UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

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ORDER

August 6, 2020

Before

FRANK H. EASTERBROOK, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

No. 20-2085	UNITED STATES OF AMERICA, Plaintiff - Appellee v. BRADLEY M. COX, Defendant - Appellant
Originating Case Information:	
District Court No: 1:18-cr-00083-HAB-SLC-1 Northern District of Indiana, Fort Wayne Division District Judge Holly A. Brady	

The following are before the court:

1. **MOTION FOR PRETRIAL RELEASE**, filed on July 7, 2020, by the pro se appellant.

2. **RESPONSE TO MOTION FOR RELEASE FROM DETENTION**, filed on July 20, 2020, by counsel for the appellee.

3. **REPLY TO APPELLEE'S RESPONSE**, filed on July 30, 2020, by the pro se appellant.

IT IS ORDERED that the appellant's motion for pretrial release is **DENIED**. The district court's denial of Bradley Cox's motion for release is **AFFIRMED**.

APPENDIX A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	Cause No. 1:18-CR-83-HAB
	)	
BRADLEY M. COX	)	

OPINION AND ORDER

The matter of Defendant Bradley M. Cox's detention is not a new one to this Court. The issue has resulted in multiple orders by two different magistrates, a seven-page Opinion and Order by this Court, and a summary ruling by the Seventh Circuit. All have concluded that Cox's pretrial detention is proper. Undeterred, Cox is back before this Court on his Motion for Revocation of Detention Order (ECF No. 136), asking this Court to review Magistrate Cherry's original detention order (ECF No. 16) under 18 U.S.C. § 3145(b). Because the Court finds no reason to depart from Magistrate Cherry's decision, Cox's instant motion will be denied.

A. Procedural History

As this Court said in its last ruling on Cox's detention, "Defendant's Motion is a complicated web of interconnected and incorporated filings," stretching from his initial detention until today. (ECF No. 103 at 1). Defendant's detention hearing was held on September 12, 2018. Both Cox and the Government were represented by counsel, and Magistrate Cherry heard evidence and argument from both sides. Following the hearing, Magistrate Cherry entered his Order of Detention. (ECF No. 16). Magistrate Cherry determined that the presumption of detention existed due to the charge and that Cox had failed to rebut the presumption. (*Id.* at 2). Cox was further found to pose a flight risk and a risk to the community. (*Id.*). Magistrate Cherry determined that no condition, or combination of conditions, could assure the safety of the community or Cox's

APPENDIX B

appearance in the future, basing his determination on several factors including Cox's prior criminal history and his multiple probation violations. (*Id.* at 2–3).

On October 31, 2019, Cox filed his pro se Motion for Pretrial Release (ECF No. 84).[1] In the Motion for Pretrial Release, Cox requested that the Court grant him pretrial release "based on new evidence that did not exist at the time of the initial detention hearing which rebuts the presumption that he is a flight risk or a danger to society." (*Id.* at 1). Cox did not want a hearing on the motion since "all facts and evidence are either already on the record or will be provided forthwith." (*Id.*). In summary, Cox argued that because he had ended his criminal conduct before he was questioned by police, and because he did not flee following that questioning, he qualified for pretrial release under 18 U.S.C. § 3142(a)(2). Cox also argued that, despite having violated the terms of probation on an earlier state court case, he would not violate any terms of supervised release the Court would impose.

The Government filed its Objection to Defendant's Motion for Pretrial Release (ECF No. 85) on November 5, 2019. Relevant to this Opinion and Order, the Government argued that Cox's detention hearing could not be reopened under 18 U.S.C. § 3142(f)(2) because Cox had failed to identify any information that "was not known to the movant at the time of the hearing." (ECF No. 85 at 4; quoting 18 U.S.C. § 3142(f)(2) and citing *United States v. Watson*, 475 Fed. Appx. 598, 600 (6th Cir. 2012); *United States v. Esposito*, 354 F. Supp. 3d 354, 358–59 (S.D.N.Y. 2019)). Instead, the Government argued that Cox sought to "relitigate the issue of detention by presenting arguments based upon facts known to him at the time of his detention hearing." (ECF No. 85 at 5).

[1] This was the second time Cox filed the Motion for Pretrial Release, having initially filed it pro se while still represented by counsel. (ECF No. 74). This initial filing was stricken by the Court. (ECF No. 77).

