



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

JPM:AP

*271 Cadman Plaza East
Brooklyn, New York 11201*

November 28, 2022

By Email and ECF

The Honorable Roanne L. Mann
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Jonathan Rodriguez & Junior Marmol Duran
Criminal Docket No. 22-MJ-1255

Dear Judge Mann:

The government submits this letter in advance of the defendants' initial appearances and detention hearing in the above-referenced case. For the reasons stated below, the government requests that the defendants be detained pending trial. They pose a danger to the community and constitute a significant flight risk.

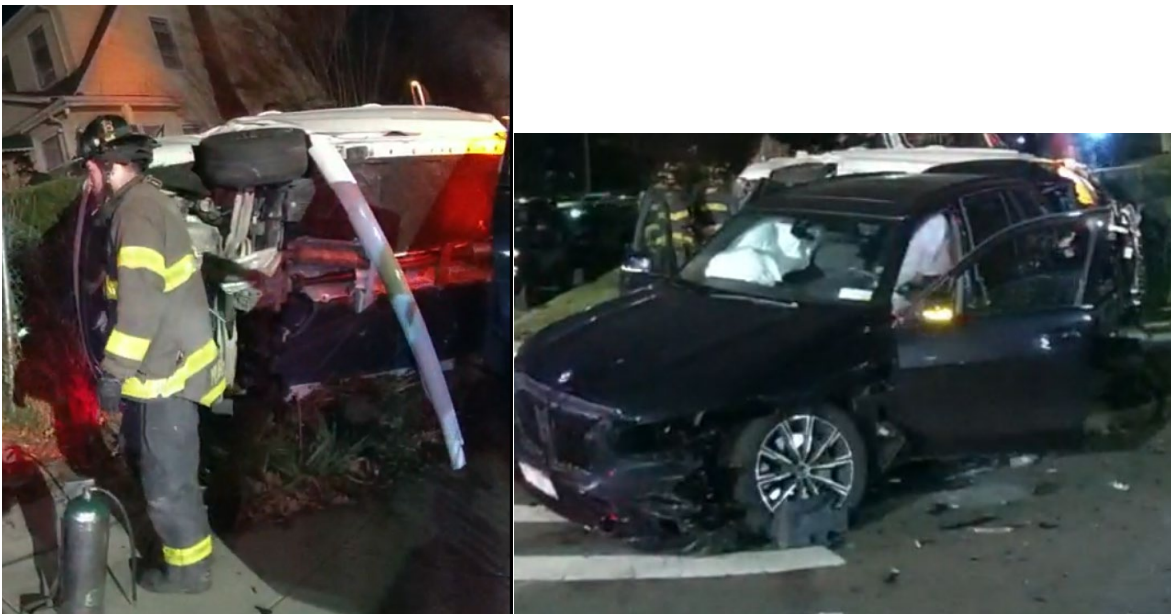
A. Background

The defendants are charged by complaint with participating in a recent, violent carjacking and brandishing a firearm during a crime of violence. On November 22, 2022, at approximately 1:30 a.m., a victim of the defendants' offenses, "John Doe," was approached by five males who were driving a stolen white Mercedes Benz (the "Mercedes") with Florida license plates near 80-49 Kent Street in Queens, New York. One of the five males tackled John Doe to the ground as another pointed a firearm in his direction. As John Doe was held at gunpoint, one of the males forcibly stole, among other things, John Doe's cell phone, car keys, wallet, and two envelopes collectively containing approximately \$13,935 in cash. Some of the men fled in John Doe's black BMW X5 (the "BMW") as the others drove away in the Mercedes.

Following the robbery and carjacking, John Doe was able to track his stolen cell phone using his wife's phone and reported the location of the stolen phone to responding police officers. John Doe accompanied the officers in their marked police vehicle to look for the five males and the stolen BMW. During the canvass, the officers observed the stolen BMW driving at a high rate of speed the wrong way on a one-way street of a residential block causing the officers to swerve to avoid crashing into the BMW. The officers continued their pursuit of the BMW for a short distance until they observed it collide with the Mercedes driven by the other

males involved in the carjacking. The collision caused the Mercedes to flip on its side next to a house.

