

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Case No. 16-MJ-909 (KMM)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	GOVERNMENT'S MOTION FOR
v.)	DETENTION
)	
AARON RHY BROUSSARD,)	
)	
Defendant.)	

COMES NOW the United States of America, by and through its undersigned attorneys, Andrew M. Luger, United States Attorney for the District of Minnesota, and Thomas M. Hollenhorst, Assistant United States Attorney, and hereby moves this Honorable Court to order the pretrial detention of the defendant, Aaron Rhy Broussard.

I. Procedural History

On December 6, 2016, Broussard was charged in a one-count indictment in the Middle District of Pennsylvania with distributing fentanyl resulting in death, in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). The charge carries a mandatory minimum sentence of 20 years in prison and a maximum sentence of life in prison. *See* 21 U.S.C. § 841(b)(1)(C). Broussard was arrested in Hopkins, Minnesota, on December 6, 2016, and had his initial appearance in this district on December 7, 2016. At the hearing, the Court ordered Broussard’s temporary detention upon motion of the government. A detention and removal hearing has been scheduled for December 9, 2016, at 2:30 p.m., before the Honorable Kate M. Menendez, United States Magistrate Judge.

II. Statement of Facts

The charge against Broussard follows a six-month investigation by the United States Postal Inspection Service (“USPIS”), Drug Enforcement Administration (“DEA”), Department of Homeland Security, and several other state and local law enforcement agencies. In the spring of 2016, law enforcement began investigating dozens of fentanyl-related overdoses throughout the United States, at least ten of which resulted in death.¹ During the course of the investigation, law enforcement determined that the overdose victims had all received fentanyl from “PlantFoodUSA.Net” just before their overdoses. In all cases, the victims had ordered less dangerous drugs but, unbeknownst to them, received fentanyl instead. Investigation has disclosed that PlantFoodUSA.Net is an internet-based website used by Broussard to illegally distribute controlled substances, controlled substance analogues, and other regulated substances.

For example, on April 8, 2016, the police in Grand Rapids, Michigan, received a report of a fentanyl overdose. The victim (“V-1”) arrived at a hospital in cardiac arrest and was found with fentanyl in his system. V-1’s mother cooperated with the authorities and found in V-1’s bedroom a small plastic Ziploc baggie containing a white crystalline powder which later tested positive for fentanyl. She also found a package that V-1 had received that had a return address to a post office box linked to Broussard in Hopkins,

1. Fentanyl is a controlled substance which is a potent, synthetic opioid pain medication with a rapid onset and short duration of action. The drug has become widespread substance of abuse and has been linked to the deaths of thousands of victims in the United States over the last year including the pop icon Prince.

Minnesota. V-1 suffered severe brain damage from the overdose, but is slowly recovering, albeit with potential life-long neurological deficits.

On April 14, 2016, the police received a report of another overdose victim (“V-2”) in Ramsey County, Minnesota, who was found dead in his office. The USPIS determined that two days before, V-2 had received a parcel shipped from Friendly Delivery, a “Click-N-Ship” account used by Broussard to ship drugs. Several evidentiary items were seized from V-2’s office including the above-referenced shipping envelope and several items of drug paraphernalia related to drug use. Many of these items contained a white crystalline residue, some of which tested positive for the presence of fentanyl. A coroner later determined that V-2 had fentanyl in his system at the time of his death.

On May 8, 2016, police officers in Scranton, Pennsylvania, went to the apartment of an overdose victim and found an unresponsive 26-year-old woman (“V-3”) who later died of a fentanyl overdose from a substance she believed to be less dangerous. By all accounts, V-3 only used the drugs because of the urging of her boyfriend who had recently ordered the drugs from PlantFoodUSA.Net. The police seized various evidence from the apartment including fentanyl residue. This incident provides the basis for the instant indictment.

