-WAL-EAH

TO: Michael Conley, Esq., AUSA
Barry K. Disney, Esq., AUSA
Joannie Plaza-Martinez, Esq.
Teri L. Thompson, Esq.

ORDER

THIS MATTER came before the Court on November 13, 2024, for a hearing on the Motion for Detention of Defendant Rakem Angel Hendrickson filed by the United States (the "Government") on October 24, 2024. Dkt. No. 16. The Government was represented during the hearing by Michael Conley, Esq., AUSA, and Barry K. Disney, Esq., AUSA. Mr. Hendrickson, who was present, was represented by Joannie Plaza-Martinez, Esq. and Teri L. Thompson, Esq.

At the hearing, the Court first instructed the parties to argue whether the rebuttable presumption in favor of detention, under 18 U.S.C. § 3142(e)(3)(B), applied against Mr. Hendrickson based on probable cause to believe that he committed an offense under § 924(c) even though he was not charged with a violation of that statute. Based on the evidence presented, the Court ruled that the rebuttable presumption did apply. The Court then heard argument as to whether detention was appropriate in this case and took the matter under

advisement. For the reasons that follow, the Court will grant the Government's Motion for Detention.

BACKGROUND

On October 22, 2024, the Government filed an Indictment charging Mr. Hendrickson with violations of: (1) 18 U.S.C. §§ 2119(3) and 2, carjacking resulting in death; (2) 14 V.I.C §§ 922(a)(1), 923(a), and 11, first degree premeditated murder; and (3) 14 V.I.C. §§ 922(a)(2), 923(a), and 11, first degree felony murder (in an attempt to commit robbery, kidnapping, and assault in the third degree of the victim). Dkt. No. 1. Each count charged him as both a principal and as an aider and abettor. *Id.* These charges stemmed from an incident on January 4, 2019, when Mr. Hendrickson and others allegedly carjacked a vehicle owned by Kailash Banani, resulting in Mr. Banani's death. *Id.*

At Mr. Hendrickson's October 23, 2024, initial appearance, the Government sought detention pending trial. Dkt. No. 7. This request triggered a detention hearing, which the Court continued until November 13, 2024, at Defendant's unopposed request. Dkt. No. 15. In the interim, the Government filed the instant Motion for Detention. Dkt. 16.

I. The Detention Motion

In its motion, the Government argued that Mr. Hendrickson was eligible for detention pursuant to: 18 U.S.C. § 3142(f)(1)(A), because the indictment alleged a crime of violence; § 3142(f)(1)(B), because it included offenses for which the maximum sentence was life imprisonment or death; § 3142(f)(1)(E), because it involved possession or use of a firearm;

and § 3142(f)(2)(A), because it involved a serious risk that the Defendant would flee. Dkt. No. 16 at 2. The Government also contended that, pursuant to § 3142(e)(3), the Court should presume that no conditions of release would assure the appearance of Mr. Hendrickson and the safety of the community:

> Pursuant to 18 U.S.C. § 3142(e)(3), it shall be presumed, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds probable cause to believe that the person committed: (B) an offense under section 924(c). 924(c) is triggered in this case because the death of the victim was committed by the use of a deadly or dangerous weapon.
>
> Even though the defendant is not formally charged with a violation of 18 U.S.C. § 924(c), the presumption of detention applies because the evidence submitted by the Government will establish probable cause that he committed a violation of § 924(c). *United States v. Rudolph*, 582 F. Supp. 3d 804, 809-11 (D. Colo. 2022) ("[A]" [sic] defendant need not be charged with a violation of § 924(c) for the judicial officer to conclude that a presumption of detention applies."); *see also United States v. Lee*, 206 F. Supp. 3d 103 (D.D.C. 2016) (concluding presumption of detention applies under § 3142(e)(3)(B) notwithstanding fact that defendant was not charged with a violation of § 924(c)); *United States v. Farguson*, 721 F. Supp. 128, 129–31 (N.D. Tex. 1989) (same); *United States v. Bess*, 678 F. Supp. 929, 932 (D.D.C. 1988) (same).

Id. at 2-3. However, the Government acknowledged that the Second Circuit has held "that the presumption of detention did not apply to a defendant because the government had not yet charged that defendant with a violation of § 924(c)." *Id*. at 3 (citing *United States v. Chimurenga*, 760 F. 2d 400, 406 (2d Cir. 1988)).

