DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

UNITED STATES OF AMERICA,

v.

JUAN BERMUDEZ,

Defendant.

1:24-cr-00006-WAL-EAH

TO: Rhonda Williams-Henry, Esq., AUSA
Gabriel J. Villegas, Esq., AFPD

ORDER

THIS MATTER comes before the Court on the Government's Motion for Detention of Defendant Juan Bermudez, pursuant to 18 U.S.C. § 3142(f)(1)(E) and (f)(2)(A). Dkt. No. 14. The Court held a hearing on the motion on March 11, 2024. The Government was represented by Rhonda Williams-Henry, Esq., AUSA, and the Defendant was represented by Gabriel J. Villegas, Esq., AFPD. The Defendant also was present. For the reasons that follow, the Court will grant the motion.

PROCEDURAL BACKGROUND

On March 4, 2024, the Defendant was charged in an Information with (1) sexual exploitation of a child, in violation of 18 U.S.C. § 2251(a); (2) coercion and enticement, in violation of 18 U.S.C. § 2422(b); (3) aggravated second degree rape, in violation of 14 V.I.C. § 1700a(a); and (4) unlawful sexual contact second degree, in violation of 14 V.I.C. § 1709(a). Dkt. No. 1. The charges stemmed from the alleged sexual assault of a 13-year-old minor by Defendant, who was a friend of the victim and her family. Dkt. No. 1-1. A search of the victim's and Defendant's cellphones revealed sexually explicit photographs and videos of the victim,

and the victim and Defendant, as well as text messages between the victim and Defendant. *Id*. In a September 2023 forensic interview, the victim stated she had had an ongoing sexual relationship with the Defendant starting around May 2022. *Id.*

The Government moved to proceed by affidavit at the detention and preliminary hearing[1]. Dkt. No. 13. In its motion for detention, the Government argued that this case raises a rebuttable presumption for detention because the offenses involve a minor child and raises a serious risk that the Defendant will flee. Dkt. No. 14. The sexual exploitation of a child charge carried a penalty of 15 to 30 years, and the coercion and enticement charge carried a ten-year to life sentence; the weight of the evidence was strong, given the minor's statements at the forensic interview and the depictions taken from the cell phone; while the Defendant had family ties to the community, he also had ties outside the community as he had been employed in Tennessee for approximately 20 years and had an incentive to flee given the possible sentence; and the Defendant's dangerousness was established by the nature of the offenses committed. *Id*.

At the hearing, three witnesses testified on behalf of the Defendant, stating that they would serve as third party custodians. Noemi Ortiz, the Defendant's sister, stated that she was a minister of a church that was located at the same plot as Defendant's residence, where he resides with his mentally ill son who she believes is in his 20's. She had activities at the

[1] The Government charged the Defendant through an Information and therefore the Defendant had no right to a preliminary hearing. The Court permitted the Government to proceed by affidavit at the Detention Hearing.

church on Tuesday, Wednesday, and Friday from 7:15 p.m. to 8:45 p.m. She took care of her grandchild on Monday and Tuesday from 9:30 a.m. to 4:30 p.m., and on Wednesday, Thursday, Friday, and Saturday from 3:30 p.m. until 10:30 p.m. She could look in on the Defendant on Monday and Tuesday after 4:30 p.m. She did not know the Defendant's routine and indicated they were close, although she did not know his personal business or the age of his son. She lived about five minutes from the Defendant's house. She does not have any cash or property that she could put up to satisfy Defendant's bond if set by the Court.

Efrain Bermudez, the Defendant's brother, lived about 700 feet from his brother's residence, and the minor victim had lived in his home. He was retired but worked on his farm across the street; however, he could not see the Defendant's residence from his farm. Asked if he felt the Defendant would flee, he responded that, to the best of his ability, today, he would say no. While he had the property that he lived in, which he testified was valued between $30,000 to $70,000, he did not state whether he could post it to satisfy Defendant's bond, if set by the Court.

Isaac Edward, the Defendant's employer, stated that he had known Bermudez for about two years. Bermudez came in sometimes on Mondays, but regularly Tuesday through Friday, and worked from 9:00 or 10:00 a.m. to 4:30 p.m. He would go home at lunch to feed his son. He had "not heard everything" about the charges against Bermudez, but he did not see anything that made him feel uncomfortable for Bermudez to be in his establishment, to work for him, or be around his family. Although he had a teenage daughter, he could make sure she was not around his shop when Bermudez was there. If Bermudez did not show up

for work, he would let the Court know. He could "do what he can" to assist in posting cash or property as a bond.

