

A detention hearing was held before me on June 15, 2011. Defendant appeared in person, represented by David Guastello. The government was represented by Assistant United States Attorney Brent Venneman. The parties stipulated that the court consider the information in the Pretrial Services Report of Pretrial Services Officer Van Hecke as the testimony he would give, under oath, if called as a witness. I took judicial notice of the statutory presumption against release¹. No other evidence was offered by either party.

II. FINDINGS OF FACT

On the basis of the information contained in the report of Pretrial Services Officer Van Hecke, I find that:

1. Defendant, 30, is a lifelong resident of Kansas City. He has lived for several months in a Section 8 residence with two of his children and their mother, along with two additional children of hers.

2. Defendant maintains daily contact with his parents and two siblings. Defendant has never been married but has four children (ages 3 years, 16 months, 1 year, and 5 months) from two

¹18 U.S.C. § 3142(e) states in pertinent part as follows: "Subject to rebuttal by the person, it shall be presumed 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 that there is probable cause to believe that the person committed 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)."

separate relationships, and his current girl friend is three months pregnant with his fifth child. Defendant maintains regular contact with his children but does not provide financial support. Defendant's mother is unwilling to assist him with bond due to defendant's personal safety.

3. Defendant's employment history is limited to occasional temporary jobs with the most recent being a few months ago and lasting only a few days. Missouri Probation and Parole ("MPP") records indicate defendant received disability benefits for mental health disorders, but defendant's mother was unaware of this. Defendant has no significant financial assets or liabilities but has an unknown amount of medical bills.

4. Defendant reported that he was diagnosed with schizophrenia as an adolescent, hospitalized on at least two occasions, and was prescribed Haldol and Thorazine but has not taken those medications. MPP records indicate defendant was diagnosed with Oppositional Defiant Disorder, Attention Deficit Disorder, Effective Disorder, Intermittent Explosive Disorder, and a learning disability. MPP records also indicate defendant attempted an overdose at age 11 and three or four other suicide attempts while incarcerated. Defendant's mother reported that defendant has communicated thoughts of self-harm to her since 2007. Defendant experimented with alcohol and marijuana at age 15. He has used cocaine, depressants, and PCP.

5. Defendant's criminal history includes the following:

Date	Charge	Disposition
09/03/19965	1. Assault 1st degree (Felony) 2. Armed criminal action (Felony)	10 years in custody
<p>The offense occurred on 2/14/96 and involved defendant and four other men seriously assaulting a female victim by punching, kicking, and striking her with various objects including lamps and a bowling ball. Much of the victim's clothes were removed and she was later encountered by police walking down the street in a blouse and panties. She was transported to a hospital where she fell into a coma and as of 6/25/98 had yet to regain consciousness. Defendant was denied parole after having accumulated at least 23 conduct violations while incarcerated including threats, self mutilation, creating disturbances, and insulting behavior. Defendant's sentence was completed on 4/9/07.</p>		
06/13/1997	Failure to appear	Turned over to Jackson County
07/31/1997	Passing a bad check	No further action
09/25/1997	Forgery (Felony)	3 years in prison, failure to appear warrant was issued while defendant was released on bond.
11/09/1997	Failure to appear	Turned over to Jackson County
12/04/1997	Failure to appear	Turned over to Jackson County
12/11/1997	Passing a bad check	No further action
08/03/2007	Property damage	6 months in jail, 2 years probation
08/31/2007	Property damage 1st degree	No further action
09/28/2007	Harassment - phone calls	Unknown
05/27/2008	Tampering with motor vehicle	Unknown

09/24/2008	Distribute, deliver, manufacture controlled substance	Released
10/15/2008	Possession of controlled substance	Released
05/22/2009	1. Aggravated domestic assault 2. Possession of controlled substance	1. Dismissed 2. Released
07/05/2009	Simple assault	Dismissed
09/03/2009	Simple assault	Dismissed
12/17/2009	1. Possession of controlled substance (PCP) 2. Knowingly possessing explosive or incendiary device	1. Pending 2. Unknown
06/09/2010	Distribute, deliver manufacture controlled substance	Unknown
06/18/2010	Property destruction	Nolle pros
05/25/2011	Tampering 1st degree	Released
Defendant was arrested pursuant to an investigation into stolen vehicles. It is unknown whether charges will be filed.		

6. Defendant is also being investigated by Grandview police for fraud involving gift cards from Sam's Club and an employee or former employee.

7. If convicted, defendant faces a statutory minimum prison sentence of ten years and a statutory maximum prison sentence of life.

III. CONCLUSIONS

I find by clear and convincing evidence that no single condition or combination of conditions of release will reasonably assure the safety of the community. Defendant is charged with a large drug conspiracy; he has a long criminal history which includes violent conduct, three felony convictions, and pending charges; he has a history of illegal drug use; he has a history of serious untreated mental health issues; and he has a history of poor institutional adjustment. In addition, I find that defendant has failed to rebut the presumption provided for in 18 U.S.C. § 3142(e) that there is no condition or combination of conditions of release that will reasonably assure the safety of the community.

It is, therefore

ORDERED that the defendant be committed to the custody of the Attorney General or his authorized representative for detention pending trial. It is further

ORDERED that defendant be confined in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. It is further

ORDERED that the Attorney General or his authorized representative ensure that the defendant is afforded reasonable opportunity for private consultation with his counsel. It is

further

ORDERED that, on order of a court in the Western District of Missouri, the person in charge of the corrections facility where defendant is confined deliver the defendant to a United States Marshal for his appearance in connection with a court proceeding.

/s/ Robert E. Larsen
ROBERT E. LARSEN
United States Magistrate Judge

Kansas City, Missouri
June 15, 2011