Cox filed his pro se Response to Government's Objection (ECF No. 87) on November 13, 2019. Cox stated that he was not moving to reopen his detention hearing under § 3142(f)(2). Instead, he argued that his Motion for Pretrial Release was an "appearance" for the purposes of § 3142(a) and, therefore, the Court could make a detention determination without requiring a showing under § 3142(f)(2) of new information. Notably, Cox cited to no case law or other authority in support of his interpretation of the statute.

Magistrate Judge Susan Collins issued her Opinion and Order denying the Motion for Pretrial Release (ECF No. 94) on November 26, 2019. Magistrate Collins found Cox's "appearance" argument unpersuasive, stating:

> While § 3142(a) refers to a defendant's "appearance," this obviously refers to when the Court must make an order regarding detention. This point is bolstered by the further restriction on when the Government can move for detention, as was the case here, or when a court can raise the issue *sua sponte*. In other words, the section's reference to an "appearance" merely means that the judge must make an order regarding the release or detention of the defendant when the defendant initially "appears" or is physically present in the charging court, unless a party seeks a continuance.

(*Id.* at 5) (citations omitted). Magistrate Collins then proceeded to analyze the Motion for Pretrial Release under § 3142(f), ultimately concluding that Cox had "not shown that any of the information considered in his motion is new or was unknown at the time of his initial hearing or would be material to the issue of detention." (ECF No. 94 at 11). Cox was advised to file a motion pursuant to 18 U.S.C. § 3145(b) if he believed that the law was improperly applied at his original detention hearing. (ECF No. 94 at 12).

Rather than heed Magistrate Collins' advice, Cox filed a pro se Motion to Reconsider (ECF No. 98) on December 9, 2019. While the Motion to Reconsider ran some sixteen pages, the argument boiled down to a single assertion: "[t]he ordinary legal meaning of 'appearance' includes a motion to the court." (ECF No. 98 at 5). After making this assertion (without any support), Cox

argued that a plain reading of § 3142(a) "allows for a 'person charged with an offense' to make an 'appearance before a judicial officer,' not limited to a one-time appearance or a detention hearing, for the reconsideration of pretrial release." (ECF No. 98 at 11). Cox cited to no case law in support of his interpretation, instead repeatedly pointing the Court to general statutory construction cases. Magistrate Collins issued a one-page Order (ECF No. 101) on December 16, 2019, denying the Motion to Reconsider on the bases set forth in her November 26, 2019, Opinion and Order (ECF No. 94).

Cox then sought relief from this Court, filing what he described as a motion under § 3145(b) to review the Magistrate's November 26, 2019, Opinion and Order, which Defendant states was a "de facto detention order[2] which opens it up for review and appeal." (ECF No. 102 at 1). Incorporating his Motion to Reconsider in its entirety, Cox again argued that "a plain reading of 18 USC 3142 [sic] actually does allow the Court to grant pretrial release without reopening the detention hearing." (ECF No. 102 at 2).

This Court denied that motion on January 31, 2020. (ECF No. 103). The Court concluded that Cox's interpretation of 18 U.S.C. § 3142 was at odds with the plain language of the statute and any reasonable interpretation thereof. The Court also stated that, had it reached the merits of Cox's detention challenge, it saw "no reason to depart from the Order of Detention (ECF No. 16) in this case." (*Id.* at 7 n. 4). Cox appealed this Court's order on February 12, 2020, (ECF No. 104), and his appeal was denied on March 24, 2020. (ECF No. 118).

Having reached a dead end in his attempt to re-write the Bail Reform Act, Cox has now taken Magistrate Collins' advice and filed the instant motion under § 3145(b). Cox now argues

[2] The Court finds no support for the concept of a "de facto detention order," particularly where there is a de jure detention order in the record. (ECF No. 16). Accordingly, this Court rejects Defendant's invitation to review the November 26, 2019, Opinion and Order of the magistrate under § 3145.

that he successfully rebutted the presumption of detention and, having done so, the conditions of pretrial release he proposes will sufficiently assure his future appearance and the safety of the public. The Government disagrees, arguing that Magistrate Cherry properly considered the relevant factors in ordering Cox's detention. (*See, generally*, ECF No. 139).