The Government then argued that each of the factors in § 3142(g), which a court must consider when determining whether an individual poses a flight risk or danger to the

community, weighed in favor of detention. *Id.* at 3-4. As to the nature and circumstances of the offenses charged, the Government asserted that the seriousness of the offenses—a violent carjacking resulting in murder—could not be overstated. Further, the weight of the evidence was strong, as the case was presented to a grand jury and an indictment issued. As to the history and characteristics of the Defendant, the Government anticipated that it would offer arguments based on the pretrial services report, which was then pending completion. Concerning danger to the community, the Government noted that, with the serious and violent underlying fact pattern and charges, the Defendant was a danger to the community. As to risk of flight, the severe penalties associated with the charges indicated a significant flight risk to avoid those penalties. *Id.* at 3-4. It concluded that no condition or combination of conditions could reasonably assure the safety of the community or secure the Defendant's appearance at trial, and thus that he should be detained. *Id.* at 4.

The Defendant did not file a written response to the detention motion.

II. The Detention Hearing

A. Argument as to Whether Section 3142(e)(3)(B) Applied Even Where a Defendant Is Not Charged with Violating Section 924(c)

At the detention hearing, the Court instructed the parties to first argue whether the presumption of detention applied in this case, so that the parties could know what standard would control when they argued for and against pretrial detention. The Government relied on its motion for the proposition that no court outside the Second Circuit has required a

defendant to be charged with violating § 924(c) in order for the presumption of detention to apply under § 3142(e)(3)(B).

Attorney Plaza-Martinez contended[1] that the district court cases cited by the Government were not binding and that the Court should instead follow the Second Circuit's holding in *Chimurenga*, 760 F.2d 400, the only circuit court case to have addressed this issue. She sought to distinguish the district court cases cited in the Government's motion from the instant case on the ground that the other cases all involved either a single defendant or a concession that the defendant had used a firearm. Mr. Hendrickson's case, in contrast, involved more than one perpetrator and a separate, unnamed individual—*i.e.* not Mr. Hendrickson—was found with the gun that was used to kill the victim. Attorney Plaza-Martinez added that even were the Court to decline to follow the holding in *Chimurenga*, it would still need to make a finding of fact that there was probable cause to believe that Mr. Hendrickson violated § 924(c), and such probable cause did not exist. The Government responded by arguing that the distinctions raised by the Defendant were irrelevant to the analyses of the cases it cited and that there was probable cause to support a finding that Mr. Hendrickson violated § 924(c).

For reasons detailed below, the Court agreed with the Government that the text of 18 U.S.C. § 3142 established a rebuttable presumption in favor of detention so long as the

[1] Attorney Teri L. Thompson, as learned counsel for Mr. Hendrickson, appeared at the hearing by videoconference, but she advanced no arguments.

Government could demonstrate probable cause existed to believe Mr. Hendrickson violated § 924(c). Thus, the parties argued whether probable cause existed to support such a finding based on the following evidence and documents brought to the attention of the Court.

1. The Search Warrant Affidavit

The Government offered the affidavit of Bureau of Alcohol, Tobacco, and Firearm Special Agent Justin Mace, which was admitted as Exhibit 1. The 48-page redacted search warrant affidavit, filed in *United States v. Hendrickson*, No. 22-mj-00050 (D.V.I. Oct. 24, 2024), the precursor to the present case, detailed much of the evidence that led to the indictment in the instant case. The affidavit asserted that probable cause existed to believe that Mr. Hendrickson violated the Hobbs Act, 18 U.S.C. § 1951, and 14 V.I.C. § 922(a) and (b) (murder under Virgin Islands law). Ex. 1 ¶ 6.

Agent Mace averred in his affidavit that, on the evening of January 4, 2019, three or four individuals watched Kailash Banani, a St. Croix jeweler, from their cars. *Id*. ¶¶ 23-27. Surveillance cameras across Christiansted showed the cars, including one allegedly driven by Mr. Hendrickson, circling the area around Mr. Banani's jewelry shop in Christiansted, waiting for him to leave for the day. *Id*. ¶ 28. The footage then showed some of the cars following Mr. Banani's vehicle after he left work until a stolen white van crashed into his car. *Id*. § 25, 28.

Three men got out of the van and beat and robbed Mr. Banani. *Id*. During the assault, which occurred on the side of a public road, multiple vehicles passed the scene. *Id.* Any time

a vehicle stopped, one of the assailants walked over to the stopped vehicle and brandished a firearm to threaten the driver into driving away. *Id*. After robbing him, one of the assailants fired multiple shots at Mr. Banani before fleeing. *Id*. The three assailants were recorded running from the scene of the shooting along a path where investigators later found a glove. *Id.* ¶¶ 26, 28.

DNA samples taken from the glove matched a DNA sample taken from Mr. Hendrickson. *Id*. The glove also had Mr. Banani's blood on it. *Id.* ¶ 26. A stocking cap found at the scene of the murder also contained DNA matching a sample taken from Mr. Hendrickson. *Id.* In August 2019, a search warrant was executed on Mr. Hendrickson's home. *Id*. ¶ 34. During that search, police found two sets of keys that they later confirmed belonged to Mr. Banani. *Id*.

