

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

UNITED STATES OF AMERICA :  
 :  
 v. : CRIMINAL NO. 98-13-1  
 :  
 THOMAS KELLY :

MEMORANDUM ORDER

Defendant was today found guilty by a jury of conspiracy to transport stolen property interstate, three counts of causing the interstate transportation of stolen property and three counts of money laundering. The court conducted a bail hearing consistent with 18 U.S.C. § 3143(a). This memorandum order incorporates and memorializes the findings of and restrictions imposed by the court.

On February 23, 1998, defendant was placed on \$50,000 OR bond with travel restrictions by a U.S. Magistrate Judge in the Western District of Texas at San Antonio. Defendant was also ordered to "discontinue home based business and any other unverifiable employment."

There is no indication that the defendant violated any conditions of release or rules of the Pretrial Services Office in the intervening 12 weeks. The defendant married in January 1998 and helps to provide for his wife's two children, ages 15 and 16. The defendant has community ties to San Antonio. At this juncture, however, the court concludes that the defendant poses an appreciable risk of flight and at least some potential danger to the community.

In the words of the investigating Pretrial Services Officer in San Antonio, the defendant has "an extremely long history of theft related and fraud convictions." It also appears that defendant has not been deterred in the past from committing such offenses while conditionally released. He committed the offenses for which he was convicted in the instant case while on probation imposed after a theft conviction in a Texas state court, and committed two theft offenses while on parole imposed after a credit card fraud conviction in a Texas state court. While theft and fraud may not pose a danger to the community of the magnitude of crimes of violence and narcotics offenses, the victims of theft and fraud are nevertheless injured and the demonstrated propensity repeatedly to commit such crimes even while on conditional release does pose some danger to the community.

The court is also concerned about the risk that defendant will fail to appear. The defendant faces a sentence in this case of more than five years of imprisonment and a substantial fine, as well as a significant restitution requirement. The defendant faces revocation of his probation in Texas. The defendant has possessed and used false identification in the past. The defendant has a prior conviction for failure to appear for a court proceeding. The defendant has experience flying airplanes and has a pilot's license. He lives and works just over 100 miles from the Mexican border.

The court has concluded that only substantial restrictive conditions will reasonably assure the appearance of the defendant as required and the safety of the community. See 18 U.S.C. § 3142(c)(1)(B).

**ACCORDINGLY**, this                      day of May, 1998, consistent with the court's oral directives at the conclusion of the bail hearing on this date in this matter, **IT IS HEREBY ORDERED** that the defendant is released pending sentencing on \$50,000 OR bond on the following terms and conditions: that he obey all laws -- state, local and federal; that he immediately report any contact with law enforcement authorities to his supervising Pretrial Services officer; that he obey all rules and regulations of the Pretrial Services Office; that he immediately surrender his pilot's license and passport to his supervising officer and not hereafter apply for a passport or pilot's license in his or any other name; that he not own or possess any firearm; that he not possess or use any illegal drug or narcotic and submit to such periodic drug testing as the supervising officer may deem appropriate; that he not leave San Antonio; that he continue his full time employment at Air Age in San Antonio; that, except for the hours of 6:00 a.m. through 4:30 p.m. on workdays, he shall be subject to home confinement with electronic monitoring and subject to spot telephone and personal checks both at work and at home by the Pretrial Services Office; that, except for his current employment with Air Age, he not engage, directly or

through any other person, in any financial enterprise, business or commercial activity; and, that he not alienate any assets he has which may otherwise be available for purposes of restitution.

**IT IS FURTHER ORDERED** that the Pretrial Services Office shall immediately notify the court and the U.S. Attorney's Office of any violation of any of these conditions, and shall take appropriate steps to report and effect the apprehension of the defendant immediately upon learning that his whereabouts cannot be ascertained or that he has absconded.

**BY THE COURT:**

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**JAY C. WALDMAN, J.**