Attorney Villegas posited a condition of release where Bermudez would remain home on curfew from 6:30 p.m. until 6:30 a.m., which would allow him to go to work. He would stay home on the weekends. On being questioned by the Court, Ms. Ortiz responded that young people attended the church on the property. Attorney Villegas also stated that since the minor victim had left the island, no one else would be at risk. The Court responded that the issue is the danger to others in the community, and asked what could happen in the evening, since none of the proposed custodians lived with the Defendant. Attorney Villegas answered that Bermudez would be sleeping; he would not be carousing.

The Government argued that the Defendant broke a family's trust when he went after the minor victim, he was a danger to other children, he was a flight risk given the number of years of sentencing exposure and his ties outside the community. He was also a danger to the community given that this was not a sting operation but there was an actual victim. No conditions would ensure the safety of the community or that he would not flee.

DISCUSSION

Title 18 U.S.C. § 3142(e) authorizes the Court to detain a defendant unless the Court finds that there exists a "condition or combination of conditions [that] will reasonably assure the appearance of the persons as required and the safety of any other person and the community." Pursuant to Section 3142(e)(3), a rebuttable presumption arises in favor of detention where "there is probable cause to believe that the person committed – . . . an

offense involving a minor victim under section . . . 2242 . . . 2251[.]" 18 U.S.C. 3142(e)(3)(E). The offenses here involved a minor victim and Bermudez was charged in an Information under 18 U.S.C. §§ 2242 and 2251.[2]

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 *United States v. Carbone*, 793 F.2d 559, 560 (3d Cir. 1986)) (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."). 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), it requires a showing that the defendant's criminality "is a thing of the past." *United States v. Hollerich*, 22-cr-225, 2022 WL 16806156, at *3 (W.D. Pa. Nov. 8, 2022) (citing

[2] A finding by the judicial officer that there is probable cause to believe the defendant committed an offense under 18 U.S.C. § 2242 and 2251 raises a 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." 18 U.S.C. § 3142(e)(3). That finding is obviated where a defendant is charged in an indictment, however, as "the indictment is sufficient to support a finding of probable cause triggering the rebuttable presumption of dangerousness under § 3142(e)." *United States v. Suppa,* 799 F.2d 115, 119 (3d Cir.1986). "[T]he filing of an information in the Virgin Islands is the *full equivalent* of the presentment of an indictment by a grand jury." *Rivera v. Government of Virgin Islands,* 375 F.2d 988, 990 (3d Cir.1967) (emphasis supplied). Thus, in the Virgin Islands, an information supports a finding of probable cause to trigger the rebuttable presumption.

United States v. Perry, 788 F.2d 100, 114 (3d Cir. 1986)) and be probative that the defendant is not a flight risk or that he poses a danger to the community.

If the Defendant rebuts the presumption, the burden then shifts back to the Government to demonstrate by clear and convincing evidence that Bermudez is a danger to the community and by a preponderance of the evidence that Bermudez will not appear. *See Perry*, 788 F.2d at 115 ("The clear and convincing standard does not even operate until the defendant has come forward with some evidence of lack of dangerousness.").

In making its determination of whether there are conditions or a combination of conditions of release that will reasonably assure that Bermudez appears and 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 Bermudez; and (4) the nature and seriousness of the danger to any person or the community that would be posed by Bermudez's release. 18 U.S.C. § 3142(g).

The Court concludes that Bermudez's evidence has not rebutted the presumption of detention—i.e., that no condition or combination of conditions will reasonably assure his appearance or the safety of any other person and the community. As to assuring Bermudez's appearance, when asked whether she thought he might leave the island, his sister's lukewarm response was "I don't think so." When asked whether he thought Bermudez would flee the island, his brother gave a similar equivocal response that, "to the best of his ability," as of "today," he did not believe he would flee. Bermudez's employer did not opine on the

issue. None of these conditional statements are probative or constitute sufficient evidence to rebut the presumption that no conditions would reasonably assure Bermudez's appearance. In addition, the serious nature of the offenses charged and the severity of the penalties, if the Defendant were convicted, are compelling grounds for concluding that the Defendant poses a risk of flight. *See United States v. Wrensford,* 2012 WL 6028628, at *7 (D.V.I. Dec. 4, 2012) (quoting *United States v. Stein,* 2005 WL 3071272, at *7 (S.D.N.Y. Nov. 15, 2005) for the proposition that "[t]he defendant has a substantial motive to flee given the severity of the sentence he may face in the event of conviction.").