Cellphone location data obtained after that search indicated that two phones belonging to Mr. Hendrickson were in the area of the murder at the time it was committed and that the phones proceeded along the same route as the assailants before and after the assault. *Id*. ¶¶ 39-41. The phone records further showed that one of Mr. Hendrickson's phones was used to make calls, just before and just after the murder, to another of the alleged assailants who was tailing Mr. Banani and who apparently served as the getaway driver. *Id*. Furthermore, location data from Mr. Banani's phone showed that after he was murdered, his phone moved along the same route, at the same time, as Mr. Hendrickson's phones. *Id*. ¶¶ 43-44.

Special Agent Mace testified during the hearing, largely reiterating what was included in his affidavit. Defense counsel cross-examined Agent Mace about whether the evidence truly demonstrated that Mr. Hendrickson was present at the scene of the carjacking and murder. Cross-examination revealed that the glove bearing Mr. Hendrickson's DNA also had two other individuals' DNA on it and that a matching glove found near the scene of the murder did not contain conclusive DNA evidence. Agent Mace also testified on cross-examination that Mr. Hendrickson was present for or involved in at least two recent shootings on St. Croix and that Mr. Hendrickson was not violent or uncooperative during his arrest on the instant charge.

2. The Parties' Arguments as to Probable Cause to Believe Mr. Hendrickson Violated Section 924(c)

Following Agent Mace's testimony, the Government argued that the evidence proffered at the hearing—particularly the DNA evidence, call logs, and location data—was more than sufficient to establish probable cause that Mr. Hendrickson violated § 924(c). The Government also emphasized the fact that Mr. Hendrickson was charged as an aider and abettor, which meant that it did not need to prove that Mr. Hendrickson actually possessed or fired the gun during the commission of the crime.

Attorney Plaza-Martinez countered that the glove with Mr. Hendrickson's DNA on it also held two other individuals' DNA, and therefore demonstrated only that Mr. Hendrickson touched the glove at some point, not that he was present near the crime scene or during the murder. Moreover, the weapon used to kill Mr. Banani was seized from someone else. Finally,

Mr. Banani's keys were found eight months after the murder, which suggested that someone might have given Mr. Hendrickson the keys after the murder and robbery. Because of these gaps in the evidence, the Government failed to prove that Mr. Hendrickson was involved in, present for, or aided and abetted the commission of this crime.

The Court determined that the Government demonstrated probable cause to believe Mr. Hendrickson violated § 924(c), and therefore that the rebuttable presumption in favor of detention applied against him. Having set out the standard under which the Court would consider the parties' arguments, the Court instructed the parties to argue whether Mr. Hendrickson should be detained pending trial.

B. Detention Proceedings

1. The Pretrial Services Report

Both parties relied on the Pretrial Services ("PTS") Report dated October 24, 2024, which incorporated some information from a PTS Report prepared in Mr. Hendrickson's prior federal case, *United States v. Hendrickson*, 19-cr-00012, where he pleaded guilty to the use of a firearm during a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A)(i).[2] The PTS Report set out Mr. Hendrickson's community and family ties, indicating that he had spent most of his life on St. Croix and that his common law wife, five-year-old son, a brother, and his mother lived on St. Croix. The Report stated that Mr. Hendrickson received his high

[2] Mr. Hendrickson was sentenced on that charge in April 2021 to, *inter alia*, 60 months' imprisonment and 4 years supervised release. He was released from prison on November 20, 2023.

school diploma on the island and was unemployed. His criminal record showed that he had been charged in Virgin Islands Superior Court with reckless endangerment twice in 2010—the second charge including unauthorized possession of a firearm—but that both charges were dismissed; and that he was charged with unauthorized possession of a firearm in 2018, which was also dismissed in Superior Court because it was transferred to district court and became the federal case referred to above (No. 19-cr-00012).

2. Mr. Hendrickson's Proposed Third-Party Custodian

The Defendant called as a witness Melanesia Encarnacion, Mr. Hendrickson's mother and proposed third-party custodian. Ms. Encarnacion testified that she worked at the U.S. Post Office on St. Croix from 7:00 a.m. to 3:30 p.m. She said she lived in a rented house with two and a half bedrooms, where Mr. Hendrickson would live. She also said was willing to serve as Mr. Hendrickson's third-party custodian and to post a $50,000 bond for her son to be released. She added that she understood the requirements of a third-party custodian, as she was serving in that role with another of her sons, and she would make sure that the Defendant followed the rules and did not do anything he was not supposed to do. She also said she understood the risks attendant to posting bond. Asked how she could supervise Mr. Hendrickson during the hours when she was at work, she said she could not do so, but suggested he could perhaps go to his grandparents' home during the day until she got out of work. Ms. Encarnacion added that the Defendant had a 5-year-old son with whom he had an excellent relationship and that he had been living with the child's mother and his son before

he was arrested. Finally, she testified that Mr. Hendrickson did not have a passport and had three grandparents living on St. Croix.

