IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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No. 13-3194

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LINDA SCHROCK,

Defendant-Appellant

_____

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

_____

UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION FOR RELEASE PENDING APPEAL

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Pursuant to Federal Rule of Appellate Procedure 9 and Sixth Circuit Rule 9(b), the United States respectfully submits this opposition to defendant Linda Schrock's motion for release pending appeal, filed April 11, 2013. Schrock was convicted of two felony offenses: 18 U.S.C. 371 (conspiracy) and 18 U.S.C. 249(a)(2) (willfully causing bodily injury because of a person's religion). On

February 8, 2013, Schrock was sentenced to 24 months' imprisonment. R. 383.[1] She reported to prison on April 12, 2013.

As discussed below, because Schrock was convicted of a crime of violence, and it is an offense for which the maximum sentence is life imprisonment, 18 U.S.C. 3143(b)(2) prohibits her release pending appeal unless she: (1) "clearly show[s] that there are exceptional reasons" why her detention would not be appropriate; and (2) satisfies the requirements for release pending appeal set forth in 18 U.S.C. 3143(b)(1). See 18 U.S.C. 3145(c). As set forth below, because she cannot satisfy these requirements, her motion should be denied.

BACKGROUND

1. This case arises out of a series of religiously-motivated assaults over a two-month period by members of a religious community in Bergholz, Ohio against practitioners of the Amish religion. On March 28, 2012, the government filed a ten-count Superseding Indictment charging 16 defendants in connection with five religiously motivated assaults. R. 87 at 14-19. The indictment alleged that, in the fall of 2011, defendants willfully caused bodily injury to the victims by restraining and assaulting them, including forcibly cutting off their beard hair (and in some cases also their head hair), because of their religion, in violation of 18 U.S.C. 249(a)(2), a provision of the Matthew-Shepard and James Byrd, Jr. Hate Crimes

[1] References to "R. __" are to numbers on the district court docket sheet in *United States* v. *Mullet*, No. 5:11cr594 (N.D. Ohio).

Prevention Act of 2009. R. 87 at 3-19. The indictment also charged related counts of conspiracy, obstruction of justice, and making false statements to federal law enforcement officers. R. 87 at 3-13, 19-21.

Linda Schrock was charged with conspiracy (Count 1) and violation of Section 249 (Count 6) in connection with the November 9, 2011, assault on her in-laws, Melvin and Anna Schrock. To summarize, Linda Schrock and her husband (Emanuel Schrock) invited Emanuel's parents to visit them in Bergholz. They suggested that the purpose of the invitation was simply to visit and have an opportunity to reconcile. In fact, Emanuel and Linda Schrock planned to forcibly remove Melvin's beard once he arrived.

At this time, Melvin and Anna Schrock were aware of previous beard- and hair-cutting assaults and were concerned that they would meet a similar fate. Emanuel assured them that they would not be assaulted, but Melvin and Anna were still concerned and contacted the Jefferson County Sheriff, who accompanied them to Emanuel's home and obtained assurances from Emanuel that he would not assault his parents. At that point, Melvin and Anna went inside the house.

After lunch, Anna Schrock went to the kitchen with Linda Schrock. At that time, Emanuel Schrock went to get scissors to remove Melvin's beard. As two of Emanuel and Linda Schrock's teenaged sons restrained Melvin Schrock, Emanuel Schrock forcibly removed Melvin's beard. Melvin's face was cut in the attack.

Anna Schrock screamed, and Linda Schrock covered her mouth. When Anna attempted to leave the house to go outside, Linda grabbed Anna and physically restrained her to prevent her from seeking assistance.

2. Linda Schrock was convicted on both Counts 1 (conspiracy) and 6 (Section 249(a)(2)). R. 230 at 15, 91-92. To prove a violation of Section 249(a)(2), the government must show that the defendant willfully caused bodily injury to another person because of the person's actual or perceived religion. If the offense involves kidnapping, it is punishable by imprisonment "for any term of years or for life." 18 U.S.C. 249(a)(2)(A)(ii). With regard to Count 6, the jury specifically found that the offense included kidnapping. R. 230 at 92. On February 8, 2013, Schrock was sentenced to 24 months' imprisonment. R. 413.

On February 12, 2013, Schrock filed in the district court a motion for release pending appeal. R. 371. She asserted that she met the requirements of 18 U.S.C. 3143(b)(1), including that she is not a flight risk, is not a danger to others or the community, and raises on appeal substantial questions of law or fact. On February 21, 2013, the United States filed an opposition, asserting that: (1) 18 U.S.C. 3143(b)(2) prohibits release pending appeal in the circumstances of this case; and (2) in any event, Schrock does not satisfy the standards set forth in 18 U.S.C. 3143(b)(1). R. 429. On February 25, 2013, the district court denied the motion "[f]or the reasons set forth in the government's response" and without further

discussion. R. 448. On April 11, 2013, the day before she was due to report to prison, Schrock filed the instant motion for release pending appeal with this Court. She essentially makes the same arguments she made in the district court.