B. Legal Discussion

Title 18 U.S.C. § 3145(b) permits a defendant to file a motion seeking review or revocation of a detention order when the defendant has been "ordered detained by a magistrate judge, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court [.]" Section 3145(b) does not require that new evidence or information be available before a detention order can be reconsidered and revoked, *id.*, and "[t]he standard of review for the district court's review of a magistrate judge's detention . . . order . . . is de novo." *United States v. Cisneros*, 328 F.3d 610, 616 n. 1 (10th Cir. 2003). "When the district court acts on a motion to revoke or amend a magistrate's pretrial detention order, the district court acts *de novo* and must make an independent determination of the proper pretrial detention or conditions for release." *United States v. Rueben*, 974 F.2d 580, 585–86 (5th Cir. 1992); *see also United States v. Maull*, 773 F.2d 1479, 1481 (8th Cir. 1985); *United States v. Sallay*, 2011 WL 1344288 at *4 (N.D. Ind. April 8, 2011); *United States v. Stephens*, 2007 WL 2164248 at *3 (N.D. Ind. July 25, 2007); *United States v. Boxley*, 2007 WL 79176 at * 1 (N.D. Ind. Jan.8, 2007); *United States v. McManus*, 2006 WL 3833314 at *1 (N.D. Ind. Dec.5, 2006).

Nonetheless, a district court may review a magistrate's detention order without holding a new hearing. *United States v. Bergner*, 800 F.Supp. 659 (N.D. Ind.1992) (citing *United States v. Gaviria*, 828 F.2d 667, 670 (11th Cir. 1987); *United States v. Phillips*, 732 F.Supp. 255, 259 (D. Mass. 1990)). "An evidentiary hearing is necessary only if the party requesting the hearing raises

a significant disputed factual issue." *United States v. Sophie*, 900 F.2d 1064, 1070 (7th Cir. 1990). Neither party has requested a hearing, and there are no significant factual disputes which the court would require a hearing to resolve. Accordingly, the court takes a fresh look at the issue of detention without holding a new hearing, but with reference to the evidence presented at the one held before the Magistrate Judge.

The Bail Reform Act ("BRA") limits the circumstances under which a district court may order pretrial detention. *See United States v. Friedman*, 837 F.2d 48, 49 (2d Cir. 1988). "When a motion for pretrial detention is made, the court engages in a two-step analysis: first, the judicial officer determines whether one of ten conditions exists for considering a defendant for pretrial detention; second, after a hearing, the judicial officer determines whether the standard for pretrial detention is met." *United States v. Thomas*, 2011 WL 5386773 at *3 (S.D. Ind. Nov.7, 2011) (citing *Friedman*, 837 F.2d at 49). There is no doubt that one of the ten threshold conditions for considering pretrial detention is met in this case. Cox is alleged to have committed a crime with multiple minor victims, *see* 18 U.S.C. § 3142(f)(1)(E), and the government's proffer was sufficient to demonstrate those allegations by a preponderance of the evidence. *See Thomas*, 2011 WL 5386773 at *3 (citing *Friedman*, 837 F.2d at 49; *United States v. DeBeir*, 16 F.Supp.2d 592, 595 (D. Md. 1998); *United States v. Carter*, 996 F.Supp. 260, 265 (W.D.N.Y. 1998)). The dispute, then, is over whether the standard for pretrial detention is met.

"Pretrial detention is allowed only after the court holds a hearing and finds that 'no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community.'" *Miller v. Hastings*, 87 Fed. Appx. 585, 586 (7th Cir. 2004) (citing 18 U.S.C. § 3142(e)). Detention may be based on a showing of either dangerousness or risk of flight; proof of both is not required. *United States v. Fortna*, 769

F.2d 243, 249 (5th Cir. 1985). The Government bears the burden of proving that the defendant is either a flight risk or a danger to the community. *United States v. Daniels*, 772 F.2d 382, 383 (7th Cir. 1985). With respect to reasonably assuring the safety of any other person and the community, the United States bears the burden of proving its allegations by clear and convincing evidence. 18 U.S.C. § 3142(f); *United States v. Salerno*, 481 U.S. 739 (1987). Clear and convincing evidence is something more than a preponderance of the evidence but less than proof beyond a reasonable doubt. *Addington v. Texas*, 441 U.S. 418, 431–33 (1979). With respect to reasonably assuring the appearance of the defendant, the United States bears the burden of proof by a preponderance of the evidence. *United States v. Portes*, 786 F.2d 758, 765 (7th Cir. 1985); *United States v. Liebowitz*, 652 F.Supp. 591, 596 (N.D. Ind. 1987).