C. The Parties' Arguments as to Detention

The Government argued that it was relying on the information contained in the search warrant affidavit to show that each of the § 3142(g) factors weighed in favor of detention. As to the nature and circumstances of the crime, the affidavit demonstrated that probable cause existed that the Defendant aided and abetted the crimes, where the victim was targeted and executed. The Government emphasized that this was a premeditated, planned murder—not merely a robbery gone wrong. The weight of the evidence was strong, given the video, DNA, and phone location evidence, as well as Mr. Banani's keys, which were seized from the Defendant's home. As to his history and characteristics, Mr. Hendrickson had two prior arrests for violent behavior and possession of a firearm in 2010 and another conviction for a firearm crime. The Government cited authority from the First Circuit holding that it would be inappropriate to ignore the lengthy record of prior arrests, notwithstanding the absence of a conviction. Furthermore, because Mr. Hendrickson was eligible for the death penalty or life imprisonment, there was every reason to believe he would flee if released. And because others had been involved in the crime, they could be at risk if Mr. Hendrickson attempted to obstruct their testimony.

Defense counsel reminded the Court that the presumption in favor of detention is easily rebutted. She cited the current and earlier Pretrial Services Reports to show Mr.

Hendrickson's strong ties both to the community and his family and urged the Court to take judicial notice of this historical data.[3] She emphasized that Mr. Hendrickson had lived on St. Croix for most of his life, except for the time he had been incarcerated, had no juvenile adjudications, had a high school diploma, and lived with his common law wife and five-year-old son before he was arrested. He had not obstructed justice or attempted to resist arrest when he was arrested in Case No. 19-cr-00012, proving he was not a danger to the community. Similarly, he never resisted or impeded any of the searches or the arrest attendant to the present charge, nor did he flee after the execution of those warrants indicated he was suspected of Mr. Banani's murder. Furthermore, during a 2024 home visit, probation officers found no dangerous weapons. In addition, between his November 2023 release from incarceration and his 2024 arrest in the instant case, Mr. Hendrickson had not left St. Croix, which indicated that he was not a flight risk. Defense counsel asked that the Defendant be released on home detention with electronic monitoring at his common law wife's or mother's home, along with a requirement that he report to the probation office once or twice a week and other standard conditions.

In response, the Government pointed out that Ms. Encarnacion offered no credible evidence that would assure the safety of the community and Defendant's appearance. When

[3] While the Pretrial Services Reports are not admitted into evidence, as they are not public records and are to remain confidential, 18 U.S.C. §§ 3153(c)(1), (3), the Court did consider the statements included in the reports. *See United States v. Rowland*, No. 18-cr-00579-2, 2019 WL 653217, at *3 (E.D. Pa. Feb. 15, 2019) (considering information from Pretrial Services Report in assessing § 3142(g) factors in a detention hearing).

she was at work, no one would be supervising Mr. Hendrickson. Thus, she would be unable to monitor his calls, his compliance with the Court's order, or who came to the house when she was away. The Government did not know who else lived at the house or whether there was a landline to contact the Defendant at that location. In addition, Mr. Hendrickson provided no evidence that he might have known he was a suspect in the instant case, which prohibited the Court from concluding that, despite that knowledge, he opted not to leave St. Croix. Moreover, Mr. Hendrickson's pretrial release in his 19-cr-00012 case was revoked, suggesting he could not comply with Court Orders and would be a danger to the community. *See* Dkt. No. 57, *United States v. Hendrickson*, No. 19-cr-00012 (D.V.I. Aug. 20, 2019).

DISCUSSION

I. Section 3142(e)(3) Applies Even Where a Defendant Is Not Charged with Committing One of the Listed Offenses

"Upon the appearance before a judicial officer of a person charged with an offense," the Bail Reform Act governs how a court should determine whether to release or detain that person pending trial. 18 U.S.C. § 3142(a). It provides a non-exhaustive list of conditions of release a court can impose to ensure the accused individual does not flee or pose a threat to the safety of the community while awaiting trial. 18 U.S.C. §§ 3142(b), (c). The statute authorizes the detention of individuals pending trial when a court finds that no conditions of release will reasonably assure that the accused will not flee or pose a danger to the community. 18 U.S.C. § 3142(e).

As relevant here, the statute provides that, in certain cases, a presumption exists that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community." 18 U.S.C. § 3142(e)(3). The presumption applies when a judicial officer finds "probable cause to believe" that a defendant committed one or more specifically listed offenses, including "an offense under section 924(c)[.]" 18 U.S.C. § 3142(e)(3)(B).[4] If the presumption applies, the defendant must be detained pending trial, unless the Defendant rebuts the presumption. 18 U.S.C. § 3142(e).