Bermudez's evidence was similarly insufficient to rebut the presumption that no condition or combination of conditions would reasonably assure the safety of any other person and the community. The evidence was somewhat probative of his general history and characteristics, but not that Bermudez's criminality was "a thing of the past." *Hollerich*, 2022 WL 116806156, at * 3. In fact, his sister and employer stated that they were not all that familiar with the charges against him. Moreover, his sister did not know her brother's daily routine, his personal business, or even how old his son was, that belied a relationship that did not appear very close and raised a question of whether she could exercise any authority over him. She had childcare obligations during the day and church obligations in the evenings, leaving time only on Monday and Tuesday afternoons to visit his home. This is clearly inadequate oversight to insure that Bermudez would comply with all of the Court-imposed restrictions that might accompany his release. Similarly, Bermudez's brother's home is 700 feet from Bermudez's home. During the day, he works across the street at his

farm and could not see Bermudez's house. Nor would he be able to closely monitor the house in the evenings—not only Bermudez's ingress and egress, but also the ingress and egress of any visitors—a particularly important point because Bermudez has been charged with enticement. And while Bermudez's employer interacted with him during the workday, he also would not be monitoring Bermudez's home on evenings and weekends to ensure that no minors would visit the premises.

While Bermudez's sister and brother did not have concern for *their* safety in relation to Bermudez, that does not speak to whether "any other person" in the community would reasonably be safe if he were not detained. 18 U.S.C. § 3142(e)(3). Similarly, Bermudez's employer testified that he never saw Bermudez as a "threat" and had him around his family (including a 16-year-old daughter)—i.e., he did not see Bermudez as a threat to him or his family. At the same time, he qualified his answers, stating that he "hadn't heard everything" about Bermudez's charges. In the Court's view, this statement does not address the safety of "any other person" in the community either.

For these reasons, the Court believes Defendant's suggestion of a 6:30 p.m. to a 6:30 a.m. curfew is inadequate to assure the safety of the community. So too, confinement to his house would not suffice either, since none of the proposed third-party custodians would be keeping a constant eye on his house. Consequently, the Court finds that the Defendant has not rebutted the presumption that he poses a danger to the community.

Furthermore, even if the Court had found Bermudez's evidence sufficient to rebut the presumption, the factors under § 3142(g) militate in favor of detention. The first factor, the

nature and seriousness of the crimes charged, involves sexual exploitation of a child and coercion and enticement. Congress has recognized the seriousness of offenses outlined in 18 U.S.C. §§ 2242 and 2251 that involve minor victims by creating a rebuttable presumption in favor of detention when there is probable cause to believe that an individual has committed such an offense. 18 U.S.C. § 3142(e)(3). *Cf. United States v. Richardson*, No. 3:17-cr-24, 2022 WL 2442299, at *6 (W.D. Pa. June 21, 2022) (finding charge under 18 U.S.C. § 2252 a serious offense weighing in favor of detention). Moreover, the seriousness of these crimes is reflected in the sentences: a ten-year minimum (maximum of life) for conviction under § 2422(b), and a fifteen-year minimum (maximum of 30 years) for a conviction under § 2251(a)

In addition, Bermudez's alleged crimes involve a minor and are, therefore, crimes of violence. 18 U.S.C. § 3156 (defining "crime of violence" as used in the Bail Reform Act to include "any felony under chapter . . . 117[.]"[3]). *See, e.g., United States v. Munro,* 394 F.3d 865, 871 (10th Cir. 2004) ("the risk involved in attempted sexual abuse of a minor" in violation of 18 U.S.C. § 2422, "is significant enough to render it a crime of violence"); *United States v. Champion,* 248 F.3d 502, 506 (6th Cir. 2001) (recognizing that violations of federal statutes

[3] Chapter 117 of Title 18 of the U.S. Code includes crimes under 18 U.S.C. § 2422, coercion and enticement. Moreover, U.S.S.G. § 2L1.2 defines "crime of violence" for purposes of an offense level sentencing enhancement to be "any of the following offenses under federal, state, or local law: murder, manslaughter, kidnapping, aggravated assault, *a forcible sex offense ..., statutory rape, sexual abuse of a minor*, robbery, arson, extortion, extortionate extension of credit, burglary of a dwelling, or any other offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another." *See* U.S.S.G. § 2L1.2, cmt. n.1(B)(iii) (2008) (emphasis added).

designed to protect minors constitute a crime of violence, and specifically that a conviction under § 2251(a) was a crime of violence).[4] These allegations are crimes Congress specifically set apart as so dangerous that they require the presumption of detention. Bermudez has offered no argument or evidence in an effort to contradict the seriousness of the nature and circumstances surrounding the charges against him. Thus, this factor weighs heavily in favor of detention.

Second, the weight of evidence against Bermudez, showing his dangerousness, is substantial, given the victim's statement and the actual photographic and video depictions of the criminal activity from the victim's and Bermudez's cellphones, such that this factor favors detention.