Furthermore, in this case, Congress has placed a statutory finger on the scale, weighing against Cox. Pursuant to 18 U.S.C. § 3142(e)(3)(E), "[s]ubject to rebuttal by the [defendant], it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the [defendant] as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the [defendant] committed an offense involving a minor victim under section ... 2251[.]" "Probable cause is not proof beyond a reasonable doubt, or even proof by a preponderance of the evidence." *Braun v. Baldwin*, 346 F,3d 761, 766 (7th Cir. 2003). At the detention hearing before Magistrate Cherry, the government proffered sufficient evidence for this court to conclude that there is probable cause to believe the defendant committed the acts charged in the Indictment in violation of 18 U.S.C. § 2251(a). As such, the § 3142(e)(3)(E) presumption that no condition or combination of conditions will reasonably assure the appearance of the defendant or the safety of the community applies. Indeed, this point is undisputed.

In the early days after the BRA was enacted, some confusion existed as to what quantum of evidence the defendant had to present in order to "rebut" a § 3142(e) presumption. But that confusion has long since been cleared up. In both *United States v. Diaz*, 777 F.2d 1236 (7th Cir. 1985), and *United States v. Dominguez*, 783 F.2d 702 (7th Cir. 1986), the Seventh Circuit embraced the interpretation first offered by Judge (now Justice) Breyer of the First Circuit in *United States v. Jessup*, 757 F.2d 378 (1st Cir.1985). As the Seventh Circuit explained:

> In *Jessup*, 757 F.2d at 381–84, the court correctly identifies the presumptions in § 3142(e) as being of the so-called "middle ground" variety; that is, they do not disappear when rebutted, like a "bursting bubble" presumption, nor do they actually shift the burden of persuasion to the defendant. They are "rebutted" when the defendant meets a "burden of production" by coming forward with some evidence that he will not flee or endanger the community if released. Once this burden of production is met, the presumption is "rebutted" in the sense that word was used in *Jessup*. Use of that word in this context is somewhat misleading because the rebutted presumption is not erased. Instead it remains in the case as an evidentiary finding militating against release, to be weighed along with other evidence relevant to factors listed in § 3142(g). *Jessup*, 757 F.2d at 384. The burden of persuasion remains with the government once the burden of production is met. *Id.* at 381–82.

Dominguez, 783 F.2d at 707. In other words, where a defendant can produce some evidence which, if believed, would logically refute the assertion that he will flee or pose a danger to the community, he has defeated the "presumption" in favor of detention. At least, he has defeated it to the extent that it ceases to be dispositive and becomes just one more factor in the court's analysis. *See Diaz*, 777 F.2d at 1238 (explaining that even when it is rebutted, "[t]he presumption reflects a congressional judgment, to which we are obligated to give weight, that persons facing heavy sentences for particular types of offenses are likely to jump bail"). That said, "a defendant's desire to be released from incarceration and his or her promise not to flee the jurisdiction is woefully insufficient to rebut the presumption that persons facing very serious charges should remain detained until those charges are resolved." *Stephens*, 2007 WL 2164248 at *6. "If that were the

case, then pretrial detention would be virtually nonexistent, since every criminal defendant would present the court with an identical plea for release." *Id.*

Cox's attempts to rebut the presumption that no condition or combination of conditions will reasonably assure his appearance are, in some ways, strikingly similar to those the court found "woefully insufficient" in *Stephens*. In that case, the defendant argued that he had roots in the community, including seven biological children between the ages of 2 and 11, for whom he was primarily responsible. He offered to submit to any conditions the court might deem proper and argued that he had "no reason" to leave the jurisdiction. *Id.* at *3. In the case before the court, Cox has argued that he has familial connections to the area; that he will submit to any conditions of release (including internet monitoring); and that he had a good appearance record when on pretrial release during previous state court prosecutions. (ECF No. 113 at 4–8). But Cox also points out the fact that he didn't flee the jurisdiction prior to being indicted and that he had prior success on probation in Montgomery County. (*Id.* at 4–5).