Mr. Hendrickson's attorney argued that § 3142(e)(3)(B) applied only when an individual has been *charged* with a violation of § 924(c). But, as several courts across the country have held, this reading cuts against the statute's plain language, which specifically states that the rebuttable presumption applies "*if the judicial officer finds* that there is probable cause to believe that the person committed" a violation of 924(c). 18 U.S.C. § 3142(e)(3)(B) (emphasis added). *See e.g. Rudolph*, 582 F. Supp. 3d at 809-10 (agreeing with

[4] The offenses listed in 18 U.S.C. § 3142(e)(3) are:

> (A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;
> (B) an offense under section 924(c), 956(a), or 2332b of this title;
> (C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed;
> (D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or
> (E) an offense involving a minor victim [under 21 different sections of Title 18].

the Government's interpretation that the "plain language" of § 3142(e)(3) "focuses on a finding by the judicial officer, not upon the charges brought"); *Bess*, 678 F. Supp. at 932 (same); *Farguson*, 721 F. Supp. at 130 (same). *See also Desert Palace, Inc. v. Costa*, 539 U.S. 90, 98 (2003) ("where, as here, the words of the statute are unambiguous, the judicial inquiry is complete") (internal quotation marks omitted).

If Congress intended the rebuttable presumption to apply only when a defendant is *charged* with one of the enumerated offenses in section 3142(e)(3), it very easily could have said so. *See id.* at 99 ("If Congress intended" that a term in a statute be read to require some "heightened showing, it could have made that intent clear by including language to that effect in [the statute]."). Instead, Congress opted to mandate the application of the rebuttable presumption when "the judicial officer finds probable cause" that a certain offense has been committed. Congress did not use the term "charged" in § 3142(e) despite that term appearing twice elsewhere in the statute. *See Wisconsin Central Ltd. v. United States*, 585 U.S. 274, 279 (2018) ("Courts typically presume that "difference in language . . . convey differences in meaning.").

Therefore, the Court is unconvinced that § 3142(e)(3) means anything other than what it says: that the presumption in favor of detention applies "if the judicial officer finds that there is probable cause to believe that the person committed" one of the listed offenses. The only distinction between applying the rebuttable presumption in favor of detention in this case and in a case where the defendant was indicted for a violation of § 924(c) is that the

court must make a finding of fact as to whether probable cause exists to believe that the defendant violated § 924(c).[5] 18 U.S.C. § 3142(e)(3)(B).

Granted, no court in the Third Circuit has addressed, much less answered this statutory question. And the only circuit court to have addressed the issue has read the Bail Reform Act in such a way as to make § 3142(e)(3)(B) effective only upon a charged violation of § 924(c). *Chimurenga*, 760 F.2d at 405. Focusing on the word "charged" in § 3142(a) ("[u]pon the appearance before a judicial officer of a person *charged* with an offense, the judicial officer shall issue an order that, pending trial, the person be—. . . (4) detained under subsection (e) of this section") the Second Circuit concluded that "[t]he plain language" of the Bail Reform Act "shows that the presumption was intended to arise only after a defendant has been charged with *the particular offense* [enumerated in § 3142(e)(3)] by a valid complaint or indictment." *Id*. (emphasis added). But the Second Circuit does little by way of textual analysis to arrive at this conclusion, and arguably misinterprets § 3142(a) by reading "a person charged with an offense" as a person "charged with the particular offense."

It is therefore unsurprising that, outside of the Second Circuit, no court to confront this issue has agreed with *Chimurenga*'s interpretation of the Bail Reform Act:

> With due deference to the Court of Appeals for the Second Circuit, this Court does not read the 'plain language of the statute' as indicating that the presumption 'was intended to arise only after a defendant has been charged with the particular offense by a valid complaint or indictment.' *United States v.*

[5] This is because an indictment for violating § 924(c) would serve as prima facie evidence of the existence of probable cause that the violation occurred. *See Beavers v. Henkel*, 194 U.S. 73, 85-87 (1904).

> *Chimurenga*, 760 F.2d 400, 405 (2nd Cir. 1985). The 'plain language' of § 3142(e) states that the presumption applies upon a finding by 'the judicial officer' that there is probable cause to believe that the person committed an offense under 18 U.S.C. § 924(c). Section 3142(a), upon which the Second Circuit relied, speaks of a person charged with an offense, a necessary first step to determining whether a particular person is properly before the court, and if so whether he should be released or detained pending further proceedings.

Bess, 678 F. Supp. at 932.

Based on the plain reading of the Bail Reform Act, and despite *Chimurenga*'s holding to the contrary, this Court need look no further than the indictment issued against Mr. Hendrickson, regardless of the charges contained therein, to find that he was "charged with an offense" and may, therefore, be "detained under section (e)." 18 U.S.C. § 3142(a).