After the collision below (less than 10 minutes after the carjacking), the defendant Jonathan Rodriguez fled from one of the vehicles but was apprehended a short distance away after a brief foot chase. Responding officers also found the defendant Junior Marmol Duran hiding underneath a truck a short distance from the collision. Near him, police recovered a fanny pack containing the envelopes with the cash stolen from John Doe. Co-defendant Juan Acevedo (who was previously arraigned and detained) was also found unconscious on the ground near the collision. He was later transported to a local hospital for treatment to a fractured pelvis. Police also recovered additional items stolen from John Doe in the BMW. Inside the Mercedes, police recovered a loaded 9mm firearm. John Doe separately identified the defendants as having been involved in the carjacking.



Most troublingly, the violent carjacking appears to be only one of a spate of armed robberies carried out by the defendants in the recent week. According to several complaints sworn against the defendants in Queens County Supreme Court, the defendants are also suspected of participating in two gunpoint robberies in Queens, which took place approximately half an hour before the carjacking of John Doe. In both of those robberies, the victims were approached by Hispanic males driving a white Mercedes Benz. The earlier robberies took place a short driving distance away from the carjacking in a nearby precinct. Those victims were robbed of cash, winter jackets, and cell phones. Following the collision of the stolen cars, police recovered some of the cell phones and jackets stolen earlier in the evening from the wrecked Mercedes. In a Mirandized post-arrest statement, Rodriguez implicated himself in the carjacking and also admitted to participating in the robberies described above with his co-conspirators.

On November 25, 2022, the Honorable Lois Bloom, United States Magistrate Judge, authorized a complaint and signed arrest warrants charging Rodriguez, Acevedo, and

Marmol Duran with violations of Title 18, United States Code, Sections 2119 and 924(c) in connection with the carjacking of John Doe on November 22, 2022. On November 26, 2022, Acevedo was arraigned on the complaint and Judge Bloom entered an order of detention.

B. Legal Standard

Under the Bail Reform Act, Title 18, United States Code, Section 3141 et seq., federal courts are empowered to order a defendant's detention pending trial upon a determination that "no condition or combination of conditions would 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). A finding of dangerousness must be supported by clear and convincing evidence. See United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995). A finding of risk of flight must be supported by a preponderance of the evidence. See United States v. Jackson, 823 F.2d 4, 5 (2d Cir. 1987); see also United States v. Abuhamra, 389 F.3d 309, 320 n.7 (2d Cir. 2004).

The concept of "dangerousness" encompasses not only the effect of a defendant's release on the safety of identifiable individuals, such as victims and witnesses, but also "the danger that the defendant might engage in criminal activity to the detriment of the community." United States v. Millan, 4 F.3d 1038, 1048 (2d Cir. 1993) (quoting legislative history).

The Bail Reform Act lists four factors to be considered in the detention analysis, whether for risk of flight or dangerousness: (1) the nature and circumstances of the crimes charged; (2) the history and characteristics of the defendant; (3) the seriousness of the danger posed by the defendant's release; and (4) the evidence of the defendant's guilt. See 18 U.S.C. § 3142(g); see also United States v. Jacobson, 502 F. App'x 31, 32 (2d Cir. 2012).

Where the evidence of guilt is strong, it provides "a considerable incentive to flee." United States v. Millan, 4 F.3d 1038, 1046 (2d Cir. 1993); see also United States v. Palmer-Contreras, 835 F.2d 15, 18 (1st Cir. 1987) (per curiam) (where "the evidence against defendants is strong, the incentive for relocation is increased").

Additionally, the possibility of a severe sentence is an important factor in assessing a defendant's likelihood of flight. See Jackson, 823 F.2d at 7; United States v. Martir, 782 F.2d 1141, 1147 (2d Cir. 1986) (defendants charged with serious offenses whose maximum combined terms created potent incentives to flee).