In the end, the court need not decide whether Cox's arguments—which strike the court as at least marginally stronger than those made by the defendant in *Stephens*—are sufficient to rebut the presumption created by § 3142(e)(3)(E). Even if they are, thus relegating the presumption to its "rebutted" role as one factor among others, the court would still find by a preponderance of the evidence that Cox poses a flight risk. The personal qualities Cox is touting—consistent employment history, roots in the area, a history of making court dates—were exhibited before he was facing a mandatory minimum fifteen-year sentence of imprisonment. It is no surprise that Cox has no history of evading court dates or appearances; he has almost no experience with serious charges. But that is no guarantee of how he will behave under these new-to-him circumstances. Considering the statutory factors, the court observes that the crimes with which Cox is charged are

very serious ones, with lengthy prison sentences, and were allegedly committed against multiple minor victims. *See* 18 U.S.C. § 3142(g)(1). Furthermore, the case against Cox, while largely circumstantial, appears to be a strong one; Cox appears to have essentially admitted his guilt during his initial interaction with law enforcement. *See* § 3142(g)(2). All of this is colored by the fact that Congress has made a considered judgment that defendants faced with crimes like Cox's are more likely to jump bail than others. *See Diaz*, 777 F.2d at 1238. This court finds by a preponderance of the evidence that pretrial detention is necessary in this case to assure the appearance of Cox at future court proceedings. Since detention may be based on a showing of either dangerousness or risk of flight, *Fortna*, 769 F.2d at 249, this alone is reason enough to deny Cox's motion.

Even if that were not enough, the court would deny Cox's motion because he has completely failed to rebut the presumption that no condition or combination of conditions would ensure the safety of the community were he to be released. *See* § 3142(e)(3)(E). True, Cox does nominally argue that he is not a danger to the community. But the only proof he offers is that he is not accused of committing any crimes since the acts charged in the Indictment, which concluded in April 2018. (ECF No. 84 at 5). That is not enough. The government has charged Cox with six felony counts related to his alleged scheme of extorting sexually related materials from minors via the internet. The government has substantiated the charges to the level required at this stage of a criminal proceeding, and Congress has mandated (quite reasonably) that, provided that probable cause is demonstrated, those who victimize minors are presumed to pose a danger to the community. *See* § 3142(e)(3)(E). The court recognizes that Cox need only meet a burden of production, not persuasion, to rebut that presumption. But surely Cox's "Well, that's the only time the government alleges that I used the internet to extort nude pictures from minors!" argument is insufficient to rebut the presumption that he poses a danger to the community based on the nature

of his crime itself. If the court were to allow that sort of argument to carry the day, the presumption would be a toothless one, indeed.

C. Conclusion

For the foregoing reasons, Cox's Motion for Revocation of Detention Order (ECF No. 136) is DENIED.

SO ORDERED on June 18, 2020.

s/ Holly A. Brady
JUDGE HOLLY A. BRADY
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

UNITED STATES OF AMERICA,	CAUSE NO.:	1:18-MJ-122
	Hearing of:	09/12/2018
vs.	CHARGE:	Sexual Exploitation of Children 18 U.S.C. 2251(a)
BRADLEY M. COX, Defendant.		

ORDER OF DETENTION

After conducting a Detention Hearing under the Bail Reform Act, 18 U.S.C. § 3142(f), I conclude that these facts require that the defendant be detained pending trial.

Part I—Findings of Fact

☐ (1) The defendant is charged with an offense described in 18 U.S.C. § 3142(f)(1) and has previously been convicted of ☐ a federal offense ☐ a state or local offense that would have been a federal offense if federal jurisdiction had existed - that is

- ☐ a crime of violence as defined in 18 U.S.C. § 3156(a)(4)or an offense listed in 18 U.S.C. § 2332b(g)(5) for which the prison term is 10 years or more.
- ☐ an offense for which the maximum sentence is death or life imprisonment.
- ☐ an offense for which a maximum prison term of ten years or more is prescribed in _____[1]
- ☐ a felony committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. § 3142(f)(1)(A)-(C), or comparable state or local offenses:

  any felony that is not a crime of violence but involves:
  - ☐ a minor victim
  - ☐ the possession or use of a firearm or destructive device or any other dangerous weapon
  - ☐ a failure to register under 18 U.S.C. § 2250

☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state release or local offense.

☐ (3) A period of less than five years has elapsed since the ☐ date of conviction ☐ the defendant's release from prison for the offense described in finding (1).

☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition will reasonably assure the safety of another person or the community. I further find that the defendant has not rebutted this presumption.

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[1] Insert as applicable: (a) Controlled Substances Act (21 U.S.C. § 801 *et seq.*); (b) Controlled Substances Import and Export Act (21 U.S.C. § 951 *et seq.*); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. § 955a).