II. The Government Adduced Sufficient Probable Cause to Find Mr. Hendrickson Violated Section 924(c), So the Rebuttable Presumption in Favor of Detention Applied at the Detention Hearing

A. Relevant Law

Having held that a defendant need not have been charged with one of the specifically listed offenses under § 3142(e)(3) for the presumption of detention to apply, the question remained whether probable cause existed to find that Mr. Hendrickson violated one of those enumerated offenses—here, § 924(c), which establishes sentencing enhancements for:

> any person who, during and in relation to any crime of violence[6] or drug trafficking crime . . . for which the person may be prosecuted in a court of the

[6] Mr. Hendrickson did not and could not dispute that he was charged with a crime of violence. "[C]arjacking in violation of 18 U.S.C. § 2119 categorically constitutes a crime of violence under . . . 18 U.S.C. § 924(c)[.]" *United States v. Smith*, No. 19-2257, 2021 WL 2135947, at *1 (3d Cir. 2021). "[F]irst degree murder under 14 V.I.C. § 922(a)(1) is a crime of violence under § 924(c)(3)." *United States v. Matthias*, No. 2016-cr-0025, 2017 WL 1536430, at *12 (D.V.I.

> United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm[.]

18 U.S.C. § 924(c)(1)(A).

"Probable cause is a low hurdle. It requires only a fair probability that the person committed the crime." *Scutella v. Cousins*, 811 F. App'x 110, 113 (3d Cir. 2020) (internal quotation marks omitted). "It is well-established that an 'indictment is sufficient to support a finding of probable cause' necessary for the rebuttable presumption under § 3142(e) to arise." *United States v. Matthias*, No. 2016-cr-0025, 2017 WL 1536430, at *14 (D.V.I. Apr. 27, 2017) (quoting *United States v. Suppa*, 799 F. 2d 115, 119 (3d Cir. 1986)).

B. Application

Prima facie evidence, in the form of Mr. Hendrickson's indictment, established probable cause to believe that he was one of the perpetrators of a carjacking and murder, two crimes of violence. Based on Agent Mace's affidavit, which stated that surveillance footage showed that while committing those crimes at least one assailant brandished and discharged a firearm, the Court also found probable cause at the detention hearing to believe that during that crime at least one of the perpetrators—either Mr. Hendrickson or someone else—carried, possessed, and used a firearm while perpetrating the carjacking and murder. *See, e.g., id.* at *13 (a court may rely on the facts outlined in an investigator's affidavit to find probable cause regarding the information or circumstances surrounding an offense). This

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Apr. 27, 2017).

was sufficient evidence to meet the "low hurdle" of probable cause to believe Mr. Hendrickson violated § 924(c) by committing a violent crime and either using or aiding and abetting the use of a firearm during that crime.[7]

That the murder weapon was found in someone else's possession does not necessitate a different outcome. The Government adequately demonstrated probable cause to find that Mr. Hendrickson at least facilitated the use of the firearm by participating in the carjacking and murder, regardless of who possessed the firearm. Therefore, the Court held that the rebuttable presumption that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community" applied against Mr. Hendrickson.

III. Mr. Hendrickson Did Not Produce Enough Evidence to Rebut the Presumption in Favor of Detention, While the Government Met Its Burden of Showing Detention Was Appropriate in This Case

A. Legal Standards

Once the presumption in favor of detention is established, the burden is placed on the defendant to rebut the presumption by producing countervailing evidence to support his contention that he will appear and will not pose a threat to the community. *U.S. v. Carbone,*

[7] A person violates § 924(c) even if they were not the actual user or possessor of a firearm during a crime so long as they aided and abetted the violent crime during which the gun was used. *See* 18 U.S.C. § 2(a) ("Whoever commits an offense . . . or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."); *Rosemond v. United States*, 572 U.S. 65, 73-75 (in facilitating, as an abettor, one part of a violent crime that involved the use of a gun, the defendant committed a violation of § 924(c) even if that person was not the party that carried or used the firearm).

793 F.2d 559, 560 (3d Cir. 1986). This Court has held that to rebut the presumption, a defendant is "required to produce 'some credible evidence' to assure his presence before the Court and safety of the community." *United States v. Richardson*, No. 2009-cr-23, 2009 WL 2044616, at *3 (D.V.I. July 9, 2009) (citing *Carbone*, 793 F.2d 559 at 560) (internal quotation marks added by *Richardson* court); *see also United States v. Sterling*, 459 F. Supp. 3d 673, 678 (E.D. Pa. 2020) ("With the rebuttable presumption triggered, the burden shifts to [the defendant] to produce evidence of lack of dangerousness and risk of flight.").

Rebuttal evidence may include "'testimony by coworkers, neighbors, family physician, friends, or other associates concerning the arrestee's character, health, or family situation,' or evidence of steady employment." *United States v. Levy*, No. 08-393, 2008 WL 4978298, at *1 (E.D. Pa. Nov. 20, 2008) (quoting *United States v. Perry*, 788 F.2d 100, 115 (3d Cir. 1986)); *see also Suppa*, 799 F.2d at 120. No single factor or combination of factors is dispositive. *See Levy*, 2008 WL 4978298, at *1.