DISCUSSION

The Bail Reform Act (Act) mandates detention pending appeal in the circumstances presented in this case. Pursuant to 18 U.S.C. 3143(b)(2), a person found guilty of a crime of violence or an offense for which the maximum sentence is life imprisonment,[2] shall be detained. The Act includes a narrow exception, however, which allows for release pending appeal if the defendant: (1) "clearly show[s] that there are *exceptional reasons*" why detention would not be appropriate; and (2) meets the conditions for release set forth in 18 U.S.C. 3143(b)(1). 18 U.S.C. 3145(c) (emphasis added); see *United States* v. *Sandles*, 67 F. App'x 353, 354 (6th Cir. 2003) ("[D]efendant is subject to the mandatory detention provision in 18 U.S.C. []3143(b)(2)" and "[t]herefore, he must meet not only the criteria for release established in [Section] 3143(b)(1), but also must demonstrate exceptional reasons why his detention is not appropriate") (citing 18 U.S.C. 3145(c)).

Section 3143(b)(1) requires the defendant to make four showings: (1) "by clear and convincing evidence," she is "not likely to flee"; (2) "by clear and

[2] 18 U.S.C. 3143(b)(2) incorporates these factors by cross-referencing to the circumstances set forth in 18 U.S.C. 3142(f)(1)(A)-(C).

convincing evidence," she does not "pose a danger to the safety of any other person or the community"; (3) the appeal "is not for the purpose of delay"; and (4) the appeal "raises a substantial question of law or fact" likely to result in reversal, a new trial, or a reduced term of imprisonment. The "statute creates a presumption against release pending appeal." *Sandles*, 67 F. App'x at 353-354. If the Court finds that the defendant meets these "conditions for release required of any convicted person," the Court turns to whether the defendant established that "exceptional reasons exist making detention inappropriate." *United States* v. *Herrera-Soto*, 961 F.2d 645, 646 (7th Cir. 1992) (per curiam) (internal quotation marks omitted).

As set forth below, Linda Schrock has not established that she is entitled to release pending appeal under *either*: (1) the required showing that there are "exceptional reasons" why her "detention would not be appropriate"; or (2) the Section 3143(b)(1) factors. 18 U.S.C. 3145(c).

1. <u>"Exceptional Reasons."</u> This Court may not grant release pending appeal unless it finds that Linda Schrock has "clearly shown" that "exceptional reasons" exist making detention inappropriate. Schrock has made no such showing. Indeed, she has not even attempted to make such a showing. Instead, she asserts (in addressing the Section 3143(b)(1) factors) that she is not likely to flee and is not a danger to others because of her family and community ties. The Section

3143(b)(1) factors, however, do not satisfy the requirements of Section 3145(c); rather, they are "foundational." *United States* v. *Koon*, 6 F.3d 561, 564 (9th Cir. 1993) (denying petitions for rehearing and rehearing en banc) (Rymer, J., concurring). In other words, to establish "exceptional" reasons, the defendant "has to show more than the fact that he or she is neither a danger to the community nor likely to flee." *Ibid.*

Courts have described such "exceptional reasons" as those that are "clearly out of the ordinary, uncommon, or rare." *United States* v. *Little*, 485 F.3d 1210, 1211 (8th Cir. 2007) (per curiam) (citation omitted). Generally, circumstances that are "purely personal do not rise to the level of exceptional warranting release." *United States* v. *Lea*, 360 F.3d 401, 403 (2d Cir. 2004) (internal quotation marks and citation omitted); see also *id.* at 403-404 ("There is nothing exceptional about going to school, being employed, or being a first-time offender, either separately or in combination.") (internal quotation marks omitted); see generally *United States* v. *Garcia*, 340 F.3d 1013, 1022 (9th Cir. 2003) ("Hardships that commonly result from imprisonment do not meet this standard. * * * Only in truly unusual circumstances will a defendant whose offense is subject to the statutory provision be allowed to remain on bail pending appeal.") (citing cases).

In sum, because Schrock has failed to clearly show that "exceptional" circumstances warrant her release pending appeal, she does not fall within the

Section 3145(c) exception that would permit her release pending appeal. The failure to clearly show any exceptional circumstances defeats her motion for release, regardless of whether she meets the Section 3143(b)(1) requirements. In any event, she does not meet those criteria.

2. The Section 3143(b)(1) Factors. Schrock first asserts that she does not pose a risk of flight or a danger to others. She notes her strong ties to her home and that she does not have a history of violent conduct. Motion 2. Schrock, however, fully participated in a violent "surprise" attack of her in-laws in her house after she and her husband lured them there with false promises of safety, and also lied to the sheriff who was there. While her husband was forcibly removing his father's beard, she physically restrained her elderly mother-in-law. Moreover, the assault (like the previous four) was under the leadership of her father (and co-defendant) Samuel Mullet, Sr. Her allegiance to him provides reason for concern of the risk she may pose to others, including members of Amish communities whose religious practices may be contrary to those followed by Mullet and the other defendants. In short, she has not met her burden of showing "by clear and convincing evidence" that she does not pose a danger to the safety of others.