Third, as to Bermudez's history and characteristics, he was born on St. Croix and has family ties to the community. He has a job, and he is also now looking after his son who is

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[4] In *United States v. Livingood*, No. 5:21-MJ-5375, 2021 WL 5918553 (E.D. Ky. Dec. 15, 2021), the Court wrote:

> sexual abuse crimes are among the most serious and harmful crimes prosecuted in federal court. When the circumstances of the crime suggest that a trusted adult abused very young children left in his care, this factor weighs heavily in favor of detention. *See United States v. Downsbrough*, No. 3:13-CR-61, 2013 WL 2447858, at *1 (E.D. Tenn. June 5, 2013) (concluding that "the nature and circumstances of the offense weigh[ed] in favor of detention because the charged offenses involve[d] minor victims"); *United States v. Abad*, 350 F.3d 793, 797 (8th Cir. 2003) (observing that "[d]etaining adults who prey on children for the adult's sexual gratification . . . is [ ] a legitimate government objective" justifying pretrial detention); *United States v. Demarcus Bristuan Fitzhugh*, 2016 WL 4727480, at *5 (E.D. Mich., Sept. 12, 2016) ("*Just one* sexually-related offense against *just one* minor is enough to imply dangerousness.") (emphasis in original)[.]

Id. at *2.

mentally ill. He has one prior conviction in 1999 for conspiracy to possess with intent to distribute marijuana, where he was sentenced to five years' probation. While his family ties and minor criminal history weigh against detention, the fact that he took advantage of his family ties—the minor victim lived in his brother's house—to commit the alleged offenses discounts this factor in his favor. *See United States v. Livingood*, No. 5:21-MJ-5375-MAS, 2021 WL 5918553, at *3 (E.D. Ky. Dec. 15, 2021); *see also United States v. Abad*, 350 F.3d 793, 798 (8th Cir. 2003) (noting even though the defendant had no prior criminal history, "the nature of the crime charged-sexual activity with a minor-weighs heavily against release."). In addition, the fact that the purported illicit relationship with the minor lasted over a year without being detected evinces cunning. This third factor is thus a "neutral consideration that favors neither release nor detention." *Livingood,* 2021 WL 5918553, at *3.

The final factor—the nature and seriousness of the danger to any person or the community—requires the court to "assess the totality of the evidence presented." *United States v. Santiago-Pagan*, No. 08-cr-424, 2009 WL 1106814, at *7 (M.D. Pa. Apr. 23, 2009). Allegations of enticing a child to engage in sexual activity are "particularly dangerous and pose a threat the Court cannot easily mitigate if [the defendant] is released," and "the Court can hardly conceive of a more seriously dangerous crime than child rape." *United States v. Cornish*, 449 F. Supp. 3d 681, 686–87 (E.D. Ky. 2020). As the district court opined in *United States v. Hardy,* No. 19-MJ-118, 2019 WL 2211210 (D.D.C. May 22, 2019), the fourth factor weighed heavily in favor of detention because the significant harms and dangers of the crimes charged, involving sexual activity with a minor, "animated the Congress to create the

statutory presumption of detention in these cases and to require a mandatory minimum of ten years' imprisonment upon conviction" of one of the offenses here, and a 15-year minimum for the other.[5] *Id*. at *10.

The seriousness of the crimes here, in the absence of significant countervailing considerations, gives the Court great pause. There was no testimony about Bermudez's character that would give the Court any confidence that this behavior was so out of step with his character that there would be no chance of repetition. The Court is deeply concerned that if Bermudez had the impulse to allegedly have sexual relations with a minor who was living in his brother's house, and to film those activities, the constraints of family trust, societal norms, and the legal system did not prove sufficient for him to restrain himself. While Defendant's counsel contends that since the victim is off-island, there is no further risk, that is not the thrust of this factor that considers danger to any other person in the community. The Court is not prepared to accept this bald statement without any other proof. And Defendant provided no such proof.

In sum, although Bermudez presented some evidence to show his lack of dangerousness and flight risk, it was insufficient to rebut the presumption that he should be

[5] Even where a defendant has had no contact with an actual child but engaged "with child exploitation materials" (child pornography), courts have found "real, lasting harm to real victims." *Livingood,* 2021 WL 5918553, at *3 (citing *United States v. Pece*, No. 1:20-CR-186-1, 2020 WL 6263640, at *6–7 (N.D. Ohio Oct. 23, 2020) (recognizing the danger of such images because they "permanently records the victim's abuse, and [their] continued existence causes the child victims of sexual abuse continuing harm by haunting those children in future years"); *id.* (observing that "possessors of child pornography aid in creating and sustaining a market for such material")).

detained pending trial. *See United States v. Santiago-Pagan*, No. 08-cr-424, 2009 WL 1106814, at *5 (M.D. Pa. Apr. 23, 2009) (concluding that "rebuttal of the presumption of dangerousness requires a showing that defendant's criminality is a thing of the past," and defendant did not rebut presumption of dangerousness because the proffered evidence did not relate to "defendant's moral integrity, respect for the law, or personal reliability").

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

1. The Government's Motion for Detention, Dkt. No. 14, seeking to detain Defendant 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: March 13, 2024

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