

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

v.

DEVIN MARINO

CRIMINAL ACTION
NO. 16-00417

PAPPERT, J.

April 7, 2017

MEMORANDUM

I.

Devin Marino was indicted on September 29, 2016. (Indictment, ECF No. 1.) The Indictment contains five counts: Count I charges Marino with violating 18 U.S.C. § 2261A for allegedly taking control of an email account belonging to another person (“WAO”) and sending, among other things, nude photos of WAO to twenty-five other people; sending emails, ostensibly from WAO, announcing that he had HIV; changing WAO’s login information on other websites; sending an anonymous tip to the National Center for Missing and Exploited Children stating that WAO was attempting to have sex with a minor; and accessing and sending WAO’s medical records to an unknown number of people. (*Id.* at 1–5.) Counts II–V charge Marino with violations of 18 U.S.C. §§ 1030(a)(2)(C) and (c)(2)(B)(ii) for intentionally accessing information on WAO’s email account on four separate occasions. (*Id.* at 6.)

Marino was arraigned and had a pretrial detention hearing before Magistrate Judge Hey on October 6, 2016. (ECF No. 8.) He pleaded not guilty to all charges. (*Id.*) The Government moved for pretrial detention. (*Id.*) Marino was released on \$50,000 bail, home incarceration (living with his mother and step-father) and placed on

electronic GPS monitoring. (Conditions of Release Order, at 1–2, ECF No. 9.) Among many other conditions, the terms of his release restricted him to twenty-four-hour lockdown at his mother and stepfather’s home “except for medical necessities and court appearances or other activities specifically approved by the court.” (*Id.* at 2.)

The Court subsequently modified the terms of Marino’s pretrial detention twice. On October 1, 2016, in response to Marino’s unopposed request, the Court permitted Marino “to see his family physician once a month and attend weekly therapy sessions with a licensed therapist close to his residence.” (ECF No. 15.) Two weeks later, the Court ordered Marino to “participate in a mental health evaluation and undergo mental health treatment as deemed necessary by the United States Pretrial Services.” (ECF No. 16.)

II.

A.

The Government now moves to revoke Marino’s bail pursuant to 18 U.S.C. § 3148, contending that he has repeatedly violated the conditions of his release. (Gov’t Mem., ECF No. 35.) Pretrial Services filed a report and petition requesting the revocation, (Rep. & Pet., ECF No. 36), and the Court held a revocation hearing on April 6, 2017. In advance of the hearing, Pretrial Services filed a supplemental report and petition with the Court on April 3. The Government accordingly contends that Marino violated the conditions of his release on at least three occasions. First, on November 9, 2016, Marino left his home and drove to Philadelphia. (Gov’t Mem., at 2.) Pretrial Services Officer Jeffrey Reber testified consistent with his April 3 report that Marino made this trip without permission. Because Marino checked in with local police upon

his return home, however, neither Pretrial Services nor the Government sought to revoke his bail at that time. (*Id.*)

The Government next contends that Marino violated a condition of his release on January 18, 2017. That day, Marino was given permission to meet with his attorney in Philadelphia. Pretrial Services and Marino agreed that Marino would take an Amtrak train to Philadelphia, meet with his attorney from 3:00 p.m. to 5:00 p.m., and immediately return home via train. Officer Reber testified that GPS records from Marino's ankle monitor show that Marino met with his attorney until shortly after 5:00 p.m., at which point he spent roughly two hours near 11th Street and Ridge Avenue in Philadelphia. (*Id.* at 2–3.) Marino then went to Suburban Station, where he did not board a train until after 9:00 p.m. (*Id.* at 3.) Officer Reber testified that, contrary to the transportation plan Pretrial Services and Marino had agreed to, on January 20 Marino told Reber that he went to 11th and Ridge to meet a friend with whom he had arranged a ride home, despite being required by Pretrial Services to take the train.

Finally, the Government contends that on the weekend of February 26–27, 2017 Marino attempted to remove his GPS ankle monitor, requiring Pretrial Services to replace its strap. (*Id.* at 3). Location Monitoring Specialist Charles Meissler of Pretrial Services also testified at the hearing; he stated that on February 26, 2017, Pretrial Services received a notification that Marino's GPS ankle monitor may have been tampered with or otherwise malfunctioned. Meissler testified that he called Marino, who was home alone, and requested that Marino have his mother or stepfather send a video of the ankle monitor when they returned home. After seeing that the monitor's strap was damaged, Meissler went to Marino's home and replaced the strap. The

Government produced the device at the hearing, the strap for which had been partially cut from both sides. Meissler testified that in his experience the cuts were intentional.

B.

18 U.S.C. § 3148 provides that the Court:

[s]hall enter an order of revocation and detention if, after a hearing, the judicial officer--

(1) finds that there is—

(A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or

(B) clear and convincing evidence that the person has violated any other condition of release; and

(2) finds that—

(A) based on the factors set forth in section 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or

(B) the person is unlikely to abide by any condition or combination of conditions of release.

18 U.S.C. § 3148(b) (emphasis added).

C.

The Government has shown by clear and convincing evidence that Marino violated the conditions of his release on at least three occasions; something with which Marino's counsel agreed. Marino is facing serious charges and he was placed on home incarceration, the strictest form of pretrial release. *See* (ECF No. 9). Given the

repeated violations of his release conditions, Marino is unlikely to abide by any condition or combination of conditions of his release. *See* 18 U.S.C. § 3148(b)(2)(B).¹

An appropriate Order follows.

BY THE COURT:

/s/ Gerald J. Pappert
GERALD J. PAPPERT, J.

¹ The Government also contends that the Court should revoke Marino's bail because there is probable cause to believe that Marino has violated 18 U.S.C. § 2261A for stalking WAO. For support, the Government points to WAO's receipt of a letter informing him that someone had opened a PACER account in his name. (Gov't Supp. Mem., at 1–2.) Whoever established the account set up security questions relying on WAO's personal information. (*Id.* at 1–2). Furthermore, the account was paid for with a credit card and opened using the name "Derek Mureeno." (*Id.* at 2.) *See* (Gov't Mem., at 7–8); (Gov't Supp. Mem., ECF No. 40); *see also* 18 U.S.C. § 3148(b)(1)(A). The Court need not analyze this argument given its findings above.