APPENDIX C

Alternative Findings (A)

■ (1) There is probable cause to believe that the defendant has committed an offense

☐ for which a maximum prison term of ten years or more is prescribed in:

☐ The Controlled Substances Act (21 U.S.C §801 et. seq.);or
☐ The Controlled Substances Import And Export Act (21 U.S.C. §951 et. seq.); or
☐ The Maritime Drug Law Enforcement Act (46 U.S.C. App. §1901 et. seq.); or

■ involving a minor victim under 18 U.S.C. §1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425; or

☐ under 18 U.S.C. § 924(c), §956(a), or 18 U.S.C. §2332b

■ (2) The defendant has not rebutted the presumption established by finding 1 that no condition will reasonably assure the defendant's appearance and the safety of the community.

Alternative Findings (B)

■ (1) There is a serious risk that the defendant will not appear.

■ (2) There is a serious risk that the defendant will endanger the safety of another person or the community.

Part II— Statement of the Reasons for Detention

■ I find that the testimony and information submitted at the Detention Hearing establishes by a preponderance of the evidence that there is a serious risk that the defendant will not appear at a future court hearing in this case, and there is no condition, or combination of conditions, that can be imposed to assure his or her court appearance in this case in the future, because:

(1) Of the nature and circumstances of the offenses charged;
(2) The weight of the evidence against the defendant;

■ I find that the testimony and information submitted at the Detention Hearing establishes by clear and convincing evidence that to release the defendant on pre-trial release will endanger the safety of another person, or the safety of the community in general, and there is no condition, or combination of conditions, that can be imposed to assure the safety of the other person or the safety of the community in general, because:

(1) Of the nature and circumstances of the offense charged;
(2) The weight of the evidence against the defendant;
(3) The defendant has a history of criminal activity including a juvenile history involving charges in court of Child Exploitation and Possession of Child Pornography and an adult history including, among other crimes, two misdemeanor Battery convictions as lesser included offenses of charges that were originally filed in court as Sexual Battery;

(4) While serving court supervision (probation) for the Clinton Circuit Court (Indiana), the defendant violated the supervision by, among other things, committing three Batteries two of which were originally charged as Sexual Batteries;

(5) While serving court supervision (probation and electronic monitoring) for the Montgomery Superior Court (Indiana), the defendant committed some of the sexual criminal acts alleged in the Criminal Complaint filed in this federal case;

(6) Although the Criminal Complaint filed in this federal case focuses on one alleged victim, the United States Attorney is aware of multiple victims of the defendant, some in other jurisdictions, of similar acts by the defendant.

☐ At the Detention Hearing the defendant stipulated to the serious risk that he or she would not appear for further court hearings in this case and to the serious risk of danger to the safety of another person or to the community in general if he or she would be released.

☐ There is reserved for the defendant the right to later petition the Court, through his or her attorney, to belatedly contest the detention issue.

The reasons for these findings include the contents of the Pre-Trial Services Report in this case.

Part III—Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or a designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or held in custody pending appeal. The defendant must be afforded a reasonable opportunity to consult privately with defense counsel. On order of a United States Court or on request of an attorney for the Government, the person in charge of the corrections facility must deliver the defendant to the United States Marshal for a court appearance.

Entered this 12th day of September, 2018.

/s / Paul R. Cherry
PAUL R. CHERRY
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

AO Form 472 (Rev. 09/08) (PRC Modified 02/16)

As provided by 18 U.S.C. §3153 and the General Order for the Northern District of Indiana, the Pretrial Services Report is to remain a confidential document. A copy of this report and any supplemental Pretrial Report(s) shall be provided to the defense counsel and the government with the understanding that (a) the report shall not be copied, (b) the report is not a public record, (c) the contents of this report and supplemental Pretrial Report(s) may not be disclosed to unauthorized individuals and (d) the report and any supplements shall be used only for the purposes of a bail determination and shall otherwise be confidential.

PRETRIAL SERVICES REPORT

District/Office	Charge(s) (Title, Section, and Description)
Northern District Of Indiana/Fort Wayne	**Count 1:** Title 18 U.S.C. § 2251(a) - SEXUAL EXPLOTATION OF CHILDREN
Judicial Officer The Honorable Paul R. Cherry United States District Court Magistrate Judge	
Docket Number (Year – Sequence No. – Def. No.) 0755 1:18-00122MJ-001	

DEFENDANT

Name		Employer/School	
Cox, Bradley M.		Burns Construction	
Address 3300 Susan Drive Kokomo, IN 46902		Employer/School Address 6676 South Old US Highway 31 Macy, IN 46951	
At Address Since 07/01/2017	Time in Community of Residence 4 years	Monthly Income $1,800	Time with Employer/School 2 years, 3 months

INTRODUCTION:

The defendant is scheduled to appear before Your Honor on September 12, 2018 for a Probable Cause and Detention Hearing.