Law enforcement has determined that, over the course of the last several months, Broussard has received drugs from various international sources, repackaged the drugs, and then shipped the drugs in hundreds of Priority Mail parcels from a post office in Hopkins, Minnesota. He has sent these parcels to numerous addresses throughout the United States in response to orders placed by customers using PlantFoodUSA.Net.

On December 6, 2016, the police executed a search warrant at Broussard's apartment in Hopkins. It was apparent during the search that Broussard used the premises as a base for his drug mass-marketing activities. The police seized a cornucopia of controlled substances and controlled substance analogues, including suspected methamphetamine and amphetamines. Agents also seized incriminating notes and records, financial documents, computers, and drug processing and packaging materials.

Broussard is 26 years' old with limited ties to the State of Minnesota and with no ties to the State of Pennsylvania. He appears to have been unemployed for some time, save for his drug distribution activities over the last year or more. Broussard has a prior juvenile adjudication for felony robbery and adult convictions for possession of drug paraphernalia and driving without a valid license. He was apparently uncooperative with the Pretrial Service Office, which has recommended detention.

III. Argument

A. Legal Framework

After the arrest of a person who is charged with a controlled substance offense that carries a maximum term of imprisonment of ten years or more, a judicial officer must conduct a detention hearing to determine whether any condition or combination of conditions of bond will reasonably assure the appearance of the person and the safety of any other person and the community. *See* 18 U.S.C. § 3142(f)(1)(C). The factors the judicial officer must consider are:

- (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime

of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including—

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release.

18 U.S.C. § 3142(g).

A rebuttable presumption of detention applies for an offense of this nature.

18 U.S.C. § 3142(e)(3)(A). “[A] defendant bears a limited burden of production – not a burden of persuasion – to rebut the presumption by coming forward with evidence he does not pose a danger to the community or a risk of flight.” *United States v. Abad*, 350 F.3d 793, 797 (8th Cir. 2003) (quoting *United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001). “Once a defendant has met his burden of production relating to these two factors, the presumption favoring detention does not disappear entirely, but remains a factor to be considered among those weighed by the district court.” *Id.*

Pretrial detention may be ordered either upon (1) a showing by clear and convincing evidence that release will result in a danger to the community; or (2) a showing by a

preponderance of the evidence that release will result in a serious risk of flight. *See Abad*, 350 F.3d at 797; *United States v. Sazenski*, 806 F.2d 846, 848 (8th Cir. 1986).

If, after the detention hearing, a magistrate judge orders the release of a defendant, the government may file a motion for revocation of the release order “with the court having original jurisdiction over the offense.” 18 U.S.C. § 3145(b). In this case, such a motion would be heard by the district judge assigned to the case in the Middle District of Pennsylvania. *See, e.g., United States v. Vega*, 438 F.3d 801, 803 (7th Cir. 2006); *United States v. Harrison*, 396 F.3d 1280, 1281 (2nd Cir. 2005); *United States v. Cisneros*, 328 F.3d 610, 615-16 (10th Cir. 2003); *United States v. Torres*, 86 F.3d 1029, 1031 (11th Cir. 1996); *United States v. Evans*, 62 F.3d 1233, 1239 (9th Cir. 1995); *but see United States v. Johnson*, 103 F.3d 131 (6th Cir. 1996) (unpublished). The motion for revocation must be determined promptly and is subject to *de novo* review by the district court. *See United States v. Maull*, 773 F.2d 1479, 1484 (8th Cir. 1985) (“[T]he court acts *de novo* and makes an independent determination of the proper pretrial detention or conditions for release.”).

B. Broussard Is a Danger to the Community and Poses a Serious Risk of Flight

In this context, and considering the factors outlined in § 3142(g) and the presumption of detention, the need for Broussard’s detention is overwhelming. There are simply no conditions or combination of conditions of bond that would reasonable assure his appearance at future hearings or the safety of the community.