Under the Bail Reform Act, the government may proceed by proffer, United States v. Ferranti, 66 F.3d 540, 541 (2d Cir. 1995); see also United States v. LaFontaine, 210 F.3d 125, 130-31 (2d Cir. 2000) (explaining that the government is entitled to proceed by proffer in a detention hearing); United States v. Martir, 782 F.2d 1141, 1145 (2d Cir. 1986) (same). Furthermore, "[t]he rules of evidence do not apply in a detention hearing." United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995); see also United States v. Agnello, 101 F. Supp. 2d 108, 110 (E.D.N.Y. 2000) ("[E]vidence may be supplied through proffers and hearsay information, and the rules of evidence do not apply.").

C. The Defendants Should Be Detained

For the reasons described below, the defendants pose a significant risk of flight and a clear continuing danger to the community. Specifically, the presently known facts suggest a reasonable likelihood that the defendants, if released pending trial, will flee, and/or will resume criminal activity to the detriment of the community. In light of the charges against them, there is a rebuttable presumption that no condition or combination of conditions will reasonably assure the defendants' appearance in court or the safety of the community should they be released. As further described below, the defendants cannot overcome this presumption in light of the strength of the government's case. Accordingly, a permanent order of detention should therefore be entered.

Each of the factors enumerated in 18 U.S.C. § 3142(g) weighs heavily in favor of pretrial detention. First, the charged conduct is very serious. The charged offense involved a violent armed carjacking by an organized group who were marauding in the middle of the night. Their offense involved a dangerous attempt to escape from law enforcement, involving driving the wrong way down a street, causing a violent car crash, and attempting to flee. The defendants, already driving a stolen vehicle, stole another vehicle and significant property from John Doe. In addition, there is evidence connecting these defendants to at least two additional gunpoint robberies that immediately preceded the charged offenses. Their pattern of targeting individuals for robbery on the streets of Queens demonstrates a complete disregard for the safety of the community. Their conduct also shows a level of recklessness by committing multiple gunpoint robberies on the same day within only half an hour in similar fashion.

Second, the evidence against the defendants is very strong. Among other things, the victim was able to track his stolen phone (and by extension, his stolen BMW) within minutes of the carjacking; his stolen property (as well as the stolen property of other robbery victims) was recovered less than 10 minutes after the carjacking; and the defendants were each apprehended in the immediate vicinity of the collision after attempting to evade apprehension.

Third, the defendants pose a serious flight risk, as demonstrated immediately after the collision by fleeing and hiding from responding officers. With respect to defendant Marmol Duran, who is currently on probation, the charged conduct shows a clear disregard for the terms of court supervision. The defendants additionally face a statutory maximum of fifteen years in prison in addition to a consecutive term of imprisonment for brandishing a firearm in furtherance of the carjacking. These penalties give the defendants an incentive to flee. See, e.g., Jackson, 823 F.2d at 7. When the incentive to flee is so strong, no combination of sureties and other restrictions can assure their appearance. See, e.g., United States v. English, 629 F.3d 311, 321-22 (2d Cir. 2011) (affirming detention in part because the defendant faced a presumption against release and a mandatory minimum sentence that incentivized fleeing); see also United States v. Cisneros, 328 F.3d 610, 618 (10th Cir. 2003) (the defendant was a flight risk because her knowledge of the seriousness of the charges against her gave her a strong incentive to abscond); United States v. Townsend, 897 F.2d 989, 995 (9th Cir. 1990) ("Facing the much graver penalties possible under the present indictment, the defendants have an even greater incentive to consider flight.").

D. Conclusion

For the reasons set forth above, the government, therefore, respectfully requests that the defendants be held without bail pending trial because no combination of conditions can ensure their reappearance or the safety of the community.

Respectfully submitted,

BREON PEACE
United States Attorney

By: /s/
Andrés Palacio
Assistant U.S. Attorney
(718) 254-6215

cc: Clerk of Court (RLM)
Defense Counsel (via ECF and email)