This officer interviewed the defendant on September 7, 2018, in the United States Marshalls Office, located in Fort Wayne, and verified his personal information with his girlfriend, Katelyn Shanks. Additional information was received from national, State, and Local criminal records.

DEFENDANT HISTORY / RESIDENCE / FAMILY TIES:

The defendant, age 28, was boring in Kokomo, Indiana to Genieveve and Terry Cox. The defendant maintains weekly contact with his parents who reside in Frankfurt, IN. The defendant does not have any siblings.

Mr. Cox has resided in Kokomo for the past four years. Prior to him moving to Kokomo, he resided in Frankfurt with his parents. The defendant currently resides with his girlfriend Katelyn Shanks, his girlfriend's mother Renee Shanks, and his four children. If the defendant were to be released, he would return to the above listed address. If the defendant were to return to the above address, he would have daily contact with minor children.

APPENDIX D

The defendant was previously in a relationship with Stevie Martin. His relationship with Ms. Martin produced one child: Liliana Martin, 5. For the past six years, the defendant has been in a relationship with Katelyn Shanks. His relationship with Ms. Shanks, produced three children: Jonah Cox, 5; Silas Cox, 3; and Korra Cox, 10 months.

Mr. Cox obtained his General Equivalency Diploma (GED) in 2011 from Lafayette Adult Resource Academy, Lafayette, IN. After obtaining his GED, he attended Indiana University, Kokomo (IU-Kokomo). He graduated from IU-Kokomo in 2017 with a bachelor's degree in Accounting.

The defendant reported he does not have a U.S. passport and has never traveled outside of the United States.

EMPLOYMENT HISTORY / FINANCIAL RESOURCES:

Employed/Unemployed History:

Start Date	End Date	Employer Name/ Unemployed	Address	Monthly Income	Time in Status/ Hours a Week
05/19/2016		Burns Construction	6676 S. Old US Highway 31 Macy, IN 46951	$1,800.00 $0.00	2 years, 3 months/ 40.00
06/01/2015	12/01/2015	Hern Construction	816 Millbrook Lane Kokomo, IN 46901	$2,166.67	6 months /40.00
12/01/2014	06/01/2015	Syndicate Sales	2025 N. Wabash Street Kokomo, IN 46901	$1,733.33	6 months /40.00

The defendant does not know if he will be able to return to his position at Burns Construction, if he is released.

Finances:

Monthly Income	Amount	Expenses	Amount
Salary	$1,800.00	Home/Mortgage	$792.00
		Utilities	$236.00
		Groceries and Supplies	$250.00
		Credit Card Minimum Payments	$300.00
Total	$1,800	**Total**	$1,578
Estimated Monthly Cash Flow: $222			

HEALTH:

Physical Health:

Mr. Cox has no significant physical health problems.

Mental Health:

There is no evidence to suggest the defendant has a current or past mental health condition.

During the Initial Appearance, the defendant advised the Court that he did not have any mental health condition that would affect his ability to understand the court proceedings.

Substance Abuse History

The defendant first consumed alcohol at the age of 16. He last consumed alcohol approximately seven years ago. Mr. Cox experimented with marijuana when he was 16. He advised that he has never participated in a substance abuse treatment program.

PRIOR RECORD:

The defendant reported. A criminal record check conducted through the National Crime Information Center (NCIC), state, and local records revealed the following arrest history.

Date of Arrest	Agency	Charge	Disposition
02/25/2004 (Age 13)	Unknown	Ct. 1: Child Exploitation; Ct. 2: Possession of Child Pornography; Clinton County Circuit Court; Case No.: Unknown; Frankfort, IN	02/25/2004: Placed on Informal Probation for 6 months. 02/01/2005: Released from probation.
The above arrest date reflects the date the defendant was placed on probation.			

