



[A] judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal . . . be detained, unless the judicial officer finds--

(A) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released . . . and

(B) that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in--

(i) reversal,

(ii) an order for a new trial,

(iii) a sentence that does not include a term of imprisonment, or

(iv) a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process.

If the judicial officer makes such findings, such judicial officer shall order the release of the person in accordance with section 3142(b) or (c) of this title, except that in the circumstance described in subparagraph (B)(iv) of this paragraph, the judicial officer shall order the detention terminated at the expiration of the likely reduced sentence.

Our Court of Appeals has explained that pursuant to § 3143(b)(1) bail pending appeal is justified only when a defendant meets his burden of proving the following:

(1) that the defendant is not likely to flee or pose a danger to the safety of any other person or the community if released;

(2) that the appeal is not for purpose of delay;

(3) that the appeal raises a substantial question of law or fact; and

(4) that if that substantial question is determined favorably to defendant on appeal, that decision is likely to result in reversal or an order for a new trial of all counts on which imprisonment has been imposed.

United States v. Miller, 753 F.2d 19, 24 (3d Cir. 1985).

In its opposition to Stout's application, the government concedes that Stout is not a flight risk and poses no danger to the safety of any other person or the community. We must therefore consider only whether Stout meets his burden of satisfying the remaining three prongs of Miller's standard: that his appeal is not for the purpose of delay, that it raises a substantial question of law or fact, and that if such substantial question is determined in his favor on appeal, the determination is likely to result in reversal or an order for a new trial on all counts for which Stout has been sentenced to imprisonment.

Stout argues that he is entitled to remain free on bail because the government presented insufficient evidence on which the jury could convict him on certain counts of the Superseding Indictment. Specifically, Stout takes the position that the government failed to produce sufficient evidence that he took part in a conspiracy (Count 1 of the Superseding Indictment), that he committed fraud involving aircraft parts (Counts 2, 3, and 4 of the

Superseding Indictment), or that he committed obstruction of justice (Counts 20 and 21 of the Superseding Indictment).

According to Stout, these deficiencies give rise to substantial questions of law or fact likely to result in reversal.<sup>1</sup>

Significantly, he did not raise any of these issues at the time he filed his earlier motion for a new trial based on newly discovered evidence.

The undersigned presided over the trial and is familiar with the record. The court finds that there clearly was sufficient evidence for the jury to convict Stout on conspiracy, fraud involving aircraft parts, and obstruction of justice. Stout has therefore failed to meet his burden under § 3143(b)(1). See Miller, 753 F.2d at 24. Accordingly, his application for release pending appeal will be denied.<sup>2</sup>

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1. In addition to his conviction on these counts, Stout was also convicted of two counts of mail fraud. However, in his application for release pending appeal, Stout does not mention any anticipated challenge to the sufficiency of the evidence that served as the basis for his mail fraud convictions.

2. Stout properly observes that the Judgment entered on November 19, 2014 incorrectly states that the jury found him guilty of two counts of "[o]bstruction of justice and aiding and abetting." In fact, the jury found Stout guilty of two counts of obstruction of justice, but not of aiding and abetting. The reference to "aiding and abetting" in the Judgment had no effect on his sentence and is simply a clerical error. The error is being corrected. See Fed. R. Crim. P. 36. We disagree with Stout's characterization of the error as "a serious miscarriage of justice."