1. The Nature and Circumstance of the Offense

The charge against Broussard is particularly egregious. In fact, Congress has deemed it so serious as to mandate a sentence of no less than 20 years' imprisonment upon conviction. *See* 21 U.S.C § 841(b)(1)(C). Further, in cases like this, the Sentencing Commission has specified a base offense level of 38. *See* USSG § 2D1.1(a)(2). On top of this, if convicted, Broussard would likely receive a two-level enhancement because he “distributed a controlled substance through mass-marketing by means of an interactive computer service,” and another two-level enhancement because he “maintained a premises for the purpose of manufacturing or distributing a controlled substance.” *See* USSG §§ 2D1.1(b)(7) and 2D1.1(b)(12). This would result in a total offense level of 42 and a guideline range of 360 months to life. *See* USSG Ch. 5, Pt. A (Sentencing Table).²

The charge against Broussard standing alone provides a sufficient basis to detain him. But Broussard's overall misconduct, which will undoubtedly be considered as “relevant conduct” under the Sentencing Guidelines if Broussard convicted, *see* USSG § 1B1.3, is far more egregious. Broussard's drug trafficking activities have been linked to at least ten homicides and far more drug overdoses. Either intentionally or in a profoundly reckless manner, he sent several lethal doses of fentanyl to numerous customers. Many of these customers died, or were otherwise overcome, within minutes after ingesting the drugs he sent them. One can hardly imagine a more serious drug crime.

2. Broussard is also facing potential charges under 18 U.S.C. § 1716(d) (sending injurious articles in the mail), a violation which carries “the death penalty or . . . imprisonment for life” if the offense “resulted in the death of any person.” *See* 18 U.S.C. § 1716(j)(3).

The facts of the case are further aggravated by Broussard's own drug use, his receipt of numerous shipments of drugs from international sources, and his mass-marketing strategies directed to thousands of potential customers throughout the United States.³

2. The Weight of the Evidence

Although a defendant is afforded with the presumption of innocence during a detention hearing, *see* 18 U.S.C. § 3142(j), there is a strong likelihood that Broussard will be convicted of the offense. The evidence against him is simply overwhelming and comes in the form of witness statements, police surveillance, controlled purchases by the DEA, controlled deliveries to his apartment, internet service records, financial records, shipping records, and the seizure of drug packaging materials, controlled substances, controlled substance analogues, and other regulated drugs. The evidence obtained during the six-month long investigation was more than corroborated by the evidence seized from Broussard's apartment on December 6, 2016.

3. The History and Characteristics of the Defendant

While Broussard does not have a lengthy criminal record, his adult convictions and juvenile adjudication for felony robbery paint a picture of a defendant who has a disregard for the law. Standing alone, his record would not compel detention; but, in connection with the other § 3142(g) factors and the presumption of detention, Broussard's criminal record calls for it. Perhaps more importantly, Broussard is a drug user, has limited ties to

3. In addition to the indictment in the Middle District of Pennsylvania, Broussard faces potential prosecution in several other districts including the District of Minnesota.

the State of Minnesota, has no ties to the States of Pennsylvania, and appears to have no legitimate employment.

4. The Nature and Seriousness of the Danger to any Person or the Community

Broussard's misconduct demonstrates what a serious danger he poses to other persons and the community if he is released. While criminal charges tend to curb a defendant's continued misconduct, there is no guarantee that Broussard will discontinue his internet drug trafficking activities. The websites and Email addresses he used are still active. All that Broussard needs is another computer to continue his illegal and dangerous drug mass-marketing activities. Although the risk of that happening may be small, the consequences of him doing so would be severe. Now facing a sentence of at least 20 years in prison and up to life, there is no telling what Broussard's motivations might be if released on bond. One thing is certain, however, the release of Broussard on conditions of bond would put countless people at risk and present a risk of flight.

For these reasons, there are no conditions or combination of conditions that would reasonably assure Broussard's appearance and the safety of any other person and the community if he were released on bond.

WHEREFORE, the government respectfully asks this Honorable Court to grant the government's motion and to order that Broussard be detained pending trial.

Dated: December 8, 2016

Respectfully submitted,

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United States Attorney

s/ Thomas M. Hollenhorst

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