While the evidentiary burden of rebutting the presumption has been interpreted as being "relatively light," *United States v. Griffin*, No. 07-cr-2, 2007 WL 510140, at *2 (W.D. Pa. Feb. 12, 2007), the evidence produced by the defendant must be probative on the issues that the defendant is not a flight risk and that he poses no danger to the community. *United States v. Hollerich*, 22-cr-225, 2022 WL 16806156, at *4 (W.D. Pa. Nov. 8, 2022).

The Court notes that there is only a single presumption to be rebutted: that no conditions of release will assure the person's appearance *and* the safety of the community.

18 U.S.C. § 3142(e)(3). *See United States v. Sherman*, 150 F.3d 306, 316 (3d Cir. 1998) ("'and' is conjunctive"). Thus, evidence establishing only that the defendant either does not pose a flight risk or is not a danger to the community is insufficient to rebut the presumption. The defendant must produce evidence indicating both that he is not a flight risk *and* that he is not a danger to the community.

If the defendant meets this burden of production, the burden shifts back to the government to prove a risk of flight by a preponderance of the evidence *or* dangerousness by clear and convincing evidence. *Perry,* 788 F.2d at 114–15 ("The clear and convincing standard does not even operate until the defendant has come forward with some evidence of lack of dangerousness."); *see also United States v. Kanawati,* 2008 WL 1969964, at *2 (D.V.I. May 5, 2008) ("Risk of flight and danger to the community are distinct statutory sources of authority to detain, and proof of one ground for detaining a defendant is quite enough, making any discussion of the other ground irrelevant.") (internal quotation marks omitted). But even if a defendant fails to rebut the presumption by not providing sufficient credible and probative evidence, the Government still retains the ultimate burden of proving that no conditions of release can assure that the defendant will appear and the safety of the community. *See United States v. Roebuck*, No. 23-mj-0009 (D.V.I. May 5, 2023); *see also Lee*, 195 F. Supp. 3d at 125 ("But in the end, while the presumption operates to shift the burden of production, it does not alter the government's statutory burden of persuasion, which is

consistent with the presumption of innocence. [*United States v*.] *Portes*, 786 F.2d 758, 764 [7th Cir. 1985].").

In making its determination of whether there are conditions or a combination of conditions of release that will reasonably assure that Mr. Hendrickson will appear or that will ensure the safety of the community, the Court must weigh the evidence in light of the four factors set forth in 18 U.S.C. § 3142(g). Those factors are: (1) the nature and seriousness of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of Mr. Hendrickson; and (4) the nature and seriousness of the danger to any person or the community that would be posed by Mr. Hendrickson's release. *Id.*

B. Analysis

To rebut the presumption of detention, defense counsel pointed to Mr. Hendrickson's ties to the community, given his longstanding residence on St. Croix and the presence of his mother, common law wife, and son on the island. Counsel further noted that Mr. Hendrickson did not obstruct justice or resist arrest when he was arrested, and that no dangerous weapons were found during a home visit. In addition, counsel elicited the testimony of Ms. Encarnacion, who offered to post a $50,000 bond and serve as a third-party custodian.

While Ms. Encarnacion stated that Mr. Hendrickson could stay at her residence, she also testified that she worked eight and one-half hours a day (plus travel time) during the work week and that she could not supervise him at that time. Consequently, the Court has no option but to reject Ms. Encarnacion's designation as third-party custodian, because,

while at work, she would be unable to monitor whether Mr. Hendrickson remained in the residence, who might be visiting him, and what he might be doing.

Moreover, evidence of Mr. Hendrickson's ties to the community and the availability of a third-party custodian do not constitute credible evidence "*rebutting* the statutory presumption that he is a danger to the community." *United States v. Benjamin*, No. 19-cr-79, 2021 WL 3559471, at *3 (D.V.I. Aug. 11, 2021) (citing *Perry*, 788 F.2d at 107 and other cases, and concluding that the defendant had not rebutted the presumption of detention despite his testimony about "his ties to the community, the fact that he was out on bail from state court charges and had not fled, his education, and his intention to remain . . . to face all charges") (emphasis in original); *United States v. McKnight*, No. 2:20-cr-265-5, 2021 WL 615211, at *6 (D.N.J. Feb. 17, 2021) (holding that the defendant did not rebut the presumption of detention because evidence of his ties to the community had no "bearing on his danger to the community" and other evidence weighed in favor of detention); *Matthias*, 2017 WL 1536430, at *15 (finding that evidence of the defendant's "ties to family and the community; the availability of two third-party custodians and a place to stay; and his voluntary surrender to police" was insufficient to rebut the presumption of detention).