07/10/2008 (Age 18)	Clinton County Sheriff's Department; Frankfurt, IN	Ct. 1: Burglary; Ct. 2: Residential Entry; Ct. 3: Theft; Ct. 4: Unauthorized Entry of a Motor Vehicle; Ct. 5: Unauthorized Entry of a Motor Vehicle; Ct. 6: Burglary; Ct. 7: Auto Theft; Clinton County Circuit Court; Case No.: 12C01-0807-FB-185; Frankfort, IN	02/02/2009: Ct. 1: 12 years Indiana Department of Correction (IDOC) with four years suspended to probation. Ct. 2: 2 years IDOC, executed. 08/12/2014: Petition to Revoke Probation filed. 09/25/2015: Admits violation. 90 days IDOC. Probation extended for 705 days. 11/01/2017: Successfully released from probation.

The Petition to Revoke Probation filed on August 12, 2014, indicates the defendant violated his probation by committing additional criminal offenses and failing to complete a Court ordered program.

08/06/2014 (Age 24)	Montgomery County Sheriff's Department; Crawfordsville, IN	Ct. 1: Sexual Battery; Ct. 2: Sexual Battery; Ct. 3: Battery; Ct. 4: Battery; Ct. 5: Battery; Montgomery County Superior Court; Case No.: 54D01-1407-F6-002281; Crawfordsville, IN	11/09/2015: Ct. 1: 180 days Montgomery County Jail (MCJ), all suspended. Ct. 2: 180 days MCJ, all suspended. Ct. 4: 180 days MCJ, all suspended. Placed on probation for 538 days. 04/09/2018: Released from probation.
The defendant was under probation supervision in Case No.: 12C01-0807-FB-185, when he committed the above offenses.			

ASSESSMENT OF NONAPPEARANCE:

The defendant poses a risk of nonappearance for the following reasons:

1. Offense Charged and/or Defendant's Conduct During Arrest for Instant Offense

ASSESSMENT OF DANGER:

The defendant poses a risk of danger for the following reasons:

1. Nature of Instant Offense
2. Prior Arrests and Convictions
3. Pretrial, Probation, Parole, or Supervised Release Status and Compliance
4. Pattern of Similar Criminal Activity History

RECOMMENDATION:

There is no condition or combination of conditions to reasonably assure the safety of the community. Therefore, I respectfully recommend the defendant be detained.

However, should the Court order the defendant be released, I respectfully recommend the defendant be released with the following conditions:

1. The defendant must not violate federal, state or local law while on release.
2. The defendant must cooperate in the collection of a DNA sample if it is authorized by 42 U.S.C. §14135a.

3. The defendant must advise the court or pretrial services office or supervising officer in writing before making any change of residence or telephone number.
   The defendant must appear in court as required and, if convicted, must surrender as directed to serve a sentence that the court may impose.
4. The defendant must:
   a. Submit to supervision by and report for supervision to the US Pretrial Services Officer.
   b. Continue or actively seek employment.
   c. Abide by the following restrictions on personal association, resident or travel: Remain in and do not depart from the Northern District of Indiana without permission from the Pretrial Services Officer.
   d. Avoid all contact, directly or indirectly, with any person who is or may be a victim or witness in the investigation or prosecution.
   e. Not use alcohol ( ) at all (X) excessively.
   f. Not use or unlawfully possess a narcotic drug or other controlled substances defined in 21 U.S.C § 802, unless prescribed by a licensed medical practitioner.
   g. Participate in one of the following location restriction programs and comply with its requirements as directed ii. Home Detention: You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities approved in advance by the pretrial services office or supervising officer; (X) You must pay all or part of the cost of the program based on your ability to pay as determined by the pretrial services office or supervising officer.
   h. Report, as soon as possible, to the pretrial services officer or supervising officer, every contact with law enforcement personnel, including arrests, questioning, or traffic stops.
   i. Not possess nor operate any device with internet access without the approval of the Pretrial Services Officer.
   j. No unsupervised contact with minors.

Should the defendant be released, the Amended Bail Reform Act under 18 U.S.C. § 3142(c)(1)(b) requires a statutory condition of Electronic Monitoring, as well as the following conditions:

1. Abide by specified restrictions on personal associates at the place of abode or travel
2. Avoid all contact with alleged victim(s) of the crime and potential witness(es) who may testify concerning the offense.
3. Report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency.
4. Comply with a specified curfew.
5. Refrain from possession of a firearm, destructive device, or other dangerous weapons.

Pretrial Services Officer	Date	Time
Gregory J. Coleman, United States Probation Officer	09/10/2018	1:00 pm
Reviewed By Robert C. Brubaker, Supervising United States Probation Officer		

Additional material from this filing is available in the Clerk's Office.