Schrock also asserts that her appeal is not for purposes of delay and raises substantial issues of law and fact likely to result in reversal, a new trial, or a reduced term of imprisonment. Motion 4-5. We disagree with the latter point. As

this Court has explained, an appellant raises a "substantial question" when "the appeal presents a close question or one that could go either way and * * * the question is so integral to the merits of the conviction that it is more probable than not that reversal or a new trial will occur if the question is decided in the defendant's favor." *United States* v. *Sutherlin*, 84 F. App'x 630, 631 (6th Cir. 2003) (quoting *United States* v. *Pollard*, 778 F.2d 1177, 1182 (6th Cir. 1985)). Here, the district court presided over the lengthy trial and denied defendants' various motions to dismiss the indictment, for judgment of acquittal, and for a new trial.[3] Moreover, the district court denied Schrock's motion for release pending appeal. Cf. *Pollard*, 778 F.2d at 1182 ("[s]ince the district court is familiar with the case, the district court is in an excellent position to determine in the first instance whether the defendant raises a substantial question on appeal").

[3] Shortly after defendants were convicted, the district court issued an order addressing the United States' post-trial motion for detention. See R. 243. Although the court permitted some of the defendants (including Linda Schrock) to remain on bond *until sentencing* (but also noted that it was putting these defendants "on notice" that they should expect to be remanded into custody after sentencing "should the Court impose a prison sentence"), the court explained: "In denying each defendants' motion for judgment of acquittal at the close of the government's case and again at the conclusion of all the evidence * * *, the Court ruled that there was sufficient evidence from which a reasonable juror could convict each defendant. Prior to trial, the Court rejected all of the legal challenges to the indictment and to the prosecution * * *. The Court does not believe the law has changed in the last few months, nor that anything in the evidentiary presentation at trial suggested its rulings were incorrect." R. 243 at 2.

Moreover, Schrock simply asserts that her appeal "is based on a sound foundation of fundamental principles of law"; she then lists the issues she anticipates raising on appeal. Motion 4-5. These issues include the constitutionality of Section 249(a)(2) – *i.e.*, whether it exceeds Congress's Commerce Clause power, violates the Tenth Amendment, or infringes on defendants' First Amendment rights – and various issues concerning the statutory requirements of Section 249(a)(2) and the sufficiency of the evidence. Motion 4-5. Schrock, therefore, has made no showing that any issue "presents a close question or one that could go either way." *Sutherlin*, 84 F. App'x at 631 (citation omitted). Indeed, "congressional enactments are entitled to a presumption of validity." See, *e.g.*, *United States* v. *Fisher*, 149 F. App'x 379, 383 (6th Cir. 2005). The Court may strike down an act of Congress "only if the lack of constitutional authority to pass the act in question is clearly demonstrated." *National Fed'n of Indep. Bus.* v. *Sebelius*, 132 S. Ct. 2566, 2579 (2012) (internal brackets, citation, and quotation marks omitted). Moreover, with respect to the Commerce Clause issue, "for criminal defendants, [i]t appears that *United States* v. *Lopez*[4] has raised many

[4] In *Lopez*, the Court struck down a federal statute prohibiting the possession of a gun in a school zone, concluding that Congress lacked power under the Commerce Clause to enact the statute. In so doing, the Court recognized three categories of Commerce Clause regulation: (1) the "channels" of interstate commerce; (2) "instrumentalities * * * or persons or things in interstate commerce; and (3) activities that "substantially affect" interstate commerce. *United States* v. *Lopez*, 514 U.S. 549, 558-559 (1995).

false hopes. Defendants have used it as a basis for challenges to various statutes. Almost invariably those challenges fail." *United States* v. *Beuckelaere*, 91 F.3d 781, 783 (6th Cir. 1996) (internal quotation marks and citation omitted). In this case, Section 249(a)(2) contains "jurisdictional hooks" requiring that the Government prove beyond a reasonable doubt, as an element of the offense, a nexus to interstate commerce in every prosecution. These "hooks" reflect the three *Lopez* categories of activity that Congress may regulate under its commerce power. Section 249(a)(2), therefore, both on its face and as applied in this case, is fully consistent with *Lopez*, as well as the Supreme Court's Commerce Clause decision in *United States* v. *Morrison*, 529 U.S. 598 (2000).

CONCLUSION

For the foregoing reasons, this Court should deny Linda Schrock's Motion For Release Pending Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2013, I electronically filed the foregoing UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION FOR RELEASE PENDING APPEAL with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the Appellate CM/ECF system.

I further certify that all parties are CM/ECF registered, and will be served electronically.

s/ Thomas E. Chandler
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