Ms. Encarnacion's testimony also did not reflect that the Defendant "has a respect for the law, personal reliability, or that his criminality is a thing of the past." *United States v. Wilson*, No. 20-cr-0048, 2020 WL 2084994, at *3 (M.D. Pa. Apr. 30, 2020)*; see also United States v. Santiago-Pagan,* No. 1:08-CR-0424-01, 2009 WL 1106814, at *5 (M.D. Pa. Apr. 23,

2009) (finding that the defendant did not rebut the presumption of dangerousness because "[t]he court heard no testimony relating to defendant's moral integrity, respect for the law, or personal reliability; such evidence is not only helpful, but is often crucial to an effective rebuttal of the statutory presumption"). The fact that he did not resist arrest or obstruct justice when arrested on these charges similarly is not indicative of whether he is a danger to the community. Instead, the fact that Mr. Hendrickson's pretrial release was revoked in his prior federal case—after a search warrant executed on his property collected marijuana, a digital scale, 6 empty vials, and $3,830 in cash—is more probative of how he would conduct himself on pretrial release and suggests he is a danger to the community.

The evidence adduced by Mr. Hendrickson to rebut the presumption, such as his mother's offer to post bail and his strong ties to the community, focused almost exclusively on whether he was a flight risk. The limited information provided to the Court to rebut the presumption that no condition or combination of conditions would reasonably assure the safety of community—offered mostly by way of argument from his attorney—was too insufficient and unsubstantiated to rebut the presumption.

But even if the Court were to find that the Defendant rebutted the presumption, it would still conclude that he should be detained prior to trial because there is clear and convincing evidence to find he is a danger to the community, based on the four factors articulated in 18 U.S.C. § 3142(g); *see Kanawati*, 2008 WL 1969964, at *2. As to the first factor, the nature and circumstances of the offense charged, including whether it is a crime

of violence, the Defendant is charged with crimes of violence (carjacking and murder), where a gun was used—crimes that unquestionably indicate a danger to the community. *See United States v. Bergrin,* 09-cr-369, 2009 WL 1560039, at *6 (D.N.J. May 29, 2009) ("it is beyond dispute that murder is the most serious of crimes.") (citing cases). As to the second factor, weight of the evidence, the grand jury found probable cause to believe Mr. Hendrickson committed these serious crimes by indicting him. Further, the Government referred to DNA evidence, video footage of the crime and events leading up to it, location evidence of cell phones, and items recovered from Mr. Hendrickson's home to support their case. The evidence against the Defendant is strong. As to the third factor, the history and characteristics of the defendant, while Mr. Hendrickson has ties to the community, the Court may also consider his past conduct (two violent crimes, including a firearm charge, for which he was arrested) and criminal history, which includes a conviction for firearm possession, as well as the revocation of pretrial release in his prior criminal case. Each of these three factors weigh in favor of detention.

The fourth factor, the nature and seriousness of the danger to any person or the community that would be posed if the defendant is released, "requires the court to assess the totality of the evidence presented." *Santiago-Pagan*, 2009 WL 1106814, at *7. Here, courts consider factors indicative of the defendant's propensity to commit crime generally or otherwise to endanger the community. *United States v. Childs,* No. 22-cr-0030, 2024 WL 4803786, at *2 (D.N.J. Nov. 15, 2024). Mr. Hendrickson's criminal record reveals three

arrests and a conviction for crimes involving violence, drugs, and firearms. The Court views his criminal record—particularly the revocation of pretrial release in his prior federal case, indicating a failure to comply with Court-ordered release conditions—as sufficient bases to conclude that Mr. Hendrickson would pose a threat to others if released, even if limited to home confinement with electronic monitoring. Therefore, this § 3142(g) factor weighs in favor of detention as well. On this record, the Court need not address whether Mr. Hendrickson poses a risk of flight. *Kanawati*, 2008 WL 1969964, at *2,

CONLCUSION

The presumption of detention applied in this case because the Court found probable cause to believe Mr. Hendrickson violated § 924(c). The Defendant did not meet his burden of production to rebut that presumption. However, even had the presumption not applied, the Court would still find detention appropriate in this case based on the evidence presented.

WHEREFORE, it is now hereby **ORDERED**:

1. The Government's Motion for Detention, Dkt. No. 16, seeking to detain Defendant Rakem Angel Hendrickson pending trial, is **GRANTED**.
2. The Defendant is committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal.
3. The Defendant shall be afforded a reasonable opportunity for private consultation with counsel.

4. Upon order of a Court of the United States or upon request of an attorney for the Government, the Federal Bureau of Prisons shall deliver Defendant to the United States Marshal for the purpose of appearance in connection with a Court proceeding.

5. This matter may be reopened by Defendant at a later date pursuant to 18 U.S.C. § 3142(f) if new evidence develops.

ENTER:

Dated: November 27